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**REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE BOROUGH OF BEACH HAVEN  
as Redevelopment Entity**

**AND**

**525 SECOND STREET LLC  
as Redeveloper**

**Date: October 15, 2019**

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This REDEVELOPMENT AGREEMENT (“Redevelopment Agreement”), dated as of October 15, 2019, by and between **THE BOROUGH OF BEACH HAVEN**, a municipal corporation of the State of New Jersey having its principal offices at 300 Engleside Avenue, Beach Haven, New Jersey 08008 (hereinafter referred to as the “Borough”), acting in the capacity of a redevelopment entity pursuant to the provision of the Local Redevelopment and Housing Law, and 525 SECOND STREET LLC , **or its assignee**, having an address at 4569 South Broad Street, Yardville, NJ 08620 (hereinafter referred to as “Redeveloper”). The Borough and the Redeveloper are collectively referred to as the “Parties” and individually as a “Party”.

### WITNESSETH

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

WHEREAS, in order to stimulate redevelopment, the Borough, pursuant to *N.J.S.A.* 40A:12-1 *et seq.*, via Resolution 82-2018, adopted on March 8, 2018, formally declared Block 129, Lot 5, Block 141, Lot(s) 3, 3.01, 4 and 4.01, Block 143, Lot(s) 1, 2, 3, 4, 5, 6, 7, 9, 10 and 11, Block 144, Lot(s) 4 and 5, Block 148, Lot 7, Block 148.01, Lot(s) 1-6, and Block 162, Lot(s) 7.02 and 7.03 within the Borough of Beach Haven an area in need of redevelopment (the “Maritime District Redevelopment Area”); and

WHEREAS, in order to facilitate the redevelopment of the Maritime District Redevelopment Area, the Borough adopted Ordinance #2018-12 Adopting the “Redevelopment Plan for Block 129, Lot 5; Block 141, Lot(s) 3, 3.01, 4, 4.01; Block 143, Lot(s) 1, 2, 3, 4, 5, 6, 7, 9, 10, 11; Block 144, Lot(s) 4, 5; Block 148, Lot 7; Block 148.01, Lot(s) 1-6; and Block 162, Lot(s) 7.02, 7.03 within the Borough of Beach Haven, County of Ocean, State of New Jersey”, (“Maritime District Redevelopment Plan”); and

WHEREAS, the Redevelopment Law, *N.J.S.A.* 40A:12A-8(f), authorizes the Borough to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in the Rehabilitation Area for which a Redevelopment Plan has been adopted; and

WHEREAS, by way of Resolution #258-2018, adopted on November 8, 2018, the Borough designated Mercer Management & Development, Inc., and/or its assignee as conditional redeveloper for a portion of the Maritime District Redevelopment Area known as Block 148.01, Lots 1, 2, 3 & 4; Block 148, Lot 7; Block 162, Lots 7.02 & 7.03 (the “Property”), subject to the execution of a redevelopment agreement; and

WHEREAS, Mercer Management & Development, Inc., has assigned its interests in the Project to 525 Second Street LLC, which shall be the new title of the Redeveloper; and

WHEREAS, based upon current demand for certain commercial uses and services within the Maritime District Redevelopment Area, a need for expansion of permitted uses within the Maritime District Redevelopment Area exists; and

WHEREAS, it is of utmost importance to the Borough to ensure the continued operation of Morrison's Marina as a public marina with improved public waterfront access and safety; and

WHEREAS, the Council, pursuant to Ordinance 2018-34 and Ordinance 2019-17 and upon recommendation from the Land Use Board, adopted amendments to the Maritime District Redevelopment Plan to allow Hotel uses, at three stories, on a portion of the Property, known as Block 148.01, Lots 1, 2, 3 & 4; Block 148, Lot 7; Block 162, Lots 7.02 & 7.03, together with the Maritime District Redevelopment Plan hereinafter referred to as the "Redevelopment Plan"; and

WHEREAS, the Coastal Area Facility Review Act (CAFRA) requirements apply to development of the Property; and

WHEREAS, the Redevelopment Plan requires any developer proposing to utilize the land use regulations permitted thereunder to enter into a Redevelopment Agreement with the Borough as a condition of final approval, in order to effectuate the rehabilitation and redevelopment of the Borough; and

WHEREAS, pursuant to the Redevelopment Plan, and to promote the most efficient and coherent redevelopment of the Maritime District Redevelopment Area the Borough intends to enter into a Redevelopment Agreement to govern the redevelopment of the Property; and

WHEREAS, Redeveloper proposes: 1) to construct and operate a boutique hotel, containing three (3) stories of rooms, with parking on the ground level, all of which shall not exceed forty-four (44) feet in height to the top of the hotel roof, with an elevator tower not to exceed forty-five (45) feet, nine (9) inches; 2) to construct and operate an approximately 400 seat restaurant with roof top deck at the location of the former Morrison's Restaurant; 3) to construct and operate dedicated parking on Block 148, Lot 7 and on a portion of Block 148.01 along Pennsylvania Avenue; 4) to renovate and upgrade Morrison's Marina, which will include one hundred thirty seven (137) boat slips, additional public waterfront access to the Northern and Western boundaries of the Marina, on site amenities such as a pool and lounge area for both the hotel and Marina guests, dry storage for vessels during the winter months, a Vessel parts, service and repair shop, a fuel dock and pump-out station, a Marina bar, a pavilion bar, a bait shop, public restrooms, and bathhouse for Marina guests, all substantially in accordance with and more fully described in the Concept Plan, attached hereto as Exhibit "B" (the "Project Improvements"), on the Property; and

WHEREAS, the Borough desires that the Property be redeveloped by Redeveloper in accordance with the Redevelopment Plan and substantially in accordance with the Concept Plan; and

WHEREAS, the Borough has determined in the best interest of the Borough to designate Mercer Management & Development, Inc., as the redeveloper of the Property and to enter into this Redevelopment Agreement to set forth the respective rights, privileges and obligations of the Parties with regard to redevelopment of the Property; and

WHEREAS, pursuant to the Redevelopment Law, and in order to effectuate the public purposes set forth in the Redevelopment Plan, the Parties desire to enter into an agreement that sets forth the terms and conditions pursuant to which the Property is to be redeveloped and the respective obligations of each Party with respect to the redevelopment of the Property.

NOW, THEREFORE, for and in consideration of the promises and of the mutual representations, covenants and agreements herein set forth, and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATIONS

**SECTION 1.1. Definitions.** Except as expressly provided herein to the contrary, all capitalized terms used in this Redevelopment Agreement and its exhibits shall have the following meanings:

“Affiliate” means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Boat Slip” shall mean the numbered, identified and designated space in and above the water for the mooring or docking of a single Vessel.

“Borough” as defined in the Recitals hereto.

“Borough Indemnified Parties” means the Borough and its officers, agents, employees, contractors, and consultants.

“CAFRA” shall mean the Coastal Area Facilities Review Act, *N.J.S.A.* 13:19-1 et seq., as the same may be amended and supplemented, as well as the regulations adopted by the NJDEP pursuant thereto at *N.J.A.C.* 7:7 et seq., including but not limited to the Coastal Zone Management (“CZM”) *N.J.A.C.* 7:7E-1 et. seq. and other pertinent environmental regulations promulgated by the NJDEP regarding Coastal Waters.

“Certificate of Completion” is defined in Section 4.12 (Certificate of Occupancy and Certificate of Completion).

“Certificate of Occupancy” means a temporary or final “certificate of occupancy,” as such term is defined in *N.J.A.C.* 5:23-1.4 the New Jersey Administrative Code, as may be amended or

supplemented, issued with respect to all or a portion of the Project upon Completion of all or a portion of the Project. “Coastal Area” shall have the meaning ascribed to it in *N.J.S.A.* 13:19-4.

“Commence Construction” or “Commencement of Construction” means the undertaking by Redeveloper of any actual physical construction of any Project Improvements, including site preparation, environmental remediation, construction of new structures or construction or upgrading of infrastructure.

“Completion Date” shall be thirty-six (36) months from the issuance of final unappealable approvals and building permits subject to Tolling Events.

“Control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Declaration” is defined in Section 3.2 (Declaration of Covenants and Restrictions).

“Deed Restriction” is defined in Section 3.4 (Marina Deed Restrictions)

“Effective Date” means the date on which this Redevelopment Agreement was executed by all Parties hereto.

“Environmental Laws” means any present or future applicable federal, state or local law, rule, regulation, order or other requirement dealing with environmental protection, and specifically includes CAFRA.

“Event of Default” is defined in Section 11.1 (Events of Default).

“Final Site Plan” means the Site Plan submitted to the Land Use Board for final approval pursuant to *N.J.S.A.* 40:55D-50.

“Force Majeure” is defined in Section 11.2 (Force Majeure).

“Foreclosure” means that event in which a Holder forecloses its Mortgage secured by the Property or the Project Improvements, or part thereof, or takes title to the Property or the Project Improvements, or part thereof, by deed-in-lieu of foreclosure or similar transaction.

“Governmental Approvals” means all necessary reviews, consents, permits or other approvals of any kind legally required by any Governmental Body in order to carry out the Project.

“Governmental Body” means any federal, state, county or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government, including, without limitation, the Borough and the State.

“Hazardous Substance” means any substance, chemical or waste that is listed as hazardous, toxic, a pollutant or contaminant, or dangerous under any applicable federal, state, county or local statute, rule, regulation, ordinance or order, which is not properly contained and which exceeds allowable volume and/or concentration limits under applicable Environmental Laws.

“Holder” means a person, company, entity or its known or identified Affiliates having or controlling a transferable or non-transferable security or financial interest in the Property or Project of record, such as a mortgagee, bond holder, lender in possession of a negotiable document with rights being secured in written documents setting forth the rights and responsibilities of such person, company, entity or its known or identified affiliates of those said interests.

“Holder Failure” is defined in Section 12.4(b).

“Mortgage” means a mortgage or deed of trust given by Redeveloper encumbering its interest(s) in and to the Property and/or Project Improvements.

“Land Use Board” means the Land Use Board for the Borough of Beach Haven.

“Legal Requirements” means all laws, statutes, codes, ordinances, orders, regulations and requirements of any Governmental Body, now or hereafter in effect, and, in each case, as amended from time to time.

“Long Term Financial Agreement” means that agreement to be negotiated between the Parties for a PILOT (Payment In Lieu of Taxes) program for the Project, whereby the Redeveloper, as owner of the Project Improvements, shall pay to the Borough commencing as of the date of the Certificate of Occupancy for the Project Improvements, a payment in lieu of real estate taxes pursuant to the Long Term Tax Exemption Law as defined herein.

“Long Term Tax Exemption Law” means the State statute codified at N.J.S.A. 40A:20-1, et seq., as amended and supplemented.

“Marina” shall mean a water dependent facility which provides docking, berthing, servicing or storage for more than five (5) Vessels that are not registered to the facility owner, including both wet-storage (in water) and/or dry-storage (on land/racks), as well as the piers, slips, bulkheads, pilings, docking facilities, fixtures and improvements attached thereto, Boat Slips and navigable waterways.

“NJDEP” means the New Jersey Department of Environmental Protection.

“Party” means either the Borough or the Redeveloper, as the context requires.

“Performance and Payment Bond” is defined in Article 9.

“Permitted Transaction” is defined in Section 7.2(b) (Redeveloper Covenants).

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

“Plans and Specifications” is defined in Section 4.12 (Certificate of Occupancy and Certificate of Completion).

“Preliminary Site Plan” means the Site Plan submitted to the Land Use Board for preliminary approval pursuant to *N.J.S.A. 40:55D-46*.

“Private Marina” means a Marina in which all or a portion thereof is not open to the general public and/or not generally available for public use. A Private Marina also includes a Marina intended for or restricted to the use of a particular person, group, or class.

“Progress Report” is defined in Section 6.2 (Progress Reports).

“Project” as defined in the Recitals hereto.

“Project Budget” is defined in Section 4.12 (Certificate of Occupancy and Certificate of Completion)..

“Project Costs” is defined in Section 8.2.

“Project Improvements” is defined in the Recitals hereto.

“Project Schedule” shall mean the schedule for completion of construction of the Project attached hereto as Exhibit “C”.

“Project Team” is defined in Section 4.16 (Project Team) and more specifically described on Exhibit “D”.

“Property” as defined in the Recitals hereto and more specifically described on Exhibit “A”.

“Public Site Improvements” means any utility and/or infrastructure improvements that the Borough and Redeveloper hereafter agree to classify as Public Site Improvements under this Redevelopment Agreement per Section 4.5 (Public Site Improvements) which Public Site Improvements shall be dedicated to the Borough for public use and which shall be accepted for public use upon the issuance of a Certificate of Completion for the Public Site Improvements.

“Redevelopment Agreement” or “Agreement” means this Redevelopment Agreement between the Borough and Redeveloper.

“Redevelopment Area” as defined in the Recitals hereto.

“Redevelopment Law” as defined in the Recitals hereto.

“Redevelopment Plan” as defined in the Recitals hereto.

“Redeveloper” means 525 Second Street LLC.

“Redeveloper Covenants” is defined in Section 3.1 (Redeveloper Covenants).

“Site Plan” means shall have the meaning set forth in *N.J.S.A. 40:55D-7*.

“State” means the State of New Jersey.

“Statewide Nonresidential Development Fee Act” means the Statewide Nonresidential Fee Act, *N.J.S.A. 40:55D-8.1* through *-8.8*, as may be amended.

“Tolling Event” is defined in Section 4.14 (Tolling Event).

“Transfer” is defined in Section 7.2(a) Redeveloper Covenants).

“Vessel” shall mean ships, boats, barges, craft, floating structures, vehicles or other devices which are able to navigate at sea or on or by water and/or which are or may be used for the carriage, transportation or handling of persons or property on or by water.

## **SECTION 1.2. 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.

(f) All Notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time.

## **ARTICLE 2 GENERAL REPRESENTATIONS AND WARRANTIES**

**SECTION 2.1. Representations and Warranties by Redeveloper.** The Redeveloper hereby represents and warrants the following to Borough for the purpose of inducing Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company and is qualified to do business and is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

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

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

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

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

(f) No indictment has been returned against any official of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Redevelopment Agreement or otherwise.

(g) There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (1) questions the authority of the Redeveloper to enter into this Redevelopment Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment Agreement; or (2) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform its obligations pursuant to the terms of this Redevelopment Agreement.

(h) The 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 the Redeveloper or of any agreement, Mortgage, indenture, instrument or judgment, to which the Redeveloper is a party.

(i) To the Redeveloper's knowledge, all information and statements included in any written documentation submitted by the Redeveloper to the Borough and its agents are true and correct in all material respects, and the Redeveloper acknowledges that the facts and representations contained therein are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(j) The Redeveloper agrees that the cost and financing of the Project is the responsibility of the Redeveloper, pursuant to the Redevelopment Plan and this Redevelopment Agreement. The Borough shall not be responsible for any cost whatsoever in respect to same.

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

(l) The ownership structure of the Redeveloper is set forth on Exhibit "E". The Redeveloper shall, at such times as Borough may reasonably request, furnish Borough with a complete statement subscribed and sworn to by the manager of the Redeveloper, setting forth all of the ownership interests of the Redeveloper, or other owners of equity interests of the Redeveloper and the extent of their respective holdings in the Redeveloper, and in the event any other parties have a beneficial interest in the Redeveloper, their names and the extent of such interest in the Redeveloper.

**SECTION 2.2. Representations and Warranties by Borough.** Borough hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Borough has the legal power, right and authority 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, and to perform its obligations hereunder.

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

(c) There is no pending, or to the best of the Borough's knowledge, threatened litigation that would prevent the Borough from performing its duties and obligations hereunder aside from Docket# OCN-L-3067-18 which has been filed and challenges the validity of the Redevelopment Plan.

(d) The Borough is not a party to any agreement, contract, obligation, promise, offer, representation, letter of intent, memorandum of understanding or contractual or quasi contractual relationship that prevents or limits the Borough in its ability and right to enter this Redevelopment Agreement and/or to grant to Redeveloper the rights set forth in this Redevelopment Agreement.

(e) The Borough has not granted to any other party the rights granted to Redeveloper in this Redevelopment Agreement with respect to the Property.

**SECTION 2.3. Mutual Representations.** In the event that any conditions or other matters or contractual provisions that are required by the Redevelopment Law or any other Legal Requirements have been omitted from this Redevelopment Agreement, then, as appropriate, either (a) the Borough shall correct or fulfill any requirements of the Redevelopment Law or any other Legal Requirements which would have initially been the obligation of the Borough to correct or fulfill; and/or (b) the Borough and the Redeveloper agree that this Redevelopment Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Redevelopment Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the parties, the Borough and the Redeveloper agree to act in good faith to mitigate such changes in position.

### **ARTICLE 3 REDEVELOPER COVENANTS; DECLARATION OF COVENANTS AND RESTRICTIONS**

**SECTION 3.1 Redeveloper Covenants.** The Redeveloper covenants and agrees that (collectively, "Redeveloper Covenants"):

(a) The Redeveloper shall carry out the Project in accordance with the provisions of this Redevelopment Agreement and Legal Requirements, including, but not limited to, the Redevelopment Law, all Governmental Approvals and Environmental Laws.

(b) The Redeveloper shall undertake with due diligence (1) the financing of the Project, (2) construction and development of the Project, (3) commencement and completion of each item in the Project Schedule in accordance with the Project Schedule, as the same may be delayed and/or extended by Force Majeure, or otherwise within such longer periods as are commercially and economically reasonable under the circumstances and in the sequence deemed appropriate by Redeveloper. All construction activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first class developments of the same type and nature as the Project.

(c) In the event the Redeveloper wishes to materially change or modify the Project Improvements or the Project Schedule in a manner that otherwise requires any significant new permits or approvals or any amendment or modification of any existing permits or approval, the Redeveloper will submit appropriate applications and/or supporting plans or other required documentation to the Borough for the Borough's written approval, which approval must be secured prior to development of the altered Project Improvements and which approval shall not be unreasonably withheld, delayed or conditioned.

(d) The Redeveloper shall use diligent efforts to obtain all Governmental Approvals requisite to the construction and development of the Project, including evidence satisfactory to the Borough that its use of the Project is in compliance with all Legal Requirements and Environmental Laws.

(e) Upon completion of the development and construction of the Project, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated hereby.

(f) Subject to Force Majeure, including, without limitation, interruptions that may be caused by any casualty and, or delays caused by Tolling Events, the Redeveloper shall not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project.

(g) The Redeveloper shall immediately notify the Borough of any material adverse change in its financial condition.

(h) The Redeveloper shall make all payments in satisfaction of the Redeveloper's financial obligations as set forth in this Redevelopment Agreement.

(i) The Redeveloper shall not use the Property, Project Improvements, or any part thereof for which a Certificate of Completion has been issued, in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(j) The Redeveloper shall complete the Project or cause the Project to be completed at its sole cost and expense using any public and/or private resources that may be available; provided, however, that Borough shall in no way be obligated to provide such resources except as specifically provided for herein.

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

(l) The Redeveloper shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, marital status, affectional preference or sex of any person.

(m) The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Property and not for speculation in land holding.

**SECTION 3.2. Declaration of Covenants and Restrictions.** The Redeveloper shall execute and record a Declaration of Covenants and Restrictions, approved by the Borough (“Declaration”) imposing on the Property the Redeveloper Covenants for the benefit of the Borough set forth in Section 3.1 (Redeveloper Covenants), above.

**SECTION 3.3. Effect and Duration of Redeveloper Covenants.** It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in Section 3.1 (Redeveloper Covenants) shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, 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 party in possession or occupancy of the Property or any part thereof. The Declaration shall, by its terms and without the need for recordation of any release or other instrument, expire and be of no further force or effect upon the termination of this Redevelopment Agreement.

The Redeveloper Covenants set forth in Section 3.1 (Redeveloper Covenants) shall be binding on the Redeveloper itself, and on each successor in interest to the Redeveloper. Likewise, the Redeveloper Covenants set forth in Section 3.1(i), (k) and (l) shall be binding on each party in possession or occupancy, other than patrons of the Project, respectively, of all or any of the Project Improvements. The applicable Redeveloper Covenants shall only be applicable to the specified Persons for such period of time as that Person holds possession or is in occupancy of the Property and/or Project Improvements.

**SECTION 3.4. Marina Deed Restrictions.** Redeveloper agrees that upon Completion of the Project Improvements and prior to the issuance of any Certificate of Occupancy and/or Certificate of Completion for the same, the Redeveloper shall execute a deed restriction for the benefit of, and enforceable by, the Borough, which shall prohibit the Redeveloper from (i) converting any of the Boat Slips on the Property into condominium units and from selling any of the individual Boat Slips; (ii) from creating a private Marina requiring membership; and (iii) maintaining all Boat Slips for rental by the public at large (“Deed Restriction”).

**SECTION 3.5. 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 this Redevelopment Agreement, including the Deed Restriction, both for and in their own right and in the public interest for which purpose such agreements and covenants have been provided. Such agreements and covenants shall (and the Declaration and Deed Restriction shall so state) run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein. The Borough, acting as the Redevelopment Entity, shall have the sole right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or

any other beneficiaries of such agreement or covenant may be entitled. Upon completion of the Project Improvement, the conditions that were found and determined to exist at the time the Property was determined to be in need of redevelopment shall be deemed to no longer exist and the conditions and requirements of N.J.S.A. 40A:12A-9(a) shall be deemed to have been satisfied with respect to the Project Improvements, and the Property and Project Improvements shall no longer be subject to eminent domain as a result of the redevelopment area designation, as evidenced by the issuance of a Certificate of Completion. Nothing contained in the Certificate of Completion shall modify in any way any other covenants, provisions or continuing obligations of the Redeveloper under this Redevelopment Agreement or any other provisions of those documents which are incorporated in this Redevelopment Agreement, such as the Long Term Financial Agreement, which such covenants, provisions and obligations shall remain in full force and effect and the Project shall continue until such time as all such obligations of the Redeveloper shall be satisfied and all such agreements are terminated. Likewise, nothing contained in the Certificate of Completion shall modify in any way the Deed Restriction.

#### **ARTICLE 4 IMPLEMENTATION OF PROJECT**

**SECTION 4.1. Governmental Approvals.** The Redeveloper represents that attached hereto as Exhibit "F" is a list of all Governmental Approvals known or identified to date that must be or that have been obtained by Redeveloper in connection with the development and construction of the Project Improvements. This list shall be updated as part of the Progress Reports. The Redeveloper shall use diligent efforts to secure, or cause to be secured any and all Governmental Approvals and shall carry out the Project in conformance therewith. The Borough shall fully cooperate with the Redeveloper in obtaining the Governmental Approvals. Redeveloper shall ensure that the Project Improvements and the Project are constructed and operated in accordance with all Legal Requirements, including but not limited to Environmental Laws and CAFRA. If the Redeveloper intends to request a relaxation of any *CAFRA rules and/or regulations, and/or Flood Hazard Control Act (Subchapter 15), Coastal Zone Management Rules (Subchapter 19)*, *the Redeveloper shall first obtain written consent from the Borough to do so, which consent shall not be unreasonably withheld, conditioned or delayed. Such requests shall be evaluated in consultation with the Borough Engineer.*

#### **SECTION 4.2. Borough Approvals.**

(a) **Site Plan Approval.** The Redeveloper shall apply to the Borough Land Use Board for all required Preliminary Site Plan and/or Final Site Plan, lot consolidation or subdivision approvals, and any necessary amendments thereto, for the Project and shall comply with conditions, if any, of such approvals. The Redeveloper has submitted all proposed Site Plans for the Project for conceptual review and conceptual approval by the Borough governing body, and has obtained such approval, prior to submission to the Land Use Board. The Redeveloper shall provide adequate time for the Borough governing body to review the same and provide comments thereto. To the maximum extent practicable, the Borough governing body's comments shall be incorporated into any subsequent submissions for Preliminary Site Plan and Final Site Plan approval. Conceptual Site Plan review and approval by the Borough governing body shall be an explicit condition of Commencement of Construction of the Project on the Property and

submission of the Site Plan for Preliminary Site Plan approval and Final Site Plan approval to the Land Use Board. Compliance with the design standards set forth in Section 4.2(c) (Design Standards) below and the recording of the Deed Restriction as set forth in Section 3.4 (Marina Deed Restriction) above shall each be a mandatory condition of approval for any Site Plan submitted to the Land Use Board and shall be consented to by the Redeveloper.

(b) **Borough Approval of Architectural Plan.** The Redeveloper has submitted the architectural plans for the Project for conceptual review and approval by the Borough governing body, and has obtained such approval, prior to submission to the Land Use Board. Conceptual Architectural plan approval by the Borough governing body shall be an explicit condition of Commencement of Construction of the Project on the Property. In the event the Project is to be materially changed or materially modified by necessity, economy, convenience or otherwise so that the changed or modified Project is not within the purview of the approved architectural plan, the Redeveloper shall submit the proposal change or modification to the Borough governing body and then to the Land Use Board, in the form of an application seeking amendment to the architectural plan.

(c) **Design Standards.** The Project shall comply with the following design standards:

- (i) *The Marina shall be configured to ensure that at least one boat lift has a boat lift rating at twenty seven (27) tons, which currently exists, to ensure such lift is large enough to accommodate Vessels with a length overall of forty-eight (48) feet and shall ensure that there is a location available for the repair of Vessels with a length overall of forty-eight (48) feet. Improvements to the Marina shall include, but are not limited to, improved public waterfront access and improvements to the bulkheads. The Marina shall be dredged to four (4) feet below mean low tide to ensure Vessels with a length overall of forty-eight (48) feet can safely navigate the boat slips.*
- (ii) *All buildings shall be designed to ensure that public access to the Marina remains unimpeded, there remains visibility of the Marina from 2<sup>nd</sup> Street and that the Pennsylvania Avenue area of the Property be available for parking, and for winter storage of Vessels, in conformance with the Concept Plan attached hereto as Exhibits B and B-1. All buildings shall utilize only materials approved by the governing body as set forth in Exhibit B-2.*
- (iii) *The vehicular access points to the site shall be configured so as to minimize the expected traffic impact on the neighboring RB Zone and RA Zone. In addition, a shuttle service to provide transportation between the hotel and the beach shall be provided to hotel guests and valet parking shall be made available for both restaurant and hotel guests.*
- (iv) *The hotel building shall have garage doors at the ground level which can remain open during the summer tourist season.*

- (v) The restaurant building shall be designed to ensure that the front entrance is inviting and provides a welcoming feel.
- (vi) The Property and the Project shall be designed to provide adequate security to minimize disturbance to neighboring properties from hotel and restaurant guests.
- (vii) The Project encompasses the entire Property, which shall be developed and operated as a single site. Shared parking concepts shall be utilized to the greatest extent possible for the Project.

(d) **Traffic Study.** A traffic study is to be submitted to the Borough governing body and to the Land Use Board in conjunction with any Site Plan application which shall adequately demonstrate the amount of traffic to be generated and capacity of the existing roadway network to absorb expected traffic volume. Such study must clearly demonstrate findings of no significant adverse impact, or measures to be taken to alleviate expected adverse traffic impact, which measures must be acceptable to the Borough and Land Use Board.

(e) **Compliance with the Concept Plan.** The Project shall be designed substantially in accordance and conformance with the Concept Plan. The Project shall be designed in accordance and conformance with this Redevelopment Agreement, the Redevelopment Plan, Environmental Laws and all Legal Requirements. In the event of a conflict between the Concept Plan and the Redevelopment Plan, the latter shall be controlling.

**SECTION 4.3. Existence of Utilities.** The parties acknowledge that local public utility providers may have certain rights with respect to the Property and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefore, in order to complete the Project as provided by this Redevelopment Agreement, provided that Borough shall, upon request from the Redeveloper, provide any appropriate orders as may be reasonably required to accomplish such relocation, consistent with the provisions of N.J.S.A. 40A:12A-10, and any reasonable and standard costs incurred by Borough in connection therewith shall be reimbursed by the Redeveloper. The Redeveloper shall consult local public utility providers with respect to the Property and construction, and shall take all reasonable and customary precautions to prevent personal injury, property damage and other liabilities related to utilities above, at or under the Property. Notwithstanding the foregoing, in the event that utility relocation is required in connection with the Public Site Improvements, the cost thereof (if not borne by the local public utility pursuant to the Legal Requirements) shall be negotiated by the Parties. The Redeveloper shall cooperate with the Borough in such undertaking, including, but not limited to, the provision of easements over areas within the Property suitable for such relocation, if necessary.

**SECTION 4.4. *Intentionally Omitted.***

**SECTION 4.5. Public Site Improvements.** Redeveloper shall provide a maintenance bond or a letter of credit in a form generally acceptable to Governmental Bodies in the State

guaranteeing that the Public Site Improvements, when completed, will be in accordance with the requirements of the Municipal Land Use Law, N.J.S.A. 40:550-1, et. seq.

**SECTION 4.6. Application for Tax Exemption.** The Redeveloper may make Application for Tax Exemption for the Project in accordance with the requirements of the Long Term Tax Exemption Law.

**SECTION 4.7 Site Preparation and Condition of Site.** Within One Hundred and Twenty (120) days of the date upon which all final non-appealable Governmental Approvals have been received, Redeveloper shall begin site preparation work in order to advance the Project construction schedule. After Commencement of Construction of the Project, the Redeveloper shall keep the Property free from any material accumulation of debris or waste materials and shall maintain in good condition any landscaping and amenities required under the final site plan.

**SECTION 4.8. Neighborhood Impacts.** The 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, the Redeveloper shall take steps, reasonably consistent with the nature of the construction activity required to complete the Project Improvements that are reasonably necessary in order to minimize any potential negative effects that construction of the Project may produce.

**SECTION 4.9. Traffic.** The Redeveloper and the Borough agree that the direction, flow and amount of traffic in and around the Property is an issue to be addressed during the construction of the Project as well as after its completion. The Redeveloper shall exert reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods consistent with the approved use of the Project.

**SECTION 4.10. Conditions to Grant of Long Term Tax Exemption.** Redeveloper may submit an application to the Borough pursuant to the Long Term Tax Exemption Law, codified at N.J.S.A. 40A:20-1 et seq. (the "LTTE Law"). Upon evaluation and approval of the application, via adoption of an Ordinance Authorizing such LTTE, the Parties may enter into a Long Term Financial Agreement whereby the Redeveloper shall pay to the Borough, commencing as of the date of the Certificate of Occupancy, Payments in Lieu of Taxation (PILOT payments), which will be negotiated between the Parties. If such application is submitted, the Redeveloper and the Borough agree that this Redevelopment Agreement is contingent upon the Borough enacting and adopting such PILOT Ordinance. Upon the execution of any Long Term Financial Agreement pursuant to this provision, the Parties agree that the terms and provisions of said Long Term Financial Agreement shall be incorporated herein without the need for any further amendment.

**SECTION 4.11. Occupancy Permit.** Upon completion of construction in accordance with the Governmental Approvals and Legal Requirements, the Redeveloper shall apply to the

appropriate governmental officer or body for a temporary or permanent Certificate of Occupancy prior to the operation of the Project Improvements.

**SECTION 4.12. Certificate of Occupancy and Certificate of Completion.** The Redeveloper shall provide the Borough with plans and specifications for construction of the Project Improvements in accordance with the Redevelopment Plan and this Redevelopment Agreement, including but not limited to the provisions of Section 4.2 (“Plans and Specifications”) above together with a project budget (the “Project Budget”).

Construction of the Project Improvements shall be deemed to be complete and a Certificate of Completion for the Project Improvements shall be issued by the Borough at such time as (i) the Redeveloper has constructed the Project Improvements in accordance with the terms of this Redevelopment Agreement and with the Plans and Specifications, and (ii) a Certificate of Occupancy has been issued for the Project Improvements. Upon Notice (as defined in Section 13.1 (Notice)) from the Redeveloper, the Borough agrees to issue a Certificate of Completion in form and content satisfactory to counsel for the Redeveloper and in proper form for recording which shall acknowledge that the Redeveloper has constructed the Project Improvements in accordance with this Redevelopment Agreement, the Redevelopment Plan and all other agreements referred to herein and/or annexed. Such Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the Redeveloper’s obligations pursuant to this Redevelopment Agreement to construct the Project Improvements. The Certificate of Completion shall also constitute a conclusive determination that the conditions that were found and determined to exist at the time the Property was determined to be in need of redevelopment shall be deemed to no longer exist and the conditions and requirements of *N.J.S.A. 40A:12A-9(a)* shall be deemed to have been satisfied with respect to the Project Improvements, and the Property and Project Improvements shall no longer be subject to eminent domain as a result of the redevelopment area designation, as evidenced by the issuance of the Certificate of Completion. Nothing contained in the Certificate of Completion shall modify in any way any other covenants, provisions or continuing obligations of the Redeveloper under this Redevelopment Agreement or any other provisions of those documents which are incorporated in this Redevelopment Agreement, such as the Long Term Financial Agreement, which such covenants, provisions and obligations shall remain in full force and effect and the Project shall continue until such time as all such obligations of the Redeveloper shall be satisfied and all such agreements are terminated. In the event that the Borough shall fail or refuse to provide such Certificate of Completion within thirty (30) days after written request by the Redeveloper, the Borough shall provide the Redeveloper with a Notice setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the Project Improvements in accordance with the provisions of this Redevelopment Agreement or is otherwise in default under this Redevelopment Agreement or any other applicable agreement and what measures or acts will be necessary in the opinion of the Borough in order for the Redeveloper to be entitled to such Certificate of Completion.

**SECTION 4.13. Project Schedule Violations.** If no Tolling Event has occurred and the Redeveloper fails to Commence Construction as set forth in the Project Schedule and/or to meet the Completion Date, or otherwise fails to comply with the Project Schedule, and is notified of

same in writing by the Borough, or Redeveloper conclusively determines between progress meetings (pursuant to Section 6.1 (Progress Meetings)) that it will fail to meet a Completion Date, Redeveloper shall promptly provide written notice to the Borough stating: (a) the reason for the failure to complete the applicable task, (b) Redeveloper's proposed method for correcting such failure, (c) Redeveloper's schedule for completing such task, and (d) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant Completion Dates ("Corrective Notice"). In the event that the Borough is dissatisfied with the Redeveloper's Corrective Notice, the Borough shall schedule a Progress Meeting in accordance with Section 6.1 (Progress Meetings), at which time the Parties shall meet to discuss in good faith an amicable resolution to the Project Schedule violation.

**SECTION 4.14. Tolling Event.** The Project Schedule represents the Redeveloper's current expectations as to the schedule for the progress and completion of the Project. The Redeveloper will diligently endeavor to complete the Project by the Completion Date set forth in the Project Schedule subject to relief resulting from (a) the occurrence of any one or more events of Force Majeure, (b) casualty affecting all or any part of the Project Improvements, (c) an Event of Default by the Borough that has a material adverse effect on the ability of the Redeveloper to adhere to the Project Schedule, (d) any event, objection or action by a third party, unless caused by the Redeveloper's act or omission, which delays the issuance of final unappealable approvals or buildings permits, and (d) the appeal of any approval which is a precondition of the commencement of construction. (each of the foregoing, a "Tolling Event").

**SECTION 4.15. Prohibition Against Suspension, Discontinuance or Termination.** The Redeveloper shall not suspend or discontinue its performance of its obligations under this Redevelopment Agreement or terminate this Redevelopment Agreement (other than in the manner provided for herein) for any reason other than a Tolling Event, but only to the extent and for the period of time that such performance is limited or prevented as a direct result of such occurrence.

**SECTION 4.16. Project Team.** A list of the names, addresses and phone numbers of all individuals who will comprise Redeveloper's "Project Team" including, but not limited to, those individuals who will be directly responsible for managing the Project design, approvals and construction, are set forth on Exhibit "D". Redeveloper shall provide Notice to Borough of any changes in the representatives on the Project Team.

**SECTION 4.17. Execution of Documents.** Redeveloper shall, in order to effectuate the purposes of this Redevelopment Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper for the acquisition, construction and development of the Project in accordance with all necessary Governmental Approvals.

**SECTION 4.18. Compliance with Redevelopment Agreement.** Redeveloper shall use reasonable efforts to ensure that all consultants, professionals, employees, agents, contractors engaged by Redeveloper or any of Redeveloper's subcontractors shall have the skill and judgment necessary to implement the Project in compliance with the terms and conditions of this Redevelopment Agreement.

**SECTION 4.19. Cooperation Between the Parties.** Both Parties shall fully cooperate with each other as necessary to accomplish the Project, including entering into additional agreements that may be required, such as an Easement to allow for the potential roof/awning overhang for both the hotel and restaurant into the Borough right-of-way, provided, however, that such actions shall not result in a material increase in the Parties' respective obligations hereunder or material decrease in the Parties' respective rights hereunder.

**SECTION 4.20. Cooperation With the Marlin and Tuna Club.** Redeveloper agrees to work cooperatively with the Beach Haven Marlin and Tuna Club located at 420 N. Pennsylvania Avenue, Beach Haven, New Jersey 08008 ("Marlin & Tuna Club"), to reach an agreement to allow the Marlin & Tuna Club use of the parking on the Property for up to five (5) special events per year, with the Marlin & Tuna Club providing notice of such event to Redeveloper at least thirty (30) days in advance of such event. In addition, from May through November, twenty (20) parking spaces along Pennsylvania Avenue adjacent to the Property shall be restricted to use by Marlin & Tuna Club members from 6:00 am through 6:00 pm and shall be appropriately signed to reflect this restriction. During such times as the Marlin & Tuna Club shall utilize parking on the Property, the Redeveloper may require that it be added as an additional insured on the general liability and motor vehicle insurance policies of the Marlin & Tuna Club and be provided with a certificate of insurance showing such coverage. The Marlin & Tuna club will comply with any necessary and reasonable insurance requirements for such parking arrangement, as approved by its insurers. Any agreement with the Marlin & Tuna Club may, at the discretion of the Developer, provide that the Redeveloper shall not be liable or responsible to the Marlin & Tuna Club, its employees or agents for injury to person or property sustained in connection with such use except to the extent that the Redeveloper violates the standard of due care owed to licensees.

**SECTION 4.20.1 Cooperation With the Beach Haven Charter Fishermen.** Redeveloper agrees to restrict nine (9) parking spaces along Pennsylvania Avenue adjacent to the Property for use by Charter Boat passengers/visitors from May through November from 6:00 a.m. through 6:00 p.m. and shall appropriately sign the parking stalls to reflect this restriction.

**SECTION 4.21. Term.** This Redevelopment Agreement shall become effective upon its execution by the Parties hereto, and shall remain in full force and effect from such date until the Project has been fully implemented and completed as evidenced by certification in writing from the Borough to such effect, but in no event prior to the expiration or earlier termination of the Financial Agreement. The issuance of a Certificate of Completion for all or any portion of the Project Improvements, in accordance with the terms of this Redevelopment Agreement, shall not terminate this Redevelopment Agreement and all other provisions of this Redevelopment Agreement not related to the construction of the Project Improvements shall remain in full force and effect until this Redevelopment Agreement is terminated.

## **ARTICLE 5**

### **ACKNOWLEDGMENT OF RECEIPT OF COLLATERAL DOCUMENTS**

**SECTION 5.1. Simultaneous Delivery of Documents by Redeveloper.** The Redeveloper and Borough agree that the rights, obligations and liabilities of the parties under this Redevelopment Agreement are conditioned upon the delivery of the following fully executed collateral documents and hereby acknowledge the receipt of such documents, simultaneously with the execution of this Redevelopment Agreement:

(a) Certification of the Redeveloper as to the Representations in Section 2.1 (a) – (l) (Representations and Warranties by Redeveloper).

(b) Copies of the Certificate of Formation and Certificate of Good Standing of the Redeveloper, duly certified by the Secretary of State of the state of its formation.

(c) A Copy of the executed Declaration, in a form suitable for recording.

## **ARTICLE 6 PROJECT OVERSIGHT**

**SECTION 6.1. Progress Meetings.** Redeveloper and/or Redeveloper's Project Manager shall attend and participate in progress meetings with the Borough to report on the status of the Project and to review the progress under the Project Schedule on a monthly basis prior to start of construction. Once construction of the Project Improvements has started, such progress meetings shall be held twice per calendar month. Borough shall give Redeveloper thirty (30) days advance written Notice of such meetings. The meetings shall be held at the Borough Municipal Building or other convenient location in the Borough. The agenda for the meeting shall include, but not be limited to, a status report with regard to property acquisition, Governmental Approval submissions and approvals, financial commitments, construction of Project Improvements, compliance with the Redevelopment Plan and Land Use Board approvals and activities concerning marketing and sales. At the meeting, this information will be evaluated by the Borough to determine compliance with the terms and conditions of this Redevelopment Agreement and the Project Schedule. The Borough shall have the right at all reasonable times, but no more often than quarterly, upon reasonable Notice to inspect the books and records of Redeveloper relative to the Project.

**SECTION 6.2. Progress Report.** The Redeveloper shall submit to the Borough a detailed quarterly written progress report ("Progress Report") (or more frequent Progress Reports, if requested by Borough) which shall include a description of activities completed, the activities to be undertaken prior to the next quarterly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is causing a delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and the Completion Date.

**SECTION 6.3. Access to Property.** If reasonably determined to be necessary by the Borough, the Borough or its authorized representatives shall have the right from time to time with three (3) business days' Notice to Redeveloper to enter the Property to inspect the site and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement; provided, however, that the Borough acknowledges hereby that the Property will be an active

construction site and the Redeveloper shall not be liable or responsible to the Borough, its employees or agents for injury to person or property sustained in connection with such inspections except to the extent that the Redeveloper violates the standard of due care owed to invitees. Where the Borough's activities are of such a nature that might significantly affect the Redeveloper's use of the Property or the Project Improvements, the Borough shall give five (5) days' prior Notice of the Borough's intent to access the Property and/or the Project Improvements; provided, however, that in the event of an emergency, Notice may be given at such time as reasonably practicable, including Notice subsequent to the Borough's entry. Such entrance shall be for informational purposes and shall not relieve the Redeveloper from its obligation to implement the Project in accordance with this Redevelopment Agreement. In no event shall the Borough's inspection of the Project be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement.

## **ARTICLE 7 TRANSFERS**

**SECTION 7.1. Prohibition Against Transfers.** Redeveloper recognizes the importance of the 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, particularly in view of the public aids that have been or will be made available for the purpose of making such redevelopment possible. Accordingly, except as set forth below in Section 7.2 (Redeveloper Covenants) and in accordance with Section 7.3 (Notice of Permitted Transfers) and Section 7.4 (Transfers Void), the sale, assignment or transfer of all or a portion of the Project and/or the Property to a third party entity (other than to an Affiliate) unrelated to this Redevelopment Agreement is specifically prohibited, except as otherwise stated herein.

**SECTION 7.2. Redeveloper Covenants.** Redeveloper covenants and agrees that:

(a) Except for Permitted Transactions, as defined below, the Redeveloper shall not, without the prior written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed: (1) effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper (except in the case of death of an individual(s) having such ownership or control), (2) assign or attempt to assign this Redevelopment Agreement or any rights herein or in the Property, the Project or the Project Improvements or (3) make any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Property, the Project or the Project Improvements (collectively a "Transfer").

(b) The following transactions are exceptions to the prohibition set forth in the previous subparagraph and shall not require prior approval by the Borough ("Permitted Transactions"), the written consent of the Borough to such transfers being deemed given hereby provided Notice of same is given to the Borough: (1) a Mortgage or Mortgages for the purposes of financing the Project Costs associated with, or incurred in connection with, the acquisition of the Property or the development and construction of the Project, provided that the occurrence of an Event of Default as to the Redeveloper hereunder constitutes an event of default by the Redeveloper under the loan documents documenting such financing; (2) a transfer (whether by sale, grant or foreclosure) to

any Holder or to any third party who may acquire the Property from a Holder or at a foreclosure sale; (3) any lease, sub-lease for all or any portion of the Project with occupancy to occur following issuance of a Certificate of Completion for the relevant portion of the Project Improvements; (4) a transfer or assignment of the Project, Property, Project Improvements or this Redevelopment Agreement to an urban renewal entity, provided the urban renewal entity is an Affiliate of the Redeveloper; and (5) utility and other development easements.

**SECTION 7.3. Notice of Permitted Transactions.** With respect to any Permitted Transactions (except as described in Section 7.2(b)(3)) (Redeveloper Covenants), the Redeveloper shall provide to the Borough written Notice thirty (30) days prior to any such Permitted Transaction, including a description of the nature of such Permitted Transactions, and the name(s) and address(es) of the parties and any parties, individuals and/or entities comprising such parties.

**SECTION 7.4. Transfers Void.** Any transfer of the Redeveloper's interest in violation of this Redevelopment Agreement shall be an Event of Default (as defined in Section 1.1 (Events of Default)) of the Redeveloper and shall be null and void ab initio. Such Event of Default shall entitle Borough to seek all remedies available under the terms hereof, and those available pursuant to law or in equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by Borough, no such sale, transfer, conveyance or assignment of the Property, Project Improvements, or the Project, shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. The Declaration shall contain a restriction against transfers as set forth in this Article and a declaration that any such transfer shall be null and void ab initio, and, in addition, shall provide that in the event of any attempted transfer in violation of the restrictions in this Article, the Borough shall be entitled to seek an injunction restraining such transfer, and the award of legal fees and related expenses of the Borough in connection with any such legal action. Upon the recording of the Declaration in the Office of the Ocean County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

## **ARTICLE 8 FINANCIAL OBLIGATIONS**

**SECTION 8.1. Redeveloper's Financial Commitment.** The Redeveloper represents and warrants that it has obtained or can obtain and will commit the requisite equity and debt financing in an amount necessary to implement and complete the Project.

**SECTION 8.2. Project Costs.** All costs of implementing and completing the Project and undertaking the obligations set forth in this Redevelopment Agreement, (collectively, the "Project Costs") shall be borne by the Redeveloper.

**SECTION 8.3. Borough Costs.**

(a) **Reimbursement for Borough Costs.** The Redeveloper agrees to reimburse the Borough in full for all actual and reasonable out of pocket costs incurred by the Borough in connection with the preparation, adoption and implementation of the Maritime Redevelopment

Plan and any amendment thereto and this Redevelopment Agreement which shall be limited to reasonable legal fees, planning fees, and other reasonable professional fees; provided that all such costs incurred by the Borough shall have been reasonably incurred (the "Borough Costs").

(b) **Escrow Fund.** Upon the Effective Date, Redeveloper shall post an escrow in the amount of Thirty Thousand Dollars (\$30,000.00) to cover Borough Costs. The Borough shall provide Redeveloper with invoice(s) setting forth Borough Costs incurred by the Borough at least fifteen (15) days prior to the date of the draw. Redeveloper will have the opportunity to object to the reasonableness of charges or invoice submitted for payment within that fifteen (15) day period. Within fifteen (15) days of the receipt by Redeveloper of written Notice from the Borough that the amount in the escrow account has decreased to Five Thousand Dollars (\$5,000), Redeveloper shall replenish the escrow account with the Borough to the amount of Thirty Thousand Dollars (\$30,000). If Borough Costs incurred by the Borough exceed the amount in the escrow account, Redeveloper will pay such costs upon fifteen (15) days written notice from the Borough that such costs are due.

**SECTION 8.4. Governmental Approval Fees.** The Redeveloper shall pay all fees for permits required by the Borough and any other Governmental Body for the construction and development of the Project. The Redeveloper shall maintain separate escrow accounts with the Borough for (i) land use approvals; (ii) site improvements; and (iii) construction of the Project. The escrows identified in this Section shall be separate and apart from the escrow established in Section 8.3(b) (Escrow Fund) for Borough Costs. The Redeveloper shall also be required to post Performance and/or Payment bonds or inspection escrows for the Project.

**SECTION 8.5. Borough Declaration of Event of Default.** The Redeveloper's performance of its obligations under this Section shall not, however, limit the rights of the Borough to declare the occurrence of an Event of Default hereunder in accordance with the terms hereof.

**SECTION 8.6. Affordable Housing Fee.** In accordance with the Statewide Non-Residential Development Fee Act and the Borough's applicable affordable housing Ordinances and the Housing Element and Fair Share Plan, Redeveloper shall pay a development fee equal to two and one-half percent (2.5%) of the equalized value of the improvements of the Project into the Housing Trust Fund established by the Borough. Said fee shall be calculated and paid one-half at the application for a building permit for any portion of the Project and the second half at the time of application for the issuance of a Certificate of Occupancy for any portion of the Project.

**SECTION 8.7 Sewer and Water Connection Fees.** The Redeveloper shall be responsible for and pay (a) any and all sewer and water connection fees due to Ocean County, New Jersey for sewer and water connections for the Project, and (b) any and all sewer and water connection fees due to the Borough for sewer and water connections for the Project. Such fees shall be due and payable at or before issuance of building permits for the Project.

## ARTICLE 9 PERFORMANCE AND PAYMENT BONDS

## **SECTION 9.1. Performance and Payment Bonds.**

(a) In the event that Redeveloper's general contractor for the Project is not Redeveloper or an Affiliate of Redeveloper, then, at the request of the Borough, the Redeveloper shall require its contractor(s) for the Public Site Improvements (to the extent not already posted in connection with Governmental Approvals or to a construction lender, in which case Borough shall be named as an additional insured), to furnish a performance bond as set forth in Exhibit "G" (hereinafter called "Performance and Payment Bond(s)") as security for the performance of the obligations of the contractor(s) under the contract(s) for the Public Site Improvements. Said Performance and Payment Bond(s) shall be in form and content most often accepted by government agencies in the State and sufficient for the protection of the Borough and that are standard in the underwriting industry for ensuring full performance and completion of construction by contractors and payment of all payments to multiple prime contractors, subcontractors, workers and material suppliers by contractors and subcontractors pursuant to the contract(s) for the Public Site Improvements in accordance with the laws of the State and the regulations promulgated thereunder. In this regard (and if allowed by N.J.S.A. 40:55D-1 et seq.), the parties acknowledge that the delivery of one or more letters of credit will be an adequate substitute for the amounts otherwise required on any such Performance and Payment Bonds (which letter(s) of credit will be referred to herein as "P & P LOC"), in which case the Redeveloper and the Borough will enter into an agreement establishing protocols for the administration of draws under any such P & P LOC(s), to afford the coverage that the Borough would otherwise have under any such Performance and Payment Bonds.

(b) In the event that Redeveloper is entitled to and fails to exercise its rights under the Performance and Payment Bond or P & P LOC, and if there occurs an Event of Default by Redeveloper, then, subject to the rights of a Holder, the Borough shall thereafter have the right to the protections and guarantee(s) available through and from the surety provided by the Performance and Payment Bond(s) and/or P & P LOC. The Borough shall also have all other rights and remedies available to it under the Performance and Payment Bond(s), the P & P LOC(s), this Redevelopment Agreement and/or at law. The Performance and Payment Bond and/or P & P LOC shall name the Redeveloper and Borough as their respective interests may appear, as beneficiaries of the Performance and Payment Bond(s) and/or P & P LOC, and of all rights, payments and benefits flowing or deriving therefrom.

(c) Any Performance and Payment Bond(s) or P & P LOC(s) must include any change orders or other modifications to work material to completion of the Public Site Improvements, and Redeveloper agrees that it will comply and cause its contractor(s) to comply with all requirements set forth in the Performance and Payment Bond(s) or in respect of the P & P LOC(s) in connection therewith.

(d) The identity and financial net worth of the surety issuing the Performance and Payment Bond, and the form and content of the Performance and Payment Bond, shall be acceptable to the Borough and subject to its approval to the extent provided under the MLUL. Any P & P LOC will be issued by a nationally chartered banking association.

(e) The Borough acknowledges that the purpose, inter alia, of requiring the Redeveloper to obtain the Performance and Payment Bond(s) and/or P & P LOC(s), if applicable, is to assure timely completion of the Public Site Improvements.

(f) The cost of obtaining the Performance and Payment Bond or P & P LOC, if issued, shall be borne by the Redeveloper or its contractors.

(g) In the event that the Redeveloper's general contractor is an Affiliate of the Redeveloper, Notice of its identity shall be provided to the Borough and such general contractor will be deemed to have agreed that its construction of the Project is subject to the terms of this Redevelopment Agreement and that construction of the Project shall be carried out in accordance with the terms of this Redevelopment Agreement. Any acts or omissions by such general contractor shall be deemed to be acts or omissions of the Redeveloper.

## **ARTICLE 10 INDEMNIFICATION; INSURANCE**

### **SECTION 10.1. Indemnity.**

(a) Redeveloper covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties (except where liability attaches or is alleged against the Borough Indemnified Parties as the result of negligence or willful misconduct or sole negligence by or on behalf of the Borough Indemnified Parties) harmless from and against all liability, losses, damages, demands, costs, claims, actions, or expenses (including attorneys' fees, disbursements, and court costs) of every kind, character and nature arising out of, resulting from or in any way connected with the acquisition, condemnation, condition, use, possession, conduct, management, planning, design, construction, installation, financing, marketing, leasing or sale of the Property, the Project Improvements or the Project, including but not limited to, the death of any person or any accident, injury, loss, and damage whatsoever caused to any person or to the property of any person that shall occur on the Property and that, with respect to any of the foregoing, are related to or resulting from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors.

(b) With respect to any interest in the Property, Project or Project Improvements acquired by Redeveloper, Redeveloper shall defend, protect, indemnify and hold harmless the Borough Indemnified Parties (except where liability attaches or is alleged against the Borough Indemnified Parties as the result of negligence or willful misconduct or sole negligence by or on behalf of the Borough Indemnified Parties), from any claims, liability, injury, damages, costs, claims, actions and expenses (including, without limiting the generality of the foregoing, the cost of any required investigation and remediation of any environmental conditions, and the cost of attorneys' fees) which may be sustained as the result of any environmental conditions on, in, under or migrating to or from the Property, Project or the Project Improvements, to the extent any such liability attaches to the Borough Indemnified Parties as a result of this Redevelopment Agreement or activities performed by Redeveloper or its contractors pursuant to this Redevelopment

Agreement, including without limitation claims against the Borough Indemnified Parties by any third party (the "Environmental Indemnity").

(c) In any situation in which the Borough Indemnified Parties are entitled to receive and desire defense and/or indemnification by the Redeveloper, the Borough Indemnified Parties shall give prompt Notice of such situation to the Redeveloper. Failure to give prompt Notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Borough Indemnified Parties, unless such failure to give prompt Notice materially impairs the Redeveloper's ability to defend. Upon receipt of such Notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Parties, including the employment of counsel reasonably acceptable to the Borough Indemnified Parties, the payment of all expenses and the right to negotiate and consent to settlement. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Redeveloper in any such action, the Redeveloper shall indemnify and hold harmless the Borough Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Borough Indemnified Parties are entitled to indemnification hereunder.

**SECTION 10.2. Survival of Indemnity.** The provisions of this Article 10 shall survive the termination of this Redevelopment Agreement due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged; provided, however, that such indemnity shall be binding on the Redeveloper itself, each successor in interest to the Project, the Project Improvements, the Property, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall have title to, or an interest in, or possession or occupancy of the Property, Project, the Project Improvements or any part thereof.

**SECTION 10.3. Insurance Required.**

(a) The Redeveloper shall furnish or shall cause to be furnished to the Borough certificates evidencing the existence of commercial general liability insurance coverage, insuring the Redeveloper against losses, costs, liabilities, claims, causes of action and damages for bodily injury, property damage and personal injury on the Property or related to the construction thereon, including claims made by subcontractor personnel, in the amounts set forth in Items 1 and 2 of Exhibit "G". 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.

(b) Builder's risk insurance for the benefit of the Redeveloper (subject to the interests of any Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be as set forth in Item 3 of Exhibit "G", including items of

labor and materials, whether in or adjacent to the structure(s) insured, connected therewith, and materials in place or to be used as part of the permanent construction of the Project.

(c) The Redeveloper shall also furnish or cause to be furnished to the Borough evidence satisfactory to Borough that the Redeveloper and 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, and shall be endorsed with a waiver of subrogation clause for the Borough.

(d) Comprehensive automobile liability insurance covering all owned, hired and non-owned vehicles with at least the following limits of liability: Bodily Injury Liability and Property Damage Liability - \$1,000,000 combined single limit per occurrence.

(e) All insurance policies required by this section shall be obtained from insurance companies licensed in the State and rated at least A in Best's Insurance Guide. All insurance policies required hereunder shall be kept in force until a final Certificate of Completion is issued.

(f) 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) the policies cannot be canceled or materially changed except after ten (10) days prior 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 deductibility limits reasonably satisfactory to the Borough.

## ARTICLE 11 EVENTS OF DEFAULT AND REMEDIES

**SECTION 11.1. Events of Default.** Any one or more of the following events shall constitute an Event of Default hereunder, unless such event results from the occurrence of (i) a Tolling Event (in the case of an alleged Event of Default of Redeveloper) or (ii) Event of Default by Redeveloper or occurrence of event of Force Majeure (in the case of an alleged Event of Default of the Borough):

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

(b) (1) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (2) a custodian shall have been legally appointed with or without consent of the Redeveloper and such appointment has not been discharged within ninety (90) consecutive days; (3) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (4) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (5) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (6) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (7) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the United State Bankruptcy Code; (8) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (9) the Redeveloper shall have suspended the transaction of its usual business.

(c) The Redeveloper shall default in or violate its obligations with respect to the design, development and construction of the Project in accordance with this Redevelopment Agreement, the Redevelopment Plan, Governmental Approvals or Legal Requirements, including but not limited to failure to comply with the Commencement of Construction, abandonment or suspension of construction work (subject to Tolling Events and/or Force Majeure), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so.

(d) (1) The passage of ninety (90) days following the filing of a complaint in foreclosure if such complaint has not been stayed or discharged or (2) the issuance of a deed in lieu of foreclosure for any financing in connection with the Project.

(e) The Redeveloper or its successor in interest (except for third parties to which a portion of the Project has been conveyed in the ordinary course of business) shall fail to pay any real estate taxes or assessments on any real property or any part thereof owned by it in the Borough when due, or shall place thereon any encumbrance or lien unauthorized by this Redevelopment Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within sixty (60) days after written demand by the Borough to do so.

(f) The Redeveloper implements a Transfer in violation of this Redevelopment Agreement.

(g) A default has occurred under any Mortgage or Mortgages secured by the Property, the Project, the Project Improvements or any portion thereof.

(h) A default the Long Term Financial Agreement executed pursuant to Section 4.10 (Conditions to Performance) above.

**SECTION 11.2. Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following acts, events or conditions or any combination thereof that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the parties to this Redevelopment Agreement; provided, however, that such act, event or condition shall be beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Redevelopment Agreement ("Force Majeure"):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of a public enemy, war, terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project, other than those set forth above (such events being required to physically affect a party's ability to fulfill its obligations hereunder; the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure event);

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

(c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than Borough when acting in conformance with this Redevelopment Agreement) with jurisdiction within the Borough, excepting decisions interpreting federal, state and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party to this Redevelopment Agreement relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval, provided, however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional, negligent or bad faith of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

(e) Strikes or similar labor action by equipment manufacturers, contractors, suppliers of material and/or transporters of same;

(f) Acts or omissions of the other Party, except in conformance with this Redevelopment Agreement;

The parties hereto acknowledge that the acts, events or conditions set forth in paragraphs (a) through (f) above are intended to be the only acts, events or conditions that may (upon satisfaction of the conditions specified above) constitute Force Majeure. Notice by the party claiming such extension shall be sent to the other party within thirty (30) calendar days of the commencement of the cause. During any Force Majeure that affects part of the Project, Redeveloper shall continue to perform its obligations for the rest of the Project insofar as practicable. The existence of an act of Force Majeure shall not prevent a party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure provided that the event that is the basis of the Event of Default is not a result of the Force Majeure. Except for act or acts of Force Majeure resulting from acts or omissions of the other Party, all act or acts of Force Majeure will be deemed to have ceased to exist as of a date eighteen (18) months from its initial occurrence.

**SECTION 11.3. Remedies Upon Event of Default Prior to Termination of Redevelopment Agreement.**

(a) **Remedy Upon Event of Default.** In the event that an Event of Default by the Redeveloper occurs, then subject to all other provisions herein for Notice, cure and mitigation of damages, except where expressly inapplicable, the Borough may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper, as applicable, under this Redevelopment Agreement including the seeking of damages in an amount not to exceed the net anticipated benefit from the agreements contemplated in this Redevelopment Agreement and in the Financial Agreement executed pursuant to Section 4.10 ( Conditions to Grant of Long Term Tax Exemption). Further, the Borough shall have the right, in its sole and absolute discretion, upon sixty (60) days' Notice to the Redeveloper, to terminate this Redevelopment Agreement and the Long Term Financial Agreement executed pursuant to Section 4.10(Conditions to Grant of Long Term Tax Exemption ). In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such sixty (60) day period, the Redeveloper shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity.

(b) **Remedies in the Event of Termination of Redevelopment Agreement.** In the event that this Redevelopment Agreement is terminated by the Borough pursuant to the preceding paragraph, the Borough shall terminate the Redeveloper's designation as the Redeveloper of the Project. The Borough shall have the right to apply to the damages described in Section 11.3(a) (Remedy Upon Event of Default), above, any funds of the Redeveloper in the hands of the Borough at the time of such default and termination.

**SECTION 11.4. Remedies of Redeveloper Upon Event of Default by Borough.** In the event that an Event of Default by the Borough occurs, then Redeveloper may take whatever action

at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Borough, as applicable, under this Redevelopment Agreement, including the seeking of damages in an amount not to exceed the net anticipated benefit from the agreements contemplated in this Redevelopment Agreement and in the Financial Agreement executed pursuant to Section 4.10 (Conditions to Grant of Long Term Tax Exemption). Further, the Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' Notice to the Borough, to terminate this Redevelopment Agreement and the Financial Agreement executed pursuant to Section 4.10 (Conditions to Grant of Long Term Tax Exemption). In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such sixty (60) day period, the Borough shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity.

**SECTION 11.5. Specific Performance.** If an Event of Default occurs, or a Party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) Party shall have the right and remedy, without posting bond or other security, to have the provisions of this Redevelopment Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Borough or the Redeveloper and that money damages may not provide an adequate remedy thereto.

**SECTION 11.6. Failure or Delay.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**SECTION 11.7. Remedies Cumulative.** No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

**SECTION 11.8. Continuance of Obligations.** The occurrence of an Event of Default shall not relieve the defaulting party of its obligations under this Redevelopment Agreement.

**SECTION 11.9. Litigation Costs.** In the event that a Party to this Redevelopment Agreement successfully pursues an action to enforce any remedy provided in this Article, that Party shall be entitled to payment by the other Party of all reasonable costs and expenses incurred in connection with such action.

**SECTION 11.10. Mitigation.** The Parties shall act reasonably to mitigate any damages that may be incurred as the result of an Event of Default hereunder.

**SECTION 11.11. Survival of Termination.** The provisions of this Article shall survive the termination of this Redevelopment Agreement.

**ARTICLE 12**  
**MORTGAGE FINANCING; RIGHTS OF MORTGAGEE**

**SECTION 12.1. Notice of Default to Holder and Right to Cure.** Whenever the Borough shall deliver any Notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Holder a copy of such Notice or demand; provided that Redeveloper has delivered to the Borough a written Notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Borough are concerned) have the right at its option within ninety (90) days after the receipt of such Notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession, such Holder may seek to obtain possession of the Property (or portion to which its Mortgage relates) with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession. In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such ninety (90) day period, such Holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity.

**SECTION 12.2. No Guarantee of Construction or Completion.** A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project (or portion to which its Mortgage relates), or to guarantee such construction or completion; nor shall any covenant or any other provision be construed so to obligate a Holder. Notwithstanding the foregoing, nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project, or portion to which its Mortgage relates (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having expressly assumed Redeveloper's obligations to the Borough with respect to the Project (or portion to which its Mortgage relates) by written agreement reasonably satisfactory to the Borough.

**SECTION 12.3. Foreclosure.** Nothing contained in this Redevelopment Agreement or in the Financial Agreement will, under any circumstances, be deemed or construed as limiting or in any other way prohibiting a Holder from exercising each and any right or remedy that it may have under its Mortgage, or under any other document evidencing or securing the indebtedness described therein. Notwithstanding the foregoing, however, if a Holder forecloses its Mortgage on the Redeveloper's interest in the Property (or portion to which its Mortgage relates), or takes title to the Redeveloper's interest in the Property (or portion to which its Mortgage relates) by deed-in-lieu of foreclosure or similar transaction (collectively a "Foreclosure"), the Holder shall be entitled to preserve and retain the benefits of this Redevelopment Agreement and the Long Term Financial Agreement only if it either (a) sells or otherwise transfers, if permitted hereunder, the Property and the Project to a qualified urban renewal entity formed in accordance with the

Long Term Tax Exemption Law and Redevelopment Area Bond Financing Law, as applicable, upon terms in which the Person shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with all Legal Requirements, and/or (b) assumes the obligations of the Redeveloper under this Redevelopment Agreement in accordance with all Legal Requirements. In the event of a Foreclosure, and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such Holder's interest any of the remedies available to the Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. In order to preserve the benefits of this Redevelopment Agreement and the Long Term Financial Agreement, the Holder, or the Person assuming the obligations of the Redeveloper as to the Property affected by such Foreclosure or sale, in that event must agree to complete the Project in the manner provided in this Redevelopment Agreement, but subject to reasonable extensions of the Completion Date, and shall (in the case of a third party purchaser) submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or Person assuming such obligations of the Redeveloper, properly completing Project Improvements shall be entitled to Certificates of Completion in accordance herewith. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other Person assuming such obligations of Redeveloper, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement.

**SECTION 12.4. Borough's Option to Pay Mortgage Debt or Acquire Project Improvements.**

In any case where, subsequent to an Event of Default by the Redeveloper under this Redevelopment Agreement and/or Foreclosure, the Holder:

(a) has, but does not exercise, the option to undertake and/or resume construction of the Project or part thereof covered by its Mortgage or to which it has obtained title, and such failure continues for a period of thirty (30) calendar days after the Holder has been notified or informed of the Event of Default; or

(b) undertakes and/or resumes construction of the Project but does not complete such work within a reasonable period, and such default shall not have been cured within thirty (30) calendar days after written demand by the Borough so to do (with the events specified in subparagraphs (a) and (b) each being referred to as a "Holder Failure");

Then (subject to the provisions of Section 12.2, above (No Guarantee of Construction)) the Borough shall have the option of (1) paying to the Holder the amount of the mortgage debt and obtaining an assignment of the Mortgage and the debt secured thereby, or, (2) in the event ownership of the Project Improvements (or part thereof) has vested in such Holder by way of foreclosure or action in lieu thereof, the Borough shall be entitled, at its option, to a conveyance to the Borough of the Project Improvements or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (A) the mortgage debt at the time of foreclosure or

action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (B) all expenses with respect to the foreclosure, including reasonable attorney's fees and expenses; (C) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the mortgaged property; (D) the costs incurred by such Holder in making any Project Improvements; and (E) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. The Redeveloper will be obligated to give Notice of the foregoing provisions to any prospective Holder of a Mortgage on the Project Improvements.

(c) The foregoing provisions of Section 12.4(a) and (b) above shall not apply in the event of a Holder Failure if and to the extent the Borough chooses to acquire the Project Improvements or portion thereof by condemnation, which right the Borough hereby reserves.

### **ARTICLE 13 MISCELLANEOUS**

**SECTION 13.1. Notice.** Formal notices, demands and communications between the Borough and Redeveloper (each a "Notice") shall be deemed sufficiently given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Notice may also be sent by a commercial overnight delivery service with package tracking capability and for which proof of delivery is available. In this case such Notice is deemed effective upon delivery. Such written Notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written Notice.

Copies of all Notices shall be sent as follows:

(a) When sent by the Borough to Redeveloper:

Christopher S. Vernon  
525 Second Street LLC  
4569 South Broad Street  
Yardville, NJ 08620  
609-915-7857 – Office  
Email: csv@mercermgt.com

With a copy to: James S. Raban, Esq.  
RABAN & RABAN LLC  
11710 Long Beach Blvd.  
Haven Beach, New Jersey 08008  
(609) 492-0533 - Office  
(609) 492-0464 - Fax  
Email: [jraban@regraban.com](mailto:jraban@regraban.com)

And to:

Arnold C. Lakind, Esq.  
SZAFERMAN LAKIND  
101 Grovers Mill Road, Suite 200  
Lawrenceville, NJ 08648  
(609) 275-0400 – Office  
(609) 779- 6060 – Fax  
Email: [ALakind@szaferman.com](mailto:ALakind@szaferman.com)

(b) When sent by Redeveloper to the Borough:

Borough of Beach Haven  
Attn: Borough Clerk  
300 Engleside Avenue  
Beach Haven, New Jersey 08008  
(609) 492-0111 – Office  
(609) 492-6262 – Fax

With a copy to:

M. James Maley, Jr., Esquire  
Maley Givens  
A Professional Corporation  
1150 Haddon Avenue, Suite 210  
Collingswood, New Jersey 08108  
(856) 854-1515 – Office  
(856) 858-2944 – Fax  
[jmaley@maleygivens.com](mailto:jmaley@maleygivens.com)

Any party may change its address for Notices by Notice theretofore given in accordance with this Section 13.1 (Notices) which shall be deemed effective only when actually received by the other party.

**SECTION 13.2. Non-Liability of Officials and Employees of Borough.** No member, official or employee of the Borough shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which

may become due to Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**SECTION 13.3. Non-Liability of Officials and Employees of Redeveloper.** No member, officer, shareholder, director, partner or employee of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to the Borough, or its successor, on any obligation under the terms of this Redevelopment Agreement.

**SECTION 13.4. Estoppel Certificate.** Within thirty (30) days following written request therefor by a party hereto, or of any Holder, purchaser, tenant or other party having an interest in the Property or Project Improvements, the other party shall issue a signed estoppel certificate either stating that this Redevelopment Agreement is in full force and effect and that there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of Notice would result in a default or breach under this Redevelopment Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

**SECTION 13.5. Lender Changes.** If any prospective Holder requires a change in the terms of this Redevelopment Agreement and/or the correction or fulfillment by the Borough of any matter under the Redevelopment Law, the Borough shall reasonably cooperate with the Redeveloper in approving such change, so long as such change, if any, does not modify or change the substantial rights or obligations of the Borough as set forth in this Redevelopment Agreement. In addition, the Borough shall enter into such agreements as any such prospective Holder (or the Redeveloper's equity participants) may reasonably require provided that such agreement shall not be inconsistent with the terms of this Redevelopment Agreement (i.e., shall not increase the Borough's responsibilities or decrease its benefits hereunder).

**SECTION 13.6. No Brokerage Commissions.** The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

**SECTION 13.7. Provisions Not Merged With Deeds or Ground Leases.** To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any ground lease or any deeds transferring title to any portion of the Property, the Project or Project Improvements from the Redeveloper or any successor in interest, and any such ground lease or deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

**SECTION 13.8**      **No Consideration For Redevelopment Agreement.** Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants 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.

**SECTION 13.9.**      **Successors and Assigns.** This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

**SECTION 13.10.**      **Exhibits and Schedules.** All Exhibits and Schedules attached hereto and/or referred to in this Redevelopment Agreement are incorporated herein as though set forth in full.

**SECTION 13.11.**      **Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**SECTION 13.12.**      **Severability.** If any term or provision of this Redevelopment Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law. Provided however, if invalidity or unenforceability of any provision of this Redevelopment Agreement shall deprive either party of the material benefits thereof, the parties shall negotiate in good faith to amend this Agreement to restore such benefits to the extent practicable.

**SECTION 13.13.**      **Enforcement by Borough.** It is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the public interest. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which they or any other beneficiaries of such agreement or covenant may be entitled.

**SECTION 13.14.**      **Modification of Redevelopment Agreement.** No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

**SECTION 13.15. Execution of Counterpart.** This Redevelopment Agreement may be executed in one or more counterparts and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

**SECTION 13.16. Drafting Ambiguities; Interpretation.** In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

**SECTION 13.17. Time Period for Notices.** All Notices to be given hereunder shall be given in writing in conformance with Section 13.1 (Notice) hereof, and, unless a certain number of days is specified, within a reasonable time.

**SECTION 13.18. Waivers and Amendments in Writing.** All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Borough and Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and Redeveloper. The waiver by either Party of a default or of a breach of any provision of this Redevelopment Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach.

**SECTION 13.19. Conflict of Interest.** No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to the Redevelopment Agreement which is prohibited by law.

**SECTION 13.20. Governing Law.** This Redevelopment Agreement shall be governed by and construed in accordance with the applicable laws of the State of New Jersey.

**SECTION 13.21. Withholding of Approvals.** All approvals, consents and acceptances required to be given or made by any person or Party hereunder shall not be unreasonably withheld or delayed unless specifically stated otherwise.

**SECTION 13.22. No Joint Venture.** Nothing contained herein shall be construed as making the Borough and the Redeveloper the partner, joint venturer or agent of the other and neither Party shall have the power or authority to bind the other.

**SECTION 13.23. Prior Agreements.** Any prior agreements between the Parties shall be deemed null and void and of no further force or effect.

[Signatures appear on the following page]

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

Witness

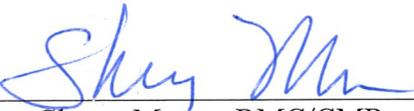
525 SECOND STREET LLC

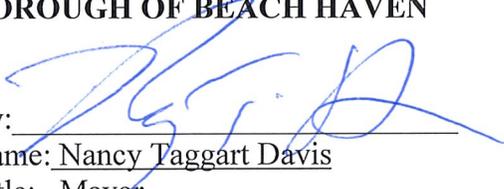
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: Christopher S. Vernon  
Title: Managing Member

Attest:

**BOROUGH OF BEACH HAVEN**

By:   
Name: Sherry Mason, RMC/CMR  
Title: Borough Manager/Clerk

By:   
Name: Nancy Taggart Davis  
Title: Mayor

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

Witness

525 SECOND STREET LLC

By: Meghan Jacobs  
Name: Meghan Jacobs  
Title: \_\_\_\_\_

By: Ch S. V  
Name: Christopher S. Vernon  
Title: Managing Member

Attest:

**BOROUGH OF BEACH HAVEN**

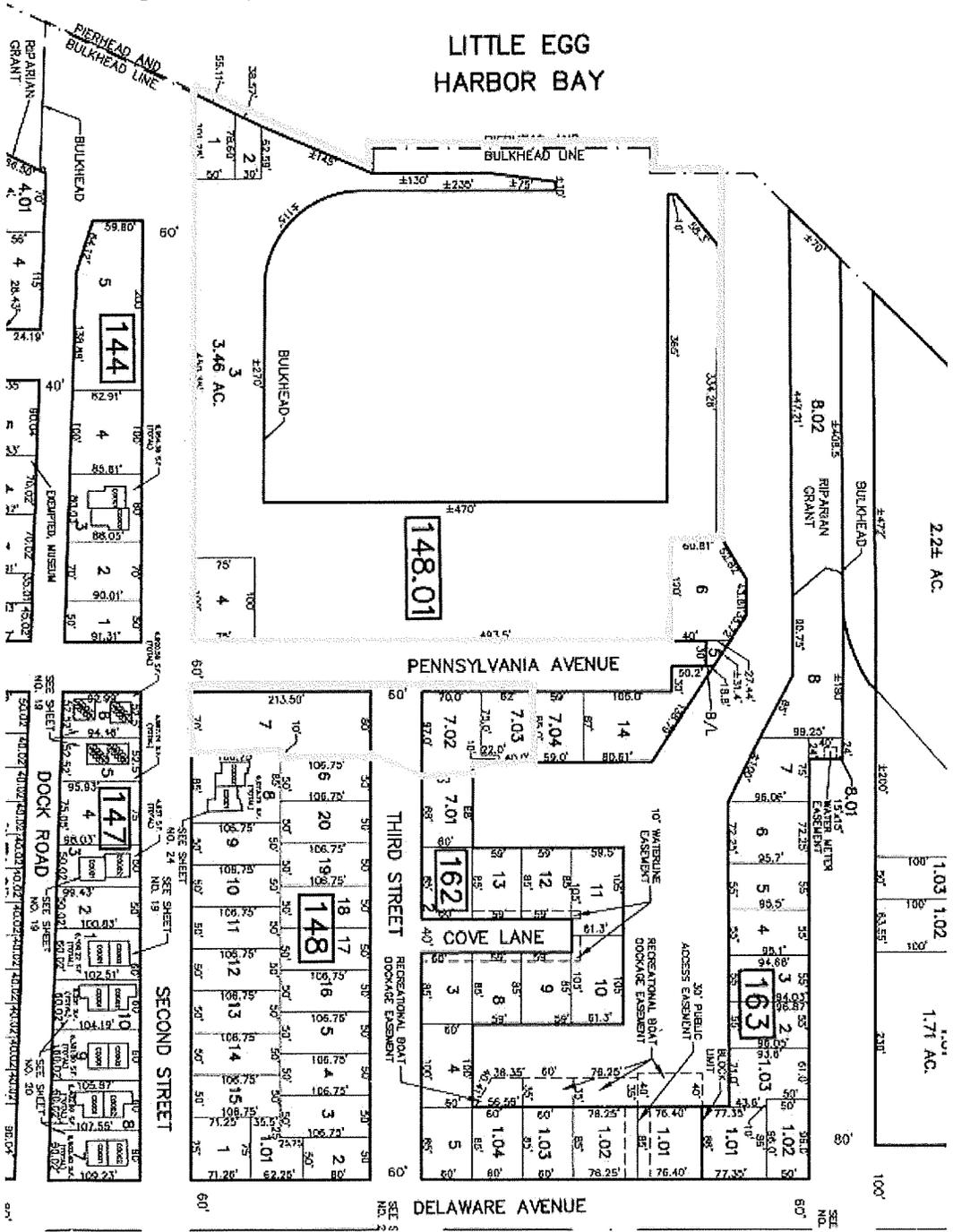
By: \_\_\_\_\_  
Name: Sherry Mason, RMC/CMR  
Title: Borough Manager/Clerk

By: \_\_\_\_\_  
Name: Nancy Taggart Davis  
Title: Mayor

# EXHIBIT A

## Property Description

Designated on the Official Tax Map of the Borough of Beach Haven and known as Block 148.01, Lots 1, 2, 3 & 4; Block 148, Lot 7; Block 162, Lots 7.02 & 7.03, within the Marina District Redevelopment Area, subject to the Marine District Redevelopment Plan, as amended. The Project site is depicted in yellow below.



## **EXHIBIT B**

### **Concept Plan**

Below is the description of the Project Improvements proposed by the Redeveloper for the Property. Both the Borough and Redeveloper acknowledge that such plans may change subject to the results of Redeveloper's investigative studies and Governmental Approvals. Any such changes shall be agreed upon by the Parties in writing prior to being incorporated into this Redevelopment Agreement, and prior to the filing of any Site Plan Application.

#### **Project Improvements:**

The Property shall be developed as a single Project containing the following:

- A hotel located along Second Street containing a maximum of 102 rooms with a pool and on grade and structured parking, valet parking and shuttle service to the beach;
- Approximately 400 seat restaurant at the site of the old Morrison's Restaurant;
- A Marina, which shall include public access to a portion of the Marina, including Boatslips, both rental and transient; a Vessel parts, service and repair shop; a fuel dock with diesel fuel and gasoline for sale and pump-out station; a Marina bar; a pavilion bar and a bait shop; the Marina basin and one hundred thirty seven (137) boat slips shall be maintained/dredged to at least four (4) feet depth at low tide; maintain a working travel boat lift equal in capacity to the current lift capable of handling Vessels of forty-eight (48) tons; there shall be a limit of 20% of the boat slips being operated as transient slips, however if seasonal slips have not been rented the Redeveloper shall be permitted to utilize those for transient use.
- Upgrades to the existing Morrison's Marina, including but not limited to improved public waterfront access and improvements to the bulkhead; the Marina shall remain open to the public;
- Buildings will vary in height, not to exceed a three (3) story hotel at a height of 44 feet to the top of the hotel roof, with an elevator tower not to exceed a maximum height of 45 feet, 9 inches and not to exceed forty-eight (48) feet for the restaurant use, such height limited to the elevator tower with the stair tower and vestibule limited to a height of forty-one (41) feet.

The approved Concept Plan is attached hereto as Exhibit B-1.

The approved materials to be utilized by Redeveloper for roofing, siding and other finishes, along with approved color options for siding and roofing, is attached hereto as Exhibit B-2.

**EXHIBIT B-1  
CONCEPT PLAN**



## **EXHIBIT B-2**

Overall design of the restaurant/hotel/marina/ship store/warehouse campus shall be consistent with the historic maritime nature of the Property and the Beach Haven Community.

The overall design of the restaurant/hotel shall be consistent as it relates to exterior finishes and details. Design shall reflect a residential scale and proportions.

Architectural details such as brackets and corbels shall be reviewed. The overall design may be embellished but shall not be overdone. Examples of these elements, as well as typical window/door trim details, shall be provided for review and approval by the Borough governing body prior to finalizing selections. Samples of actual finishes and details shall be submitted for Borough approval as even a good material detailed poorly will look bad and a bad material detailed well will look good.

### Finishes, materials, roofing:

Natural, or natural looking, and weather resistant finishes, ie., woods like cedar, mahogany, teak, ipe, redwood, which could be stained or painted. Traditional style of Western Red Cedar, 18" #1 shakes with white trim. If painted a natural palette is required. Natural stone & brick finishes are also acceptable.

Acceptable synthetic wall finishes: natural looking, high end vinyl sidings such as "Cedar Impressions Shakes", PVC panels & trim ('Azek'), Cement composite siding ('Hardieplank'). Examples of any proposed synthetic stone & brick finishes must be presented to Mayor and Council, along with the AAC, for approval.

Prohibited exterior wall finishes: aluminum siding, textured plywood siding, aluminum wrapped trim, glass curtain walls, shiny reflective metal panels, non-natural looking solar collectors, polished stone finishes, plastic (Non pvc) panels, LED illuminated wall panels (often used as signage), & asphalt wall shingles.

Acceptable exterior roofing finishes: asphalt roof shingles (dark or natural colors), metal roofing such as copper, zinc & painted aluminum (in conservative colors), fiberglass roofing (in conservative colors), some roofing membranes (in conservative colors).

Upper roofs – use of a typical asphalt shingle, ie.; GAF Timberline, in a neutral earth tone.

Lower architectural roof features – use of a metal standing seam roof of a color that will define the scheme as to what the building is identified as.

Prohibited exterior roofing finishes: tar paper, built-up tar roofs (in visible locations), torch down membrane roofing, plastic roof shingles, and flat plate solar collectors in highly visible locations.

**EXHIBIT C**  
**Project Schedule**

All Project Schedule dates run from the time of final, unappealable Approvals for all Governmental Approvals, as set forth in Exhibit F, necessary for the Project. Completion of phases of the Project is estimated as follows:

Hotel & Restaurant approximately 12-18 months  
Target date to begin construction September 1, 2020 with completion on July 1, 2021.

Marina improvements approximately 12-18 months  
Target date to begin construction September 1, 2020 with completion on July 1, 2021; however if additional perms/approvals are required construction may be delayed until late 2021.

**EXHIBIT D**

**Project Team**

**REDEVELOPER**

Principal:	Christopher Vernon
Project Manager:	John Oliver
Attorneys:	James S. Raban, Esq.
Civil Engineer:	Gary V. Vecchio, PE
Structural Engineer:	
Architect:	Craig W. Brearley, A.I.A.
Environmental Consultant: Construction Supervisor:	Karen Gruppuso, Coastal Environmental Consulting

**BOROUGH**

Attorney:	M. James Maley, Jr., Esq.
Engineer:	Frank J. Little, Jr., P.P., P.E., C.M.E.
Architect:	N/A
Project Manager:	TBD
Environmental Consultant:	TBD
Professional Planner:	Frank J. Little, Jr., P.P., P.E., C.M.E

**Exhibit E**

**Redeveloper Ownership Structure**

525 Second Street, LLC - Christopher S. Vernon, Sole Member

**EXHIBIT F**

**List of Governmental Approvals**

Beach Haven Land Use Board  
Beach Haven Governing Body (Permitting, Licensing)  
Beach Haven Water Department  
Beach Haven Sewer Authority  
State of New Jersey Department of Environmental Protection  
Division of Land Use Planning – Coastal Permitting (CAFRA)  
Ocean County Soil Conservation  
Ocean County Planning Board

## EXHIBIT G

### TABLE OF INSURANCE AND BOND REQUIREMENTS

Type of Insurance	Limits of Liability	Term of Coverage
1. Commercial General Liability	\$1,000,000 each loss/\$2,000,000 policy aggregate	Annual policy Until completion <sup>1</sup>
2. Umbrella Excess Liability	\$5,000,000 each loss/\$5,000,000 policy aggregate	Annual policy Until completion <sup>2</sup>
3. Builder's Risk Coverage <sup>3</sup>	100% of replacement cost of all insurable construction	As-Built Until completion
4. Performance Bond (Construction) <sup>4</sup>	Value of contract(s) for Public Project Improvements (100% of construction costs)	During construction

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<sup>1</sup> Policy is to provide completed operations coverage for a minimum of 3 years following issuance of final Certificate of Completion.

<sup>2</sup> See Footnote 1 above.

<sup>3</sup> Provided by general contractor(s), naming Borough Indemnified Parties as additional insureds.

<sup>4</sup> Provided by general contractor(s) for construction of Project Improvements, naming Borough as an additional insured