

REDEVELOPMENT AGREEMENT

By and Between

BOROUGH OF BELMAR

and

EASTPORT OF BELMAR, LLC

Dated as of December 21, 2022

THIS REDEVELOPMENT AGREEMENT (this "Agreement") dated as of this 21st day of December, 2022 (the "Effective Date"), by and between the Borough of Belmar (the "Borough"), in the County of Monmouth, State of New Jersey, having its offices at 601 Main Street, Belmar, New Jersey 07719 and Eastport of Belmar, LLC (the "Redeveloper"), having its offices at c/o Gregory Kapalko, 73 Inlet Terrace, Belmar, New Jersey 07719 (together the Borough and the Redeveloper collectively shall be the "Parties," and each individually shall be a "Party"),

WITNESSETH

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended from time to time, (the "Redevelopment Law") authorizes municipalities to determine whether certain parcels of land in the municipality constitute an "Area in Need of Redevelopment", as defined in the Redevelopment Law; and

WHEREAS, the Borough of Belmar, in the County of Monmouth, New Jersey (the "Borough"), a public body corporate and politic of the State of New Jersey (the "State"), is authorized pursuant to the Redevelopment Law, to determine whether certain parcels of land within the Borough constitute an area in need of rehabilitation and/or an area in need of redevelopment; and

WHEREAS, the Borough Council of the Borough (the "Borough Council") adopted ordinances which designated the area known as Parcels 1 thru 6, 6B 7 thru 9, and 11 thru 19 (the "Redevelopment Area") as an area in need of redevelopment pursuant to Section 5 of the Redevelopment Law; and

WHEREAS, the Borough Council adopted an ordinance which designated the area known as Parcel 20 (the "Rehabilitation Area", and collectively with the Redevelopment Area the "Seaport Redevelopment Area") as an area in need of rehabilitation pursuant to Section 14 of the Redevelopment Law; and

WHEREAS, on August 13, 2003, the Borough Council adopted ordinance #2003-18, which designated the "Seaport Redevelopment Plan" prepared by Schoor DePalma, Inc. dated June 3, 2003 (the "Original Redevelopment Plan") as the redevelopment plan for the Seaport Redevelopment Area; and

WHEREAS, the Borough Council adopted the "Redevelopment Plan Update" prepared by Maser Consulting, P.A. dated April 15, 2011, as the amended redevelopment plan and on March 7, 2012 the Borough Council adopted ordinance #2012-02 which approved and adopted further amendments to the Original Redevelopment Plan (collectively, the "Amended Redevelopment Plan"); and

WHEREAS, on July 20, 2016, the Borough Council adopted a resolution designating the property commonly known as Block 106, Lots 1-3, 5-6, 10.01, 10.02 and 11; Block 116, Lots 1-2; Block 117, Lots 1-4, 6-9, and 12-15; Block 67, Lot 4.01; Block 86, Lots 1-7; Block 86.01, Lot 1; Block 87, Lots 1-3; and Block 96, Lots 1 and 3-9 on the tax map of the Borough of Belmar as an area in need of redevelopment without the power of condemnation, which area shall be included with the Seaport Redevelopment Area (the "Expanded Seaport Redevelopment Area") ; and

WHEREAS, by virtue of Ordinance 2016-10 the Borough further amended the Redevelopment plan to include the Expanded Seaport Redevelopment Area Block 106, Lots 1-3, 5-6, 10.01, 10.02 and 11; Block 116, Lots 1-2; Block 117, Lots 1-4, 6-9, and 12-15; Block 67, Lot 4.01; Block 86, Lots 1-7; Block 86.01, Lot 1; Block 87, Lots 1-3; and Block 96, Lots 1 and 3-9; and

WHEREAS, by virtue of Ordinance 2022-02, the Borough further amended the Amended Redevelopment Plan including the Expanded Seaport Redevelopment Area, previously described in the

Redevelopment Area Preliminary Investigatory Report, Seaport Redevelopment Area expansion, prepared by Maser Consulting and dated June 28, 2016 (“Amended and Restated Redevelopment Plan”), with the revisions set forth in the “Amendment to the Seaport Village Redevelopment Plan” pertaining only to Block 87, Lots 1, 2 & 3, prepared by Leon S. Avakian, Inc., Consulting Engineers (“Amendment to the Seaport Village Redevelopment Plan”); and

WHEREAS, the Seaport Redevelopment area is designated an “area in need of redevelopment” under the Redevelopment Law, and the property located therein would be a “non-condemnation redevelopment area” consistent with *N.J.S.A. 40A:12A-6a*; and

WHEREAS, Eastport of Belmar, LLC (the “Redeveloper”), owns and controls the property located at Lots 9, 10, 12 & 13.02, Block 55, commonly known as 508 Main Street in the Borough of Belmar, County of Monmouth, State of New Jersey; (the “Redevelopment Property”); and

WHEREAS, on April 4, 2022, the Borough Council adopted Resolution No. 2022-79 designating Redeveloper as the redeveloper of the Property; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Property, the Borough has determined to enter into this Agreement with Redeveloper, which specifies the rights and responsibilities of the Borough, designates Redeveloper as Redeveloper of the Study Area and specifies the rights and responsibilities of Redeveloper with respect to the Project; and

WHEREAS, on December 20, 2022 the Borough Council adopted Resolution No. 2022-233 authorizing the Mayor to execute this Agreement;

NOW, THEREFORE, for and in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the Parties, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATION

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

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

Agreement

Borough

Borough Council

Effective Date

Owner

Party or Parties

Planning Board

Project Area

Property

Redeveloper

Redevelopment Law

Redevelopment Plan

Study Area

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

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

"Applicable Law(s)" shall mean all federal, State and local laws, statutes, ordinances, approvals, rules, regulations, common law, resolutions and requirements applicable hereto including, but not limited to, the Redevelopment Law and the Land Use Law (as amended from time to time), as applicable, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary and safety ordinances, laws and such rules and regulations thereunder, including all applicable federal and State labor standards and all Environmental Laws.

"Borough Costs" shall be as defined in Section 4.1(b).

"Borough Representative" shall be as defined in Section 2.4(a).

"Certificate of Approval" shall mean a certificate of Approval as defined in the applicable provisions of the Uniform Construction Code, issued by the Borough building department indicating the construction of the Project has been approved.

"Certificate of Completion" shall mean a certificate in the form attached hereto as Exhibit B, issued by the Borough pursuant to Section 2.3.

"Certificate Denial Statement" shall be as defined in Section 2.3(f).

"Certificate of No Default" shall be as defined in Section 2.8.

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

"Commence" or "Commencement" shall mean the mobilization of a construction force and/or machinery for the remediation of non-conforming environmental conditions, demolition of existing improvements and/or for construction of the Project.

"Complete" or "Completion" shall mean with respect to the Project or Project Area, the date that a Phase or the Project may, in all material respects, be used and operated for its intended purpose and the Borough has received a written certificate from Redeveloper affirming that such Phase or the Project is complete in a manner consistent with the Redevelopment Plan, all Governmental Approvals and all Applicable Laws.

"Completion Date" shall mean each of the dates set forth on Exhibit D for completion of steps in Completion of a Phase or the Project.

"County" shall mean the County of Monmouth in the State of New Jersey.

"Default Notice" shall be as defined as in Section 9.1(a)(b).

"Environmental Claim" shall mean any claim (in whatever form) made or asserted by any Person (including enforcement notices and proceedings) in connection with or with respect to environmental matters respecting the Property, including without limitation, any noncompliance (or alleged non-compliance) with Environmental Laws.

"Environmental Laws" shall mean any and all Applicable Laws concerning the protection of the environment, human health or safety, presently in effect.

"Escrow Account" shall be as defined in Section 4.1(b).

"Event of Default" shall be as set forth in Section 9.1.

"Force Majeure" shall be as defined in Section 9.3.

"General Contractor" shall mean the contractor hired by the Redeveloper that is responsible to construct the Project.

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

"Governmental Approvals" shall mean all government approvals by a Governmental Body having jurisdiction thereof issued as a result of or in reliance on Governmental Applications, including: with respect to the development of the Project, an approved site plan submitted to, and approved by, the Planning Board in accordance with the Land Use Law, as amended from time to time; approvals for all Infrastructure Improvements, Project Improvements, County and Federal approvals, NJDEP approvals and remediation required by NJDEP and/or other Governmental Bodies with jurisdiction to administer Environmental Laws; and any plans and specifications for the obtaining of building permits, for sewerage capacity approvals, and any and all other necessary governmental permits, licenses, grants, consents and approvals.

"Governmental Body" means any federal, State, county or local (including the Borough), department, commission, authority, court or tribunal and any designee or successor thereto, exercising

executive, legislative, judicial or administrative functions of or pertaining to government, including without limitation, the Borough, County, State and Environmental Authorities.

"Holder" shall be the holder of any mortgage permitted by this Agreement.

"Infrastructure Improvements" shall mean the preparation and installation on, in, under and to the Project Area of site work, building foundations and other on-site improvements consistent with the requirements of Governmental Approvals, this Agreement, and Applicable Laws.

"Land Use Law" shall mean the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1, *et seq.*, as amended from time to time.

"NJDEP" shall mean the New Jersey Department of Environmental Protection.

"Phase" shall mean any phase of the Project as depicted on a concept plan or site plan application by Redeveloper.

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

"Permitted Transfers" shall be as defined in Section 6.1(u).

"Progress Report" shall be as defined in Section 2.4(b).

"Project" shall be as defined in Section 2.1.

"Project Area" shall mean the land on which the Project will be constructed and the neighborhood in which the Project is located.

"Project Costs" shall be as defined in Section 4.1.

"Project Improvements" means all structures, improvements and amenities necessary for the implementation and completion of the Project as described in Exhibit C attached hereto and made a part hereof, and any additional work incidental thereto, all of which shall be consistent with the Redevelopment Plan and any approved site plan, including to the extent applicable, the Infrastructure Improvements.

"Project Schedule" is set forth in Section 2.3 and shall include the schedule for obtaining required permits and approval for the development, construction and Completion of the Phase or Project as the same may be amended or modified from time to time by the Parties. The Project Schedule is attached hereto as Exhibit D.

"State" shall mean the State of New Jersey.

"Term" shall be defined in Section 2.2.

"Third Party Approvals" shall mean those approvals granted by a third party that is not a Governmental Body, which approvals are necessary in connection with the implementation of the Project and which includes, but is not limited, to the receipt of any consents or approvals required of any property owners.

"Uniform Construction Code" shall mean the Uniform Construction Code, *N.J.A. C. 5:23, et*

seq., as same may be amended from time to time.

"Unit" shall mean a residential unit.

"United States Bankruptcy Code" means the United States Bankruptcy Code, 11 U.S.C. 1 *et seq.*, and the accompanying regulations.

Section 1.3 Interpretation and Construction. In this Agreement, unless the context otherwise requires:

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

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

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

(d) The terms "agree," "agreements," "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld, conditioned or unduly delayed," except or unless the context or the express terms of this Agreement may otherwise provide, specify or dictate. Any headings preceding the text of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify or dictate.

(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, where withheld, a statement in reasonable detail shall be provided setting forth the reason for withholding of consent, approval or acceptance.

(f) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than thirty (30) days, unless the context dictates otherwise.

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

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

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

(j) Any reference to Applicable Laws or any Applicable Law shall be read to mean as the Applicable Law is amended from time to time except where Redeveloper's obligation to comply was satisfied prior to the amendment.

(k) The recitals contain statements of fact and/or expressions of intention and are incorporated into and made part of the substance of this Agreement.

ARTICLE II IMPLEMENTATION OF THE PROJECT

Section 2.1 Description of the Project.

- (a) The Project shall consist of two (2) buildings:
- i. Building 1 fronting on Main Street shall consist with approximately 5,000 sq. ft. of commercial space on the first floor and seven (7) two-story three (3) bedroom residential condominium units above the commercial.
 - ii. Building 2 in the rear of the property shall consist of seven (7) three-story three (3) bedroom residential condominium units.

The Project will also consist of the following components:

- i. Twelve (12) diagonal public parking spaces facing east on 6th Avenue that will be available to the public.
- ii. Five (5) public parking spaces will be provided on Main Street that will be available to the public. Thirty minutes requested parking from 9:00 a.m. and 6:00 p.m. No time limit at other times.

It is currently contemplated that the Redeveloper will sell each of the fourteen (14) residential condominium units and the two (2) – four (4) commercial units (approximately 5,000 sq. ft.) of varying dimensions. If, however, the Redeveloper is unable to sell all of those units within 1 year of the issuance of the building permit, the Redeveloper shall have the right to lease each unsold unit.

(b) Subject to the terms and conditions in this Agreement, Redeveloper agrees, at its sole cost and expense (except to the extent financed, reimbursed by, or paid by third parties in the ordinary course of business in connection with the development of the Project, other than the Borough), to implement and complete the redevelopment of the Project Area which shall consist of the following, as applicable: (i) the procurement of all applicable Governmental Approvals for all Project Improvements; (ii) financing, design, construction and Completion of all Project Improvements; and (iii) payment of the Borough Costs in accordance with the terms of this Agreement (collectively, the "**Project**").

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

(d) Redeveloper has been designated as the exclusive Redeveloper of the Project Area and shall have the exclusive right to redevelop the Project Area and implement the Project in accordance with the terms and conditions of this Agreement.

(e) The Redeveloper hereby represents that it is the Owner of the Property.

Section 2.2 Term. This Agreement shall have a term of seven (7) years from the date on which the Borough issues the building permit provided that the term shall be extended, if necessary, so that the Redeveloper shall have at least eight (8) years from the date on which the building permit is issued by the Borough to the Redeveloper to complete the Project subject to: (a) any extension by reason of a Force Majeure Event in accordance with Section 2.5, or (b) any extension granted by the Borough, or its successor, pursuant to a request of Redeveloper which shall be governed by Section 2.3(d), or (c) of the Project Schedule. Notwithstanding any of the foregoing, this Agreement shall terminate upon the issuance of Certificate of Completion.

Section 2.3 Project Schedule.

(a) The Project Schedule shall control the Commencement, progress and Completion of the Project or Phases. The Parties agree and acknowledge that adherence to the Project Schedule is a material term of this Agreement, subject to the provisions of Section 2.5. Redeveloper shall use commercially reasonable efforts, subject to obtaining Governmental Approvals, to commence construction no later than the date set forth in the Project Schedule.

(b) Redeveloper may modify the Project Schedule from time to time; provided that (i) any such modification shall not change the Completion Date for the Project without the prior written consent of the Borough, and (ii) any material changes to the Project Schedule shall be subject to the Borough's review and consent, provided that in the case of either clause (i) or (ii) herein, the Borough will not unreasonably withhold, deny, condition or delay its consent.

(c) Subject to the provisions of Section 2.5, Redeveloper shall use commercially reasonable efforts to complete the Project in accordance with the Project Schedule. Upon Completion of the Project, Redeveloper shall apply to the appropriate Governmental Body for a Certificate of Approval for the Project.

(d) If, subject to the provisions in Section 2.5, Redeveloper fails to meet a Completion Date for any reason or determines that it will fail to meet a Completion Date for any reason, Redeveloper shall promptly provide written notice to the Borough stating: (i) the reason for the failure or anticipated failure to meet the Completion Date, (ii) Redeveloper's proposed method for correcting such failure, (iii) Redeveloper's proposal for revising the applicable Completion Date, and (iv) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant Completion Dates. In such event the Borough's consent shall be required for the modification of the Completion Date(s), and such consent shall not be unreasonably withheld, conditioned or delayed. If the Borough does not so consent and Redeveloper fails to meet the Completion Date, then the Borough may declare an Event of Default, pursuant to Section 9.1 herein.

(e) If Redeveloper has performed all of its duties and obligations under this Agreement and Completed the Project in its entirety, the Borough shall, within fifteen (15) days of the issuance of a Certificate of Approval for the Project and receipt of a written request from Redeveloper, issue a Certificate of Completion. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement, the Redevelopment Plan and Applicable Laws, with respect to the obligations of Redeveloper to construct the Project.

(f) In the event the Borough does not issue any such Certificate of Completion, within fifteen (15) days after submission of written request by Redeveloper, the Borough shall provide Redeveloper with a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to Complete the Project in accordance with the provisions of this Agreement, the Redevelopment

Plan and Applicable Laws and what measures or acts the Borough contends will be necessary in its reasonable opinion in order for Redeveloper to be entitled to the Certificate of Completion (the "**Certificate Denial Statement**"). Redeveloper may rely on the Certificate Denial Statement in determining what action it must take in order to achieve the Certificate of Completion. In the event of a dispute over issuance of a Certificate of Completion, the Parties shall cooperate in good faith to resolve such dispute and, thereafter, either Party may take such legal action as it deems appropriate.

(g) Upon issuance of the Certificate of Completion, the conditions determined to exist at the time the Property was determined to be an Area in Need of Redevelopment shall be deemed to no longer exist with respect to the Property and Project Area upon which the Project is located. The land and improvements within the Property and Project Area shall no longer be subject to eminent domain or any other covenant herein encumbering the Property or Project Area.

Section 2.4 Project Oversight.

(a) Redeveloper agrees to hold a reasonable number of regular progress meetings with designated representatives of the Borough (each a "**Borough Representative**") upon the Borough's reasonable request, to report on the status of the Project and to review the progress under the Project Schedule, provided that Redeveloper need not hold more than one (1) progress meeting each quarter. To the extent practicable, the meetings shall be held within five (5) business days of Redeveloper's receipt of the Borough's request for such a meeting, at an office maintained by Redeveloper in the Borough, at the office of the Borough, or within the Project Area.

(b) Redeveloper shall submit to the Borough detailed quarterly written progress reports which shall include a description of activities completed, the activities to be undertaken prior to the next Progress Report, the status of all Governmental Approvals, the status of all remediation activities, an explanation of each activity, if any, which is showing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and Completion Dates in the Project Schedule, an explanation of corrective action taken or proposed and such other information as may be reasonably requested by the Borough (collectively, the "**Progress Report**").

(c) The Borough and the Borough Representatives reserve the right to enter upon the Project Area, during regular business hours upon reasonable notice to Redeveloper and accompanied by Redeveloper and/or its designated representative(s) or agent(s), to visually inspect the site for informational purposes and observe remediation, demolition and construction activities, subject to the Borough's acknowledgment that the Project Area will be an active construction site, and Redeveloper shall not be liable or responsible to the Borough, Borough Representatives, or their respective employees, agents or invitees for damages arising from injury to person or property sustained in connection with such inspections except to the extent that Redeveloper violates the standard of due care owed to invitees. Any persons present at the Project Area pursuant to the foregoing sentence will comply with all applicable reasonable health and safety rules established by the Redeveloper and/or General Contractor(s) for personnel present in the Project Area. The Borough shall have the right but not the obligation to obtain, at its sole cost and expense, duplicate samples from Redeveloper collected as part of any remediation of the Project Area. Such inspections and observations shall not relieve Redeveloper from its obligation to implement the Project and remediate the Project Area in accordance with this Agreement. In no event shall the Borough's inspection of the Project under this Section 2.4(c) be deemed acceptance of the work or deemed to waive any right the Borough has under this Agreement.

Section 2.5 Tolling / Force Majeure. Redeveloper shall diligently adhere to the Project Schedule and the provisions set forth in this Article II, provided that such obligations shall be extended on a day for day basis for each day that Redeveloper's performance hereunder is delayed by (a) the

occurrence of an event of Force Majeure (Section 9.3); or (b) an extension of the dates for Completion of any portion of the Project granted by the Borough, in its sole but reasonable discretion. If a delay only affects a portion of the Project, the extension granted hereunder shall only apply to the obligations so affected and Redeveloper shall, to the extent practicable, continue to perform its obligations with respect to the balance of the Project.

Section 2.6 Infrastructure Improvements. Redeveloper will design and construct the Infrastructure Improvements in a good and workmanlike manner and in substantial accordance with all Applicable Laws. Redeveloper acknowledges the presence of streets, certain existing utility structures, including but not limited to electric power transmission lines, potable water or sanitary sewer transmission conduits or pipes, water lines or pipes, traffic control devices, on-site and off-site signage, lighting, storm sewers, telephone transmission lines, television cable lines and other utilities, and agrees to undertake the appropriate measures to negotiate with, acquire, enlarge, relocate or otherwise address the existence of these utilities and easements therefor, in order to complete the Project as provided by this Agreement. The Redeveloper shall comply with NJDEP stormwater management regulations that will take effect during March 2021 and all subsequent versions of the stormwater management regulations.

Site plan approval may be conditioned upon other on-site and off-site improvements specific to the Project, consistent with the authority of the Planning Board and consistent with the Land Use Law, as amended from time to time. If site plan approval is so conditioned, Redeveloper shall exercise reasonable efforts to ensure the effective coordination of such improvements and shall cooperate with the Borough in all respects to ensure that the implementation of the Project does not unreasonably interfere with the operation of the existing utilities. Redeveloper agrees to provide the performance and maintenance bonds as required by the Planning Board, consistent with the authority of the Planning Board under the Land Use Law, as amended from time to time. The Parties acknowledge that the following are included within the Infrastructure Improvements:

- i. All onsite and offsite improvements and infrastructure necessary for development of the Project shall be the responsibility of the Redeveloper. The Redeveloper is responsible for all costs associated with connecting all utility pipes, lines and systems required for the Project to the nearest available municipal and public utility pipes, lines and systems and for the proper sizing of both existing and new pipes, lines, conduits and systems and all road improvements, traffic signals, devices and signage.

Section 2.7 Prohibition Against Suspension, Discontinuance or Termination. Redeveloper shall not suspend or discontinue performance of its obligations under this Agreement for a period exceeding eighty (80) days or terminate this Agreement (other than in the manner provided for herein) for any reason except to the extent permitted by Section 2.5, but only to the extent and for the period of time permitted by Section 2.5.

Section 2.8 Certificate of No Default. Redeveloper shall deliver to the Borough, within seven (7) days of request thereof, a certificate to the effect that Redeveloper is not aware of any condition, event or act which constitutes a violation of this Agreement or which would constitute an Event of Default hereunder and to its knowledge no condition, event or act exists which, with notice or lapse of time, or both, would constitute such a violation, or Event of Default, or if any such condition, event or act exists, specifying the same (the "**Certificate of No Default**") until acceptance of the Project by the Borough.

Section 2.9 Cooperation. The Parties shall fully cooperate with each other as necessary and desirable to accomplish the Project, including entering into additional agreements that may be required, provided, however, that such actions shall not result in a material increase in the Borough's and Redeveloper's respective obligations hereunder or material decrease in the Borough's or Redeveloper's respective rights hereunder. The Borough specifically agrees to cooperate with the Redeveloper to effect changes to the Redevelopment Plan consistent with the terms and provisions of the Redevelopment Plan and this Agreement.

Section 2.10 Estoppel Certificates. At any time, and from time to time, prior to the issuance of a Certificate of Completion, the Borough shall, within fifteen (15) days of its receipt of a written request by the Redeveloper or of any Qualified Transferee, mortgagee, lender, purchaser, tenant or other party having an interest in the Project, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, Qualified Transferee, purchaser, investor, tenant, etc.) designated by the Redeveloper, an instrument in which the Borough (i) certifies that, to the best of its information and belief, this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the Borough, the Redeveloper or qualified transferee is in Default under this Agreement, and, if so, specifying each such Default of which the Borough shall have knowledge; and (iii) confirms such other factual matters within the Borough's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project.

ARTICLE III PROJECT APPROVALS

Section 3.1 Governmental Approvals and Third Party Approvals.

(a) Redeveloper shall use commercially reasonable efforts to secure, or cause to be secured, any and all Governmental Approvals and Third Party Approvals for the Project in order to cause Commencement, Completion and remediation of the Project and Project Area in accordance with the Project Schedule and the provisions of Section 2.3.

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

(c) No Governmental Approval shall be deemed "final" until (i) the time for all appeals has run without the filing of an appeal or (ii) in the event an appeal is filed, all such appeal(s) have been resolved fully in favor of the Project and/or Redeveloper and the time for filing any further appeal has expired without the filing of any such appeal. Any such appeal shall constitute a Force Majeure Event and the Term and Completion Date shall be tolled pending a final decision or resolution.

(d) Redeveloper shall have the right but not the obligation to contest any unsatisfactory requirement or condition with respect to the Project imposed on Redeveloper as a condition to a Governmental Approval; provided that Redeveloper shall comply with any such requirement or condition if Redeveloper is unsuccessful in contesting same and the requirement or condition will not have a material adverse financial or operational impact on Redeveloper in connection with the Project, as determined by Redeveloper in the exercise of its reasonable business judgment. If Redeveloper is unsuccessful in contesting any unsatisfactory requirement or condition, or Redeveloper determines that such condition will have a material adverse financial or operational impact on Redeveloper in connection with the Project, in the exercise of Redeveloper's reasonable business judgment, Redeveloper may terminate this Agreement pursuant to Section 9.2(c) of this Agreement.

(e) In the event that Redeveloper's application for any Governmental Approval is denied or any Person brings an action that contests or challenges the grant of any Governmental Approval, then Redeveloper shall have the right in its sole discretion to (i) modify and resubmit such application, if applicable, in order to secure such Governmental Approval, provided that such modification is consistent with this Agreement and the Redevelopment Plan, and does not result in a material change to the Project as contemplated herein, or (ii) appeal or defend against such action, or (iii) terminate this Agreement by providing written notice to the Borough in accordance with the provisions of Section 9.2(c) of this Agreement.

Section 3.2 Borough Approval. The Borough agrees to rely upon the Planning Board's review of all development applications, providing its recommendations to the Borough Committee for consideration by the Planning Board in connection with Redeveloper's site plan applications. Redeveloper shall provide initial construction drawings to the Borough prior to issuance of a building permit for the Project. Upon Completion, Redeveloper shall provide as-built drawings for the Project to the Borough.

ARTICLE IV FINANCING OF THE PROJECT

Section 4.1 Redeveloper Financial Commitment.

(a) **Project Costs.** All costs of implementing and Completing the Project, including but not limited to the cost of obtaining all Governmental Approvals the cost of designing and constructing (including the costs of any construction observation services) all Project Improvements, all financing costs, all marketing and leasing costs for the Project Improvements, and the Borough Costs (collectively, the "**Project Costs**") shall be borne by Redeveloper (except to the extent financed, reimbursed by, or paid by third parties in the ordinary course of business, other than the Borough).

(b) **Payment of Borough Costs.** Redeveloper shall fund an initial escrow account (the "Escrow Account") to reimburse the Borough for costs incurred by it in the initial amount of Ten Thousand and 00/100 Dollars (\$10,000.00) with the Borough to provide funding to the Borough for all out of pocket costs incurred by the Borough in connection with the Project. Such out of pocket costs shall include, but are not limited to, all fees and costs of any outside professional consultant, legal, engineering or financial advisory services retained by the Borough related to the Project (the "**Borough Costs**"). The Borough shall provide the Redeveloper with a copy of each invoice reflecting the Borough's Costs which shall be paid by the Redeveloper. Unless the Redeveloper promptly (within 20 days of its receipt of any such copy) serves on the Borough a written objection to any invoiced item as not being a Borough Cost, the Borough shall be free to withdraw funds from the Escrow Account for payment of such invoiced

services. Use of the Escrow Account shall be subject to the same standards as set forth in N.J.S.A. 40:55D-53, and any dispute concerning payment of the Borough Costs shall be resolved in accordance with the procedures set forth in N.J.S.A. 40:55D-53.2a. Upon the issuance of the Certificate of Completion, or upon termination of this Agreement, except as otherwise provided herein in the event of a termination caused by a default of the Redeveloper, any money remaining in the Escrow Account shall be disbursed to the Redeveloper.

Section 4.2 Governmental Approval Fees. Redeveloper shall pay all fees for permits and approvals required by the Borough (in accordance with standard fees provided in the Borough's municipal code at the rates set at the time of entry of this Agreement), the Planning Board and any other Governmental Body for the construction and development of the Project in accordance with Applicable Laws. Redeveloper shall pay all other permit fees, which include any permit fees payable by the Borough or Redeveloper to all required Governmental Bodies other than the Borough, or for which the Borough is required to reimburse other Governmental Bodies or for which the Borough is required to pay to the County of Monmouth or other third party contractors retained by or on behalf of the Borough that are necessary to perform services in connection therewith. While the Redeveloper agrees to construct the Infrastructure Improvements, as required by the terms of this Agreement and the Governmental Approvals, should the cost of such Infrastructure Improvements or any off-site or off-tract improvements required by any Governmental Approvals or Governmental Body cause the economic feasibility of the Project to be prohibitive in the Redeveloper's reasonable business judgment, the Redeveloper shall notify the Borough in writing that it has so determined, and the Parties agree to work together to reach a viable solution to address the cost of such Infrastructure Improvements, during which period all other timelines in this Agreement shall be tolled. If within ninety (90) days of receipt by the Borough of the notice required herein, the Parties are unable to reach a viable solution to address the cost of such Infrastructure Improvements, the Redeveloper may terminate this Agreement pursuant to Section 9.2(c).

ARTICLE V GENERAL REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations and Warranties of the Redeveloper. Redeveloper hereby makes the following representations and warranties, understanding that the Borough has relied thereon as a material element in entering into this Agreement:

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

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

(c) All necessary consents have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on Redeveloper's behalf, and this Agreement constitutes a valid and legally binding obligation of Redeveloper, enforceable in accordance with its terms.

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

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

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

(g) To the best of Redeveloper's actual knowledge, there is no action, proceeding or investigation now pending or threatened, nor has Redeveloper received notice of any such action, proceeding or investigation, which (i) questions the authority of Redeveloper to enter into this Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform its obligations pursuant to the terms of this Agreement.

(h) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of or conflict with any of Redeveloper's organizational documents or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party or by which it is bound or affected.

(i) Redeveloper agrees that the cost and financing of the Project is the responsibility of Redeveloper, pursuant to and as set forth in this Agreement and any other agreements between the Parties. The Borough shall not be responsible for any cost whatsoever in respect to same except as otherwise indicated in this Agreement.

(j) Redeveloper is financially capable (subject to the procurement of financing) and technically capable (with the assistance of its consultants, contractors and subcontractors) of developing, designing, financing, constructing, operating, and maintaining the Project, as well as remediating the Project Area in conformance with the requirements of this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws.

(k) Each limited liability company member that owns twenty-five percent (25%) or more of the ownership interest in Redeveloper is set forth on **Exhibit E**. Redeveloper shall, at such times as the Borough may reasonably request, furnish the Borough with a complete statement subscribed and sworn to by a managing member of Redeveloper or other authorized person, setting forth all of the limited liability company members that own twenty-five percent (25%) or more of the ownership interest in Redeveloper.

(l) Neither Redeveloper nor its members have been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the Redeveloper's knowledge and belief the principals and members of Redeveloper, are not a target of a criminal investigation.

(m) Neither Redeveloper nor its members directly or beneficially, is a party to or beneficiary of any contract or agreement with the Borough which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which the Borough alleges such default, nor is such individual, partnership or entity an adverse party in any currently pending

litigation involving the Borough.

(n) Neither Redeveloper nor its members has been found in any civil or criminal action in or by a court, or administrative agency or tribunal of competent jurisdiction to have violated any federal or State law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision.

(o) Neither Redeveloper nor its members has violated any Borough, administrative agency, State or federal ethics law and entering into this Agreement will not cause any such violation or result in a conflict of interest.

(p) The Redeveloper is the owner of the Property.

Section 5.2 Representations and Warranties by the Borough. The Borough hereby makes the following representations and warranties, understanding that Redeveloper has relied thereon as a material element in entering into this Agreement:

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

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

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

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

Section 5.3 Tax Payment Agreement. The Redeveloper shall continue to pay on a quarterly basis the full amount of taxes currently affecting the subject property, including taxes for all appropriate governmental entities including the County of Monmouth, Borough of Belmar, et cetera. Said payment shall continue for a seven-year term beginning with a date that the first building permit is issued. There will be no tax assessment or tax increase on the improvements or units for the first year after the first building permit is issued. Thereafter, the taxes on the subject property would increase as it pertains to that portion of the tax bill paid to and for the Borough of Belmar in the amount of 12.5% each year on the improvements. During the entire time, however, after the first building permit is issued during the

seven-year term, the land assessment for each of the residential units shall be assessed at \$100,000.00. The commercial space on the first floor will be assessed at \$200,000.00. The start date on the increase in the taxes on the units will begin the date that the subdivision map is filed or the date of the demolition of the existing improvements whichever occurs last. Until that time, the current taxes and assessment shall continue as they presently are assessed.

Section 5.4 Mutual Representations. In the event that any contractual provisions that are expressly required by Applicable Law have been omitted, then the Borough and Redeveloper agree that this Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the Parties, the Borough and Redeveloper agree to act in good faith to mitigate such changes in position in order to conform as nearly as possible to the terms of this Agreement at the time of execution. In the event despite the efforts of the Parties to mitigate, such change results in a material adverse financial impact on either Party, either Party may terminate this Agreement by providing written notice to the other Party within thirty (30) days of the discovery of the deemed incorporation of any such clause.

Section 5.5 Project Completion. Redeveloper shall diligently undertake and implement the Project throughout the term of this Agreement and shall complete the Project within the time frames set forth in the Project Schedule.

Section 5.6 Construction Assurances. Redeveloper shall, upon Commencement of construction, proceed diligently to Completion of the Project, subject only to Force Majeure Events.

ARTICLE VI COVENANTS AND RESTRICTIONS

Section 6.1 Redeveloper Covenants. Redeveloper covenants and agrees that:

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

(b) Subject to the terms of this Agreement, including without limitation Section 9.3, Redeveloper shall undertake with due diligence (i) the financing of the Project, (ii) construction and development of the Project, and (iii) to begin and complete each item in the Project Schedule on or prior to the date set forth in the Project Schedule (and for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period). All activities performed under this Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first-class developments of the same or similar type and nature as the Project.

(c) Redeveloper shall not seek a material change to the Project, without the Borough's written approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(d) Redeveloper shall use diligent efforts to obtain all Governmental Approvals and Third Party Approvals requisite to the construction, development, use and occupancy of the Project, including evidence reasonably satisfactory to the Borough that the Project is in compliance with all Applicable Laws, including the Environmental Laws.

(e) Subject to the provisions of Sections 2.5, 2.7, 3.1(d), 3.1(e), 4.2 and Article IX of this Agreement, Redeveloper shall not suspend or discontinue the performance of its obligations under this 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, unless caused by a Force Majeure Event.

(f) Redeveloper shall not use the Project Area, Project Improvements, or any part thereof in a manner that is inconsistent with the Redevelopment Plan and this Agreement.

(g) Redeveloper shall comply with all Applicable Laws that prevent discrimination against any person, or group of persons, on the basis of age, race, color, religion, creed, national origin, ancestry, physical handicap, familial status, gender identity or sexual orientation in the sale, lease, sublease, rental, transfer, use, or occupancy of any Project Area in the Redevelopment Area, or any part thereof.

(h) Redeveloper shall not knowingly employ, hire or otherwise involve in the Project any Person or entity that has previously been disbarred, suspended or otherwise ruled unable to participate in the process of bidding for, and being awarded, public contracts.

(i) Redeveloper shall promptly notify the Borough of any material adverse change in its financial condition from the information provided to the Borough by Redeveloper indicating Redeveloper's financial capability to develop, finance and construct the Project in furtherance of Borough's consideration in designating Eastport of Belmar, LLC, as Redeveloper.

(j) Redeveloper shall make all payments in satisfaction of Redeveloper's financial obligations as set forth in this Agreement, including but not limited to payment of the Borough Costs.

(k) The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations, and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution, and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable law.

(l) The Redeveloper shall construct the Project Improvements in accordance with this Agreement, applicable Borough Ordinances, the Redevelopment Plan, and all Applicable Law.

(m) In connection with its use or occupancy of the Project, the Redeveloper shall not adopt any policy or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property or the Project is restricted upon the basis of age (except as to permit age restricted housing), race, color, creed, religion, ancestry, national origin, gender identity, sexual orientation or familial status, and the Redeveloper, its successors and assigns, shall comply with all applicable laws prohibiting discrimination or segregation by reasons of age, race, color, creed, religion, ancestry, national origin, gender identity, sexual orientation or familial status.

(n) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age (except as to permit age restricted housing), marital status, affectional preference or gender identity of any person.

(o) The Redeveloper shall not use the Project Improvements or any part thereof in a manner that is not in all material aspects consistent with the Redevelopment Plan, the Governmental

Approvals and this Agreement. The Redeveloper will construct only those uses established in the Redevelopment Plan or as the Redevelopment Plan may be modified, in writing, by the Borough from time to time in accordance with Applicable Law.

(p) In order to effectuate the purposes of this Agreement, the Redeveloper shall take such action as may be reasonably required or proper for the acquisition, construction and development of the Project Improvements in accordance with the terms of this Agreement and all necessary Governmental Approvals.

(q) The Redeveloper shall use reasonable efforts to ensure that all consultants, professionals, employees, agents, contractors, engaged by the Redeveloper or any of the Redeveloper's subcontractors shall have the skill, experience and judgment necessary to implement the Project in compliance with the terms and conditions of this Agreement.

(r) The Redeveloper, once it commences construction of any portion of the Project Improvements, will proceed diligently to complete construction of such portion in accordance with the Project Schedule.

(s) Upon the reasonable request of the Borough, the Redeveloper shall promptly deliver to the Borough copies of all surveys, reports, analyses, test results and other written reports or documents prepared for the Redeveloper by any third-party consultant with respect to any portion of the Property (with the exception of items that are proprietary to the Redeveloper), including but not limited to, wetlands investigations, environmental assessments, soil tests, surveys, title commitments, engineering analyses, utility capacity analyses and the like.

(t) The Redeveloper shall not, without the prior written consent of the Borough in its reasonable discretion (i) effect or permit any change, directly or indirectly, in the ownership of more than 10% control of the Redeveloper (whether in one transaction or by virtue of the combined effect of more than one transaction), provided however, that the Borough will not unreasonably withhold consent to a transfer of a majority or greater interest in the Redeveloper to a reputable financial institution for bona fide financing purposes provided that the current members of the Redeveloper remain in control of the entity; (ii) effect or permit any transfer, directly or indirectly, of any interest of more than 10% in the Redeveloper to a person or entity not presently holding an interest in the Redeveloper, provided that if such transfer does not contravene clause (i) then the Borough will not unreasonably withhold consent to such transfer; (iii) assign or attempt to assign this Agreement or any rights herein with respect to the Property or Project Improvements; (iv) make, except in the ordinary course of leasing or selling components of the Project to end users, any total or partial sale, lease, transfer or conveyance of the whole or any part of its interest in the Project Improvements or the Property; or (v) pledge or transfer all or substantially all of its assets (each individually, a "Transfer"). If the Redeveloper proposes a Transfer, other than as set forth above, the Redeveloper will promptly provide to the Borough information reasonably necessary to determine the qualifications of the proposed transferee to undertake the obligations hereunder. If a Transfer is approved by the Borough, the transferee, by written document acceptable in form and substance to the Borough, for itself and its successors and assigns, and for the benefit of the Borough, shall expressly assume all of the obligations of the Redeveloper under this Agreement applicable to the property interest conveyed with such sale, assignment or transfer and shall agree to be subject to all the conditions and restrictions to which the Redeveloper is subject under this Agreement, including the restrictions regarding the right to subsequent transfers. All relevant instruments and other legal documents proposed to effect any such transfer shall be submitted to the Borough, and if the transferee is approved by the Borough, such approval shall be conveyed to the Redeveloper in writing.

(u) The Redeveloper may affect the following transfers, to which the Borough hereby consents upon receipt of notice thereof, without the necessity of further action by the Borough (the “Permitted Transfers”): (i) Transfers to an Affiliate of the Redeveloper or a transfer among members of the Redeveloper and/or trustees for their benefit; (ii) leases of residential units or commercial space to residential or commercial tenants for their own use; (iii) mortgages to secure institutional financing for the acquisition of the Property and/or construction of the Project Improvements or any Phase thereof; (iv) environmental covenants and restrictions imposed by the New Jersey Department of Environmental Protection or other applicable governmental agency; (v) utility easements; (vi) a Transfer pursuant to a foreclosure or deed in lieu of foreclosure, and any Transfer by any Holder or any Holder’s successor and/or assigns after foreclosure; (vii) a Transfer of the direct or indirect ownership or control of Redeveloper among the existing owners, family members of the owners, and/or trusts established for estate planning purposes; (viii) a Transfer of any direct or indirect interest in Redeveloper to an entity owned or controlled by the existing owners or family members; and (ix) any contract or agreement which effectuates any of the foregoing exceptions. With respect to any of the Permitted Transfers listed in this Paragraph (u), the Redeveloper shall provide to the Borough with written notice within thirty (30) days prior to the Permitted Transfer, which shall include a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee parties, individuals and/or entities involved.

(v) Except as otherwise permitted in Section 9.3, not suspend or discontinue the performance of its obligations under this 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, breach of the covenant of good faith and fair dealing, or any damage to, or destruction of, the Property.

(w) Diligently undertake the construction and development of the Project (and if applicable, or each individual component) throughout the construction period and use commercially reasonable efforts to complete each component of the Project as provided in the Project Schedule.

(x) Not encumber, hypothecate or otherwise use the Project, or any part thereof, as collateral for an unrelated transaction.

(y) Keep and maintain in good condition any improvements required under Governmental Approvals, including but not limited to any landscaping or trees required to be planted upon private property or cause an entity in control of the Project (i.e. condominium or homeowner association) to maintain such improvements.

(z) The Redeveloper must pay 1.5% of the equalized assessed value of each residential unit, and 2.5% of the equalized assessed value for each commercial unit. 50% of the fee shall be paid upon issuance of the building permit. The remaining 50% of the fee shall be paid before issuance of the certificate of occupancy.

Section 6.2 Borough Covenants. The Borough hereby covenants and agrees that:

(a) It shall fully cooperate with Redeveloper to ensure that all Governmental Approvals are obtained for the Project.

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

Section 6.3 Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions contained in this Article VI shall be binding, to the fullest extent permitted by law and

equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project Area or any part thereof until issuance of the Certificate of Completion. However, such agreements and covenants shall be binding on Redeveloper itself, each successor in interest to Redeveloper and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall be in possession or occupancy of the Project Area, the buildings and structures thereon or any part thereof.

Section 6.4 Enforcement by the Borough.

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

(b) Upon Completion of the Project, the conditions that were found and determined to exist at the time the Project Area was determined to be an Area in Need of Redevelopment shall be deemed to no longer exist and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project and the Property and Project Area shall no longer be subject to condemnation.

ARTICLE VII REQUIRED UNDERTAKINGS

Section 7.1 Supervision. Redeveloper and/or its General Contractor(s), Project and/or construction manager(s) acting on Redeveloper's behalf shall supervise and direct the contractors and subcontractors. Redeveloper and/or its General Contractor(s) shall use reasonable efforts to cause the contractors and subcontractors to (i) confine operations in the Project Area, or areas appurtenant thereto, to areas permitted by the Governmental Approvals and Applicable Laws, and (ii) not unreasonably encumber the Project Area or areas appurtenant thereto with materials or equipment.

Section 7.2 Neighborhood Impacts. Redeveloper shall take all commercially reasonable steps to minimize negative effects that the construction of the Project may produce the areas immediately surrounding the Project Area.

Section 7.3 Traffic. Redeveloper and the Borough agree that the direction, flow and amount of traffic in and around the Project Area during the time of construction are an issue to be addressed during the construction of the Project. Redeveloper commits to exert commercially reasonable efforts to minimize the traffic effects of the Project upon the Project Area during construction.

Section 7.4 Rodent, Insect and Animal Control. Redeveloper will take all commercially reasonable steps necessary to minimize and control the migration of rodents, insects, or other animals from the Project Area during the construction of the Project. Redeveloper will undertake to provide controls in

accordance with all Applicable Laws and other construction standards such that the issue of rodent, insect and animal control is reasonably addressed prior to the Commencement of Construction. Redeveloper agrees to coordinate this effort with the Monmouth County Regional Health Commission No. 1.

Section 7.5 Illumination, Noise, Pollution or Damage. Redeveloper agrees that it will take all steps reasonably necessary to minimize the excessive or unwarranted illumination, noise or pollution in the Project Area during construction. Redeveloper shall take measures necessary to ensure that the improvements within the perimeter of the Project Area shall not be damaged or disturbed during construction of the Project. To the extent any damage or disturbance occurs within the perimeter of the Project Area as a result of Redeveloper's negligence during its construction activities, Redeveloper shall repair or replace such damage or disturbance to its original condition at its sole cost and expense. Redeveloper shall be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to illumination issues related to the Project and will address the issue in the context of the review of site plan applications. Notwithstanding the foregoing, Redeveloper may appeal any condition imposed by the Planning Board that the Redeveloper believes is arbitrary, capricious, or unreasonable.

Section 7.6 Maintenance and Landscaping. During construction but not during demolition and clearing of the Project Area, Redeveloper shall keep the Project Area free from any substantial accumulation of debris or waste materials. Following completion of construction, Redeveloper will be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to maintenance and landscaping issues related to the Project and will address the issue in the context of review of site plan applications.

Section 7.7 Speculative Development. Redeveloper represents its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Project Area and not for speculation in land holding. Redeveloper shall not use the Project Area, or any part thereof, as collateral for an unrelated transaction.

Section 7.8 Indemnification. Redeveloper shall indemnify fully, save and hold harmless the Borough, its officers, employees, agents and representatives from and against all losses, damages, claims, liabilities, and causes of action of every kind or character and nature, as well as reasonable costs and reasonable fees, including reasonable attorney's fees connected therewith, and the reasonable expense of investigation thereof, based upon, or arising out of, damages or injuries to third persons, or their property, caused by the acts and omissions of Redeveloper, or anyone for whose acts Redeveloper may be liable.

It is mutually agreed by the Redeveloper and the Borough that neither the Borough, nor its officials, agents, servants or employees shall be liable for any action performed under this Agreement or omission and that the Redeveloper shall hold the Borough, its officials, agents, servants and employees harmless for any acts or omissions which arise from any claim or suit except to the extent that said claim arises out of the negligence, willful, intentional or criminal actions of the Borough, its officials, agents, servants, or employees.

The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in this Section, but shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend the Redeveloper or the Borough in connection with claims, suits or actions arising from this Agreement or the Project and covered by such policy(ies) which may be brought or asserted against the Borough, its officials, agents, servants or employees.

The obligations of the Redeveloper under this section shall survive termination of this Agreement.

ARTICLE VIII INSURANCE

Section 8.1 General Requirements. From and after the date of execution of this Agreement, Redeveloper shall provide and maintain, or cause to be maintained, insurance for the Project Area as provided in **Exhibit F**.

ARTICLE IX EVENT OF DEFAULT, REMEDIES

Section 9.1 Events of Default. Either of the Parties shall have the right to declare the other Party in default of this Agreement if any of the following events (each an "**Event of Default**") occur:

(a) Subject to Section 2.5, material failure of either Party to substantially observe and perform any covenant, condition, representation, warranty or agreement hereunder and continuance of such failure for forty-five (45) days after receipt by the defaulting party of a written notice of default (the "**Default Notice**") from the non-defaulting party specifying in sufficient detail, accompanied by any relevant documentation, of (i) the nature and extent of such failure, (ii) what action is required to remedy such default and (iii) requesting that such failure be remedied within thirty (30) days; provided, however, if the breach of any such covenant, condition, representation, warranty or agreement is one which cannot be completely remedied within thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting Party has commenced the cure within the thirty (30) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties to reach compliance; or Redeveloper materially defaults in or materially violates obligations with respect to design, development and construction of the Project in accordance with this Agreement, the Redevelopment Plan, Governmental Approvals or Applicable Law, and any such default, or violation shall not be cured, ended or remedied within sixty (60) days after written demand by the Borough to do so, provided, however, if the default or violation is one which cannot be completely remedied within sixty (60) days after such written notice has been given, it shall not be an Event of Default as long as Redeveloper has commenced the cure within the sixty (60) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties, to reach compliance; or

(b) Redeveloper fails to substantially comply with the Project Schedule, as the same may be modified or extended from time to time in accordance with this Agreement, or shall abandon or substantially suspend construction work for a period of ninety (90) consecutive days (subject to the provisions of Section 2.5) and any such default, or violation shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so, provided, however, if the default or violation is one which cannot be completely remedied within ninety (90) days after such written notice has been given, it shall not be an Event of Default as long as Redeveloper has commenced the cure within the ninety (90) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred eighty (180) days after such written notice, or (y) a date agreed to by the Parties, to reach compliance; or

(c) Redeveloper or its successor in interest (except for third parties to which a portion of the Project has been conveyed in the ordinary course of business) fails to pay any real estate taxes, assessments, payments in lieu of taxes on the Project Area or any part thereof prior to the imposition of any penalty therefore, or shall place on the Project Area any encumbrance or lien unauthorized by this Agreement and such real estate taxes payments in lieu of taxes, encumbrance or lien have not been paid,

removed or discharged or provision satisfactory to the Borough made for such payment, removal or discharge within sixty (60) days after written demand by the Borough to do so; or

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

(e) A representation made by Redeveloper in Article V was false on the Effective Date; or

(f) Redeveloper violates a covenant set forth in Article VI, subject to the notice and cure periods set forth above, to the extent applicable.

Section 9.2 Remedies Upon Default; Termination.

(a) Upon an Event of Default by the Borough which is continuing and remains uncured beyond any applicable notice and cure dates, Redeveloper may take whatever action at law or in equity, as may appear necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. Further, Redeveloper shall have the right to terminate this Agreement upon sixty (60) days written notice to the Borough.

(b) Upon an Event of Default by Redeveloper which is continuing and remains uncured beyond applicable notice and cure dates (including by and Holder or any “financing party” as set forth in this Agreement), the Borough may terminate this Agreement and/or take whatever action at law or in equity, as may appear necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. Further, the Borough shall have the right to terminate this Agreement upon sixty (60) days written notice to Redeveloper, provided, however, that upon issuance of the Certificate of Project Completion, the Borough shall no longer hold any right to terminate this Agreement based on an Event of Default or otherwise with regard to the Project.

(c) In the event that either Party exercises its right to termination pursuant to Section 3.1(d) and (e), Section 4.2, and Section 5.3, the terminating Party shall provide the other Party with not less than thirty (30) days prior written notice of such election. Within thirty (30) days of such termination: (i) Redeveloper shall pay to the Borough all outstanding Borough Costs; and (ii) upon full payment of all Borough Costs, the Borough shall return the balance of the amounts, if any, in the Escrow Account. In such case neither Party shall have any further rights, claims or obligations against the other Party arising out of this Agreement.

Section 9.3 Force Majeure. Performance by either Party 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 Agreement; provided, however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Agreement ("**Force Majeure**" or "**Force Majeure Event**"):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, pandemic, epidemic, 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 a grossly negligent or willful act or omission of the Redeveloper;

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

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

(e) Strikes, lockouts, slowdowns, labor unrest, or similar labor action by trade unions or any of their members, equipment manufacturers, suppliers of material and/or transporters of same;

(f) Appeals and legal challenges of any Governmental Approval taken by any third party;

(g) Litigation between the Redeveloper and a Governmental Body, including litigation concerning this Agreement, or the development of the Project; or

(h) Major economic downturn.

Section 9.4 Notice of Default to Holder and Right to Cure. Whenever the Borough shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Holder a copy of

such notice or demand; provided that the Redeveloper has delivered to the Borough a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Borough are concerned) have the right at its option within sixty (60) days after the receipt of such notice (and the expiration of all applicable cure periods), to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. The Borough shall not seek to enforce any of its remedies under this Agreement during the period in which any such Holder is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If possession of the Property is necessary to cure any default or breach, any Holder will be allowed to complete any proceedings required to obtain possession of the Property, providing such Holder is proceeding diligently to so obtain possession.

Section 9.5 No Guarantee of Construction or Completion by Holder.

Notwithstanding any of the provisions of this Agreement, including but not limited to those which are covenants running with the land, the Holder of any mortgage (including any such Holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or transferrin lieu thereof) may acquire title as a result of foreclosure proceedings or transfer in lieu thereof, and such transfer of title shall not be deemed a transfer in violation of Section 6.1(t), and the Borough hereby consents thereto.

(a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project, or to guarantee such construction or completion, nor shall any covenant or any other provisions be construed to obligate a Holder. 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 (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made) without the Holder or Affiliate of Holder first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project by written agreement reasonably satisfactory to the Borough and the Holder. Likewise, any third-party purchaser other than the Holder who obtains title to the Project or any part thereof upon a foreclosure proceeding may acquire title upon such foreclosure proceeding, and such transfer of title shall not be deemed a transfer in violation of Section 6.1(t), and the Borough hereby consents thereto; but such purchaser shall be subject to the provisions in (b) below.

(b) If a Holder forecloses its mortgage secured by the Project, or takes title (in its name or the name of an Affiliate) to the Project by deed-in-lieu of foreclosure or similar transaction or if a third party purchaser acquires the Property at the foreclosure sale (collectively a "Foreclosure"), the Holder or its Affiliate shall have the option to either (i) sell the Project to a responsible entity reasonably acceptable to the Borough, which entity shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, (ii) itself, or its affiliate, assume the obligations of Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, or (iii) determine not to proceed with the Project pursuant to this Agreement and terminate this Agreement. 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 parcel 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. Holder, or the entity or the third party purchaser assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of the Project Schedule. Any such Holder, or other Person assuming such obligations of Redeveloper, properly completing the Project shall be entitled, upon written request made to the Borough, to Certificates of Completion. 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, if such Holder assumes the obligations hereunder, and the Redevelopment Plan. The Holder or such other Person that assumes the obligations of Redeveloper shall be entitled to develop the Property or Project in accordance herewith.

Section 9.6 Remedies Cumulative. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder 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 9.7 Litigation Costs. In the event that a Party successfully pursues an action for specific performance in connection with any remedy provided in this Article IX, that Party shall be entitled to seek payment by the other Party of all reasonable costs and expenses incurred in connection with such action.

Section 9.8 Mitigation. The Parties shall act reasonably to mitigate any damages that may be incurred as the result of an Event of Default hereunder.

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

Section 9.10 Use of Documents. Redeveloper hereby agrees that it shall provide to the Borough, copies of all documents, reports, studies and analyses required to be prepared by it or on its behalf in connection with the Project, which shall remain confidential to the extent permitted by law. This requirement shall survive the termination of this Agreement.

ARTICLE X MISCELLANEOUS

Section 10.1 Notices and Demands. A notice, demand or other communication under this Agreement by any Party to the other shall be in writing and shall be hand delivered by messenger (with receipt acknowledged in writing), delivered by overnight delivery service (guaranteeing overnight delivery, with receipt acknowledged in writing), delivered personally, or delivered by electronic transmittal or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number or electronic mail address) to the Parties at their respective addresses (or facsimile numbers, at the case may be) set forth herein, except that notice of (a) an Event of Default and (b) the institution of legal proceedings may not be delivered by facsimile:

As to the Borough:	With copies to:
As to the Redeveloper: Eastport of Belmar, LLC c/o Gregory Kapalko 73 Inlet Terrace Belmar, New Jersey 07719	With copies to: Bathgate Wegener & Wolf, P.C. 1 Airport Road Lakewood New Jersey 08701 Attn: William J. Wolf, Esq. Email: WWolf@bathweg.com

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

Section 10.2 Conflict of Interest. No member, official or employee of the Borough shall have any direct or indirect interest in Redeveloper or this Agreement, nor participate in any decision relating to this Agreement that is prohibited by law.

Section 10.3 No Improper Consideration For Agreement. Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper and the Borough warrant that Redeveloper has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Agreement, nor has the Borough or any officer or official of the Borough has not received any such payment or accepted any such obligation.

Section 10.4 Non-Liability of Officials and Employees of the Borough. No member, official, or employee of the Borough shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement, unless such member, official, or employee shall have willfully acted unlawfully, in bad faith or in gross negligence.

Section 10.5 Non-Liability of Officials, Members and Employees of Redeveloper. No member, officer, shareholder, director, partner, or employee of Redeveloper, and no member, officer, shareholder, director, partner or employee of the members of Redeveloper or the members of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Agreement, unless such member, officer, shareholder, director, partner, or employee shall have willfully acted unlawfully, in bad faith or in gross negligence.

Section 10.6 Inspection of Records. The Borough shall have the right during normal business hours and subject to reasonable advance notice (but not less than fifteen (15) business days and not more frequently than once every three (3) months), and following execution of a confidentiality agreement reasonably satisfactory to Redeveloper, to inspect at Redeveloper's place of business, the records of Redeveloper pertinent to the purposes of this Agreement, including but not limited to construction contracts, insurance policies, and agreements. Such inspections shall be performed at the offices of the Party whose records are being examined and at a time and in a manner as to not unreasonably interfere with the business operations of the Party whose books and records are being inspected and be for a legitimate business purpose affecting the material interest of the party seeking the inspection.

Section 10.7 Modification of Agreement. No modification, waiver, discharge, or amendment of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by Redeveloper and the Borough.

Section 10.8 Severability. To the extent that any article, section, subsection, clause, provision, or term of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of any such article, section, subsection, clause, provision, or term of this Agreement or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection,

clause, provision, or term of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either of the Parties of the enjoyment of its substantial benefits under this Agreement.

Section 10.9 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their successors and assigns.

Section 10.10 Governing Law. This Agreement shall be governed and construed by the laws of the State of New Jersey and federal law. Any legal action filed in this matter shall be heard in the Superior Court of New Jersey, Monmouth County Vicinage.

Section 10.11 Borough Approvals. All approvals or disapprovals required by the Borough shall, unless otherwise stated herein, be valid if given in writing by the Borough Representative or his/her authorized designee, or designee with apparent authority.

Section 10.12 Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute one and the same instrument.

Section 10.13 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements between the Parties with respect to the subject matter.

Section 10.14 Waiver. No waiver made by any Party with respect to any obligation of any other Party under this Agreement shall be considered a waiver of any other rights of the Party making the waiver beyond those expressly waived in writing and to the extent thereof.

Section 10.15 Counting of Days; Saturday, Sunday, or Holiday. The word "days" as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day. The term "Business Day" as used herein means any day other than a Saturday, Sunday, or a day on which banks and public offices are not open under the laws of the State.

Section 10.16 Review by Counsel. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey without regard to or any presumption or other rule requiring construction against the Party composing or causing this Agreement to be composed since counsel for both Redeveloper and the Borough have collectively reviewed same.

Section 10.17 Limitation of Liability.

(a) No Consequential or Indirect Damages. EXCEPT FOR LIABILITY RESULTING FROM THIRD PARTY INDEMNIFICATION CLAIMS, IN NO EVENT SHALL EITHER PARTY OR ANY OF THEIR REPRESENTATIVES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, OR LOST PROFITS OR REVENUES, DIMINUTION IN VALUE, ARISING OUT OF, RELATING TO, OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT, REGARDLESS OF (i) WHETHER SUCH DAMAGES WERE FORESEEABLE, (ii) WHETHER OR NOT IT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND (iii) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

(b) **Maximum Liability.** EXCEPT FOR LIABILITY RESULTING FROM THIRD PARTY INDEMNIFICATION CLAIMS, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID BY A PARTY TO THE OTHER PARTY PURSUANT TO THIS AGREEMENT.

(c) **Essential Purpose.** THE LIMITATION OF LIABILITY PROVISIONS SET FORTH IN THIS SECTION 10.17 SHALL APPLY EVEN IF THE NON-BREACHING PARTY'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. Each Party acknowledges and agrees that the Parties entered into the Agreement in reliance upon the limitations of liability set forth in this Section 10.17, that the same reflect an allocation of risk between the Parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that the same form an essential basis of the bargain between the Parties.

Section 11 Limitation of Liability. Upon the execution of this Agreement by the Redeveloper and the Borough, the designation of the Redeveloper as being "conditional" shall no longer be conditional as stated in the Resolution No. 2022-79.

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

ATTEST:

THE BOROUGH OF BELMAR

By: _____
Mark Walsifer, Mayor

WITNESS/ATTEST:

REDEVELOPER:

EASTPORT OF BELMAR, LLC

By: _____
(Print Name)

By: _____
Gregory Kapalko, Managing Member

LIST OF EXHIBITS

EXHIBIT A	OWNER / PROPERTY and CONSENT
EXHIBIT B	CERTIFICATE OF COMPLETION
EXHIBIT C	REDEVELOPER'S CONCEPT PLAN
EXHIBIT D	PROJECT SCHEDULE
EXHIBIT E	OWNERSHIP DISCLOSURE
EXHIBIT F	INSURANCE REQUIREMENTS
EXHIBIT G	AFFIRMATIVE ACTION PROVISIONS

EXHIBIT A

OWNER / PROPERTY

EASTPORT OF BELMAR, LLC

EXHIBIT B

Certificate of Completion

Date: _____, 202_

Project: _____ (the "Project").

Location: Block _____ Lots _____ in the Borough of Belmar, Monmouth County, New Jersey as shown on the tax maps of the Borough (the "Property").

Pursuant to Section 2.3(d) of the Redevelopment Agreement ("Agreement") by and between the Borough of Belmar (the "Agency") and (the "Redeveloper"), dated as of _____, 2022, the undersigned, an authorized representative of the Borough, certifies as of the date hereof that (all undefined terms used herein shall have the same meaning ascribed to them in the Agreement):

- (i) the Project in its entirety has been completed as of _____, in accordance with the Agreement and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Agreement;
- (ii) all permits, licenses and approvals that are required in order for the Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;
- (iii) such Completion has been further evidenced by a written certificate of the Redeveloper and a certificate of the Redeveloper's engineer evidencing completion of the Project, which certificate is attached hereto as **Exhibit 1**;
- (iv) the Project is being operated in accordance with the terms and provisions of the Agreement, the Redevelopment Plan and Applicable Laws; and
- (v) a copy of the Certificate of Approval issued with respect to the Project is attached hereto as **Exhibit 2**.

The conditions determined to exist at the time the Project Area was determined to be an Area In Need of Redevelopment no longer exist with respect to the Property and the Property is no longer subject to the covenants and restrictions in the Redevelopment Agreement and the Property is no longer subject to condemnation, pursuant to N.J.S.A. 40A:12A-9.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion of Project to be executed as of the _____ day of _____, 202____

WITNESS OR ATTEST:

THE BOROUGH OF BELMAR

By: _____ By: _____
_____, Business Administrator

Acknowledgment

STATE OF NEW JERSEY :

:SS

COUNTY OF MONMOUTH:

On this ____ day of _____, 202__ before me, personally appeared _____, the Business Administrator of the Borough of Belmar, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and (s)he acknowledged that (s)he executed the foregoing instrument as the act of the corporation and that she was authorized to execute the foregoing instrument on behalf of the Borough of Belmar.

EXHIBIT C

Redeveloper's Concept Plan

EXHIBIT D

Project Schedule

Governmental Approvals, Commencement of Construction. Subject to the provisions of Section 2.3, 2.5 and 9.3 of the Agreement, Redeveloper shall apply for and diligently pursue all other Governmental Approvals required to Commence and Complete Construction within such times as are consistent with implementation of the Project in accordance with the timetable set forth below. The deadlines set forth below are subject to revision as described in Section 2.3 of the Agreement.

a) Within twelve (12) months of the Effective Date of the Agreement, Redeveloper shall submit all applications for Governmental Approvals necessary for the submission of an application for a building permit for the Project.

b) Redeveloper shall apply to the Borough for building permits as soon as possible, but in no event more than one (1) year after receipt of all Governmental Approvals prerequisite to the issuance of building permits.

c) Within ninety (90) days of receipt of building permits from the Borough, or as soon as possible, Redeveloper shall Commence Construction.

d) In no event shall Commencement of Construction begin later than twenty four (24) months from the Effective Date.

e) Within eight (8) years of the Effective Date, Redeveloper shall Complete construction of the Project.

EXHIBIT E

Ownership Disclosure

Member	Percent Interest
[_____]	100%

EXHIBIT E

BOROUGH REPRESENTATIVES

EXHIBIT F
Insurance Requirements

Redeveloper shall purchase and continuously maintain in full force and effect for the policy periods specified below the insurance policies required by this Exhibit F. Redeveloper shall forward updated certificates of insurance and endorsement(s) when policies are renewed or changed.

Providing the required insurance shall not be interpreted as relieving Redeveloper of any obligations under the Agreement. Redeveloper shall remain liable for all claims, deductibles and amounts in excess of the coverage actually provided to the extent provided in the Agreement.

1. General Liability Insurance

Redeveloper shall provide and maintain Commercial General Liability Insurance (broad form coverage) insuring against claims for bodily injury, property damage, personal injury and advertising injury. The policy cannot be endorsed to exclude the perils of explosion, collapse and underground exposures without the specific written approval of Borough. The policy must contain a waiver of subrogation.

If Commercial General Liability Insurance or other form with a general aggregate limit and products and completed operations aggregate limit is used, then the aggregate limits shall apply separately to the activities contemplated under the Agreement, or Redeveloper may obtain separate insurance to provide the required limit which shall not be subject to depletion because of claims arising out of any other project or activity of Redeveloper. Any such excess insurance shall be at least as broad as Redeveloper's primary insurance. The coverage shall be primary and non-contributory. General Aggregate limit applies per project for construction projects.

Borough shall be named as an Additional Insured under the Commercial General Liability policy of insurance.

Scope of Coverage:	Non-Project Specific
Type of Coverage:	Occurrence Basis
Amount of Coverage:	\$1,000,000 per occurrence \$3,000,000 per occurrence
Policy Period:	Annual Policy
Named Insured:	Redeveloper
Additional Insured Parties:	Borough (its officers, employees, agents and consultants)

Aggregate per project Endorsement

2. Automobile Liability Insurance

Redeveloper shall provide Comprehensive Automobile Liability Insurance insuring against claims for bodily injury and property damage and covering the ownership, maintenance or use of any automobile, truck or other motorized vehicle or all owned/leased and non-owned and hired vehicles used in the performance of the work, both on and off the Property, including loading and unloading.

Borough shall be named as an Additional Insured under the automobile liability policy of insurance.

Scope of Coverage:	Non-Project Specific
Type of Coverage:	Occurrence Basis
Amount of Coverage:	\$2,000,000 combined single limit
Policy Period:	Annual Policy
Named Insured:	Redeveloper

Additional Insured Parties: Borough (its officers, employees, agents and consultants)

3. Workers' Compensation and Employer's Liability Insurance

Redeveloper shall provide Worker's Compensation Insurance sufficient to meet its statutory obligation in the State of New Jersey to provide benefits for employees with claims of bodily injury or occupational disease (including resulting death).

Policy Period: Annual Policy
Named Insured: Redeveloper

Redeveloper shall provide Employer Liability Insurance covering its legal obligation to pay damages because of bodily injury or occupational disease (including resulting death) sustained by an employee.

Scope of Coverage: Non-Project Specific
Type of Coverage: Occurrence Basis
Amount of Coverage: \$1,000,000 bodily injury by accident
\$1,000,000 bodily injury by disease
\$1,000,000 policy limit
Policy Period: Annual Policy
Named Insured: Redeveloper (or contractor, as applicable)

4. Umbrella/Excess Liability

Redeveloper shall provide Umbrella/Excess liability insurance limits as follows:

\$5,000,000 per occurrence
\$5,000,000 aggregate

5. Acceptable Insurance Company

Each insurance company providing any of the insurance coverage required in this Exhibit F shall have a minimum Financial Strength AM Best Rating of A- and a Financial Size Rating of VII or higher and shall be subject to approval by Borough. Each insurance company's rating as shown in the latest AM Best's Rating Guide shall be fully disclosed and entered on the required certificate of insurance.

6. Premiums, Deductibles and Self-Insured Retentions

Redeveloper shall be responsible for payment of all premiums for all of the required insurance coverages. Redeveloper further agrees that for each claim, suit or action made against insurance provided hereunder, with respect to all matters for which Redeveloper is responsible under the Agreement, Redeveloper shall be solely responsible for all deductibles and self-insured retentions. Any deductibles or self-insured retentions over \$25,000 in Redeveloper's insurance must be declared and approved in writing by Borough.

7. Certificate of Insurance

Redeveloper shall deliver to Borough a certificate of insurance with respect to each required policy to be provided by Redeveloper. The required certificates must be signed by the authorized representative of the insurance company shown on the certificate with proof that such person is an authorized representative thereof and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions stated in the policy. All endorsements shall be attached to the certificates of insurance when submitted to Borough.

8. Renewal Policies

Redeveloper shall promptly deliver to Borough a certificate of insurance with respect to each renewal policy, as necessary, to demonstrate the maintenance of the required insurance coverage of the terms specified herein without gaps in coverage. Such certificate shall be delivered to Borough not less than 30 days prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof.

9. Cancellation and Modification of Insurance Coverages

Redeveloper shall be responsible to immediately notify Borough in writing of any changes or cancellations of its insurance. Failure to provide notice to Borough shall constitute a breach of the Agreement and that contract could be terminated by Borough. This notice requirement does not waive the insurance requirements contained in this Exhibit F.

10. No Recourse

There shall be no recourse against Borough for the payment of premiums or other amounts with respect to the insurance required from Borough.

11. Endorsements and Waivers

All insurance policies required by this Exhibit F shall contain or be endorsed to contain the following provisions:

For claims covered by the insurance required by the Agreement and this Exhibit that insurance coverage shall be primary insurance with respect to the insured, additional insured parties, and their respective members, directors, officers, employees and agents and shall specify that coverage continues notwithstanding the fact that Redeveloper has left the Site. Any insurance or self-insurance beyond that specified in the Agreement and this Exhibit F that is maintained by an insured, additional insured, or their members, directors, officers, employees and agents shall be primary and non-contributory.

The insurance shall apply separately to each insured and additional insured party against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

12. Third Party Policies

Redeveloper shall require the general contractor on the project contemplated under the Agreement and its subcontractors to provide insurance that is equal to or better than the insurance coverage that Redeveloper is required to provide. Each of those policies must include as an additional insured party Borough, its officers, employees, agents and consultants.

13. Failure to Provide or Maintain Insurance Coverages

Redeveloper's failure to provide or maintain any of the required insurance coverage shall constitute a breach of the Agreement. In addition to the remedies that Borough may have pursuant to the terms of the Agreement, the Borough may take whatever action is necessary to maintain the current policies in effect (including the payment of any premiums that may be due and owing by Redeveloper) or procure substitute insurance. Redeveloper is responsible for any costs incurred by Borough in maintaining the current insurance coverage in effect, or providing substitute insurance, and such costs may be deducted from any sums due and owing to Redeveloper.

