THE NEW URBAN RENEWAL -- WHAT MAKES THIS DEAL DIFFERENT FROM ALL OTHER DEALS?

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INTRODUCTION

With changing demographics, and the increasing popularity of growth controls in the suburbs, urban redevelopment projects have become a prime focus for real estate interests. Yet these deals are different. The high cost of urban land, its diverse ownership, the need for extensive infrastructure repairs and other factors mandate extensive public involvement in revitalization projects in our cities and older suburbs. These circumstances cast developers and municipalities in new roles.

In the more complex urban environment, government functions as far more than a gatekeeper, or a regulator whose job is merely to say yes or no to projects proposed by the private sector. Rather, the richly textured relationship between the private sector and an urban government encompasses wide ranging interactions involving project subsidies, tax abatements, infrastructure contributions, development timing and design criteria. The model for this interaction is more of a joint business venture, or a contractual understanding, than a simple request for approval which is the suburban model.

Further, these interactions are guided by a series of special statutes governing urban revitalization that have their own history, process obligations, and substantive requirements which are quite different than those usually found in the land use arena, or in private real estate ventures. These statutes in turn were generated by a series of experiences that date back to the mid-19th century when many local and even state governments got into trouble by too enthusiastically embracing private railroad and canal enterprises, many of which failed. Today’s strictures on public use of land and the loan of credit date back to this nineteenth century era of public-private partnerships that ended so badly in many cases.

For these reasons, urban redevelopment deals are distinctive. The private entrepreneur or attorney looking for opportunities downtown must realize that public partnership means public scrutiny, and public control, as well as public assistance. The expression of these public concerns in the processes leading to the disposition of land and its redevelopment will be the focus of this paper.

I. THE THREE ROLES OF THE LAWYER

A. GUARDIAN OF THE DEAL

Because of the demanding interaction of public requirements and private interests, the lawyer in this field, perhaps more than any other, has to guard the deal as well as advocate for his or her client. This responsibility includes insuring that proper processes have been followed in readying land for disposition, and making sure that the substantive terms of the deal can withstand judicial scrutiny. For example, the lawyer for a purchaser in a private agreement would almost certainly resist a reverter clause in a sales contract which required that land revert to the seller if, after taking title, the buyer did not perform. Yet such a reverter agreement almost certainly saved a major casino deal in Atlantic City from a determined challenge that alleged that disposition of the land, without consideration, to Mirage Resorts (later MGM) was improper. In Bryant v. City of Atlantic City, 309 N.J. Super. 596 (App. Div. 1998), the existence of a clause
requiring that the developer clean up the site and build within a specified time frame almost certainly saved that particular huge deal from judicial extinction.

B. LITIGATION

In addition to being attorney for the deal, the private lawyer must have a litigation capability. Landowners in redevelopment areas do not like to have their property taken from them. The advent of redevelopment plans in places like Atlantic City sparks a gold rush mentality in which every land owner in a proposed redevelopment area may be motivated to file suit in order to maximize the value of his or her land, or to preserve its existing use. Defense of these suits usually requires cooperation between the city and the private redeveloper. Thus, unlike in normal private development deals, redevelopment projects require the private lawyer to think both as attorney for the client and attorney for the deal. The attorney must see each element in the redevelopment process and each clause in the contract as a ready -- not merely potential -- source of litigation.

C. DESIGN LEADER

Third, the redevelopment attorney must be a counselor capable of building a team of professionals into a unit that can produce a viable, defensible agreement. This role involves the usual ability to work with a group of diverse professionals. However, it frequently involves something else -- a wholehearted understanding of the design concepts that both the public and private sector hold dear as the vision for the project. The private lawyer has to work with the public sector in selling the vision to the public, or else the promised benefits of the partnership will never materialize. Therefore, in a very real sense, the lawyer has to become part of the design team. Otherwise she, or he, cannot as effectively stand up at a meeting before several hundred concerned citizens and persuade them, and the city mothers and fathers, why public resources and commitments should be made to this particular project.

Oddly enough, it is the seminal case of Berman v. Parker, 348 U.S. 26 (1954) which involved the old urban renewal, that laid the foundation for the present day emphasis on design, beautification and design as contrasted with slum clearance. In Berman, the owner of a viable department store located within the then proposed southwest urban renewal area in Washington, D.C., sought to have the District of Columbia Redevelopment Act of 1945 declared unconstitutional. He alleged that the statute violated the Public Use Clause of the Fifth Amendment to the U. S. Constitution, because condemnation of his property pursuant to the District of Columbia urban renewal plan was really for a private benefit, rather than public use. He specifically objected to the intention to turn his property over to private enterprise for redevelopment. The case was unusual in that the high court was functioning like a state supreme court since federal territory, the District of Columbia was involved and congressional power over that district includes all the legislative power which a state may exercise over its affairs. In the opinion, still widely followed, Justice Douglas, writing for a unanimous court, rejected the trial court’s view that redevelopment had to be limited to slum clearance. Rather, he wrote:

The concept of the public welfare is broad and inclusive (citations omitted). The values it represents are spiritual as well as physical, esthetic as well monetary. It
is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. 348 U.S. at 33.

This language bears remembering by all attorneys involved in the redevelopment process. It suggests, in our time, where slum clearance has ceased to be a major factor, that aesthetic values and design are inextricible part of the justification for the awesome powers that redevelopment with government sponsorship entails. Thus, the lawyer’s role in internalizing and implementing a design vision is critical.

II. THE REDEVELOPMENT PROCESS - DESIGNATION OF THE REDEVELOPMENT AREA

As Morton Fisher has set forth in his paper, designation of a redevelopment area and formulation of a redevelopment plan are absolutely essential precursors to the exercise of urban renewal powers, such as condemnation, subsidy and land assembly. As courts have frequently reminded us, these powers must be exercised in accordance with the procedural and substantive requirements of urban renewal laws, particularly since these laws are not merely technical but are designed to ensure that the public purposes of redevelopment are furthered by actual projects. For example, courts in both Idaho and Kentucky have thrown out economic or redevelopment statutes which contained little in the way of substantive standards or procedural safeguards governing public assistance to private development. Village of Moyie Springs, Idaho v. Aurora Manufacturing Co., 353 P.2d 767 (Idaho 1960) (calling local assistance to private projects an invitation to socialism); Miller v. Covington Development Authority, 539 SW.2d 1 (Ky. 1976) (it was an improper delegation to give an agency power to initiate condemnation in areas with “economic significance”). Because of such judicial uneasiness, counsel and developers are well advised to take seriously the procedural and substantive requirements of urban renewal laws.

A. NOTICE AND HEARINGS

In many states and New Jersey, the invocation of urban renewal powers requires a significant hearing process regarding the area selected for redevelopment. Local Redevelopment Housing Law, N.J.S.A. 40A:12A-1, et seq., and in particular 40A:12A-6. These requirements may involve formal notice to landowners in the proposed urban renewal area, together with a public hearing affording an opportunity to be heard. Such landowners may also have formal status as objectors to a project, although others may have standing to object as well. From the standpoint of the private owner, these hearings are both a challenge and an opportunity. Obviously, the developer must be sure that a proper record of the grounds for designation of an area is made at the hearing. If the redeveloper does not come on the scene until after the area has been delineated, the redeveloper will need to scrutinize the records of the proceedings to make sure the procedures were carried out properly and the statutory requirements for designation of an area were met.

Although the substantive criteria for designation of an area for redevelopment may differ from state to state, two primary principles apply across the board. First, under the influence of Berman v. Parker, as noted above, courts will not require that buildings be falling down for such powers to be exercised. Rather, such conditions as ownership or title questions rendering land
unproductive may be sufficient. See Buchsbaum, “Old Wine In New Bottles”; Redevelopment Tales of a City, a Suburb and a State, 30 Urban Lawyer 745 (1998).

Second, and just as important, redevelopment should encompass an area. Thus, courts will look to the generality of conditions in the area and will not strike down urban renewal designations simply because there are some sound structures within the area. That essential principle was established in Berman v. Parker with the court finding that:

[T]he entire area needed redesigning so that a balanced integrated plan could be developed for the region, including not only new homes, but also schools, churches, parks, streets and shopping centers. Berman, supra., 348 U.S. at 34-35.


The classic progeny of Berman include a situation confronting the New Jersey Supreme Court in 1971. In Levin v. Bridgewater Township, 274 A.2d 1 (NJ 1971), the court upheld the designation of 120 acres in a key tract, known as the Golden Triangle, bounded by Routes 202 and 206, Interstate 287 and U.S. Route 22 in the heart of central New Jersey. The tract was undeveloped, but not classically blighted, and part of it had been assembled by a rival redeveloper who had what would normally be regarded as a commercially viable department store scheme for a portion of the tract. In response, the Court held that the redevelopment law was not “confined to the elimination of perceptually offensive slums”. Rather, a blight declaration was appropriate where there was stagnation through diversity of ownership or title questions. Moreover, even though the then-zoning ordinance allowed shopping developments in 10 acres chunks, the town, without being overruled by the court, forced the redeveloper to consider the 120 acre tract as an integrated whole for redevelopment purposes.

While Levin was a 3 to 2 decision, the ultimate development of the Bridgewater Commons Mall as a key feature of central New Jersey presents a kind of poster child for the major, integrated design that Bridgewater and the developers had in mind. One can see that, between Levin, which sustained the statutory finding based on diverse ownership and title issues, and Miller, cited above, which found that the term “economically or historically significant” was unduly vague, there is a tension counsel cannot ignore. There simply must be some rational basis for designating an area for redevelopment. Otherwise the court’s underlying fear that redevelopment may be nothing more than a guise for transferring the private property of A to B, may crop up to kill an otherwise promising real estate deal.

B. THE REDEVELOPMENT PLAN

A redevelopment plan is the constitution for the particular redevelopment area. It will contain the normal panoply of zoning requirements such as use limitations, setbacks, density limitations, or even minimum densities, open space requirements, street designs. However the redevelopment plan will also spell out required street, sewer, water and other infrastructure improvements. It will specify plans for relocation and condemnation. It may contain special provisions for such items as shared parking. It will cover financing techniques, such as tax abatements. See, e.g., N.J.S.A. 40A:12A-6 and 7. The redevelopment plan will also contain the design criteria for the particular development and will specify a method for managing such
design. Further, in addition to normal review of a plan by a planning commission, either the city council or some other agency, involving architects or other design professionals, will be called upon to review the redeveloper’s plans before construction can commence.

Redevelopment plans may be relatively cursory for simple projects. In other cases, such as those with the Atlantic City casinos, they have been extremely detailed. An example of a relatively brief variety is attached as Appendix I. This redevelopment plan for Long Branch was later supplemented by an extensive series of design guidelines that provided not merely verbal standards, but colored illustrations to show the uses, densities, and styles of development which the city hoped to attract.

Sometimes, redevelopment plans are initiated by a private entity, but in many cases, the plans have been developed over a period of time by the public sector. It must be remembered that these plans are not only legally required, by statute, as well as by the constitutional requirements for implementation of a public purpose, but that they may also carry with them a strong emotional attachment. If the city council, mayor or city manager has fastened on to a certain vision of the redevelopment area, then a developer who seeks changes must sell his or her own vision both to the officials and to the public at large. As a practical matter, therefore, early consultations with city officials about the redevelopment plan are essential. Such consultations should occur along with the due diligence that is needed not only for the redevelopment process described above, but for ensuring that all the requirements of local redevelopment law with respect to plans have been carried out. As an example, the redeveloper of a major oceanfront site in Long Branch, New Jersey, himself undertook the initiative of making sure that the redevelopment plan for that city contained all statutorily required provisions. This review was in addition to the redeveloper’s assuring itself that it could actually do the kind of project set forth in the redevelopment plan and accompanying design guidelines.

C. INTERACTION WITH OTHER LEVELS OF GOVERNMENT

The planning process frequently involves more than local considerations. Redevelopment schemes located in coastal areas, for example, may have to undergo scrutiny by state coastal commissions. Other state agencies, such as those with jurisdiction over water resources or sewer or roads may also need to be consulted before construction can commence.

In this complex context a redeveloper has two choices. First, it can attempt to finish its negotiations with the city over the planning and then move to solve its dilemmas with county or state government. Alternatively, it could attempt to integrate state concerns into the local redevelopment plan so that the state approvals are assured or greatly facilitated before actual site plans are completed. For an example of integration of state and local concerns, see the Long Branch Redevelopment Area Coastal Permit, which granted overall approval for all projects to be constructed in the Long Branch redevelopment area. See Appendices I and IV attached to this paper. Under this special coastal permit, and Memorandum of Agreement projects in Long Branch are given only a cursory review at the state Department of Environmental Protection level since the state concluded that the Long Branch redevelopment area standards met all requirements of the coastal programs. Thus, individual projects do not have to be extensively reviewed at the state level after they received local approval.
In any event, the developer must remain cognizant that a city’s word on planning may not be the last word and that the plans, regulations, and criteria of state or other agencies must be considered.

D. COMMENTS ON THE PROCESS

These comments on the designation of planning process are not exhaustive. Each state’s law must be consulted. This writer recommends obtaining a summary of state laws that could be of assistance. Nonetheless, the above analysis does suggest three questions must be researched early in the game: (a) is the city meeting or has it met the state’s criteria for designation of a redevelopment area, (b) is the city complying with the state’s requirement for redevelopment plans and (c) what other outside agencies have significant jurisdiction over the planning process.

III. GETTING TO PAYDIRT - THE DESIGNATION OF THE REDEVELOPER AND THE REDEVELOPMENT AGREEMENT

A. SELECTION OF A REDEVELOPER

While use of an RFP process is common during selection of a redeveloper, it is not required. See *Bryant v. Atlantic City*, *supra*, 309 N.J. at 624. And while competitive processes may not be legally necessary, clear criteria for selection of a redeveloper are essential. Courts will be sensitive to the prospect of favoritism in disposition of public lands or in the use of public subsidy monies. Therefore, it is essential for both developer and city alike to document every step in the designation process by, for example, requesting information concerning three major items -- financial capability, qualification in terms of projects undertaken, and quality of design of the proposal -- before selecting a redeveloper, be it through an RFP or some other process.

This is another situation where the attorney must think as guardian of the deal. Every commercial instinct may compel towards quick action, and selection as redeveloper by the fastest means possible. Yet a far surer way to eventual success lies through establishment of a good paper trail documenting how the developer was chosen. There will be potential litigants out there ready to argue that the taking of the property was for the private benefit of the redeveloper. Lawyers for the redevelopers cannot afford to leave an inadequate paper trail of the selection process. The ultimate legal challenge to the choice of redeveloper may even be won, yet after several years of worry and inability to proceed, that victory will be small comfort if a deal has perished in the meantime. Better to insure that the defense of litigation through careful planning, or at least to insure that the litigation has a very substantial chance of success, by carefully documenting the process for selection of a redeveloper.

B. THE REDEVELOPMENT AGREEMENT

1. General Requirements

One hoary tenet of land use law is its proscription of contract zoning. Normally, a private party cannot contract for a given zoning designation from a municipality. Throw that knowledge away in redevelopment. A redevelopment agreement is a zoning contract. See Buchsbaum and Goldsmith, “Cities and Towns are no longer just Gatekeepers, 163 N.J. Law Jn.
913 (2001) and also Buchsbaum and Goldman, “When to Redevelop”, 155 N.J. Law Jn. 1151 (1999). Such agreements typically spell out the exact number of dwelling units, the square footage of commercial space. In return there is an agreement not to change zoning so long as the redeveloper begins construction within a reasonable time period.

Also, the zoning precept about dealing with land rather than people is inapplicable. Not only may the city choose their particular developer as a designated redeveloper, but it may also forbid assignment in some situations. See N.J.S.A. 40A:12A-9.

Further, a redevelopment agreement may, unlike the case of almost any other contract, provide direct subsidies to the developer for constructing his project as well as tax abatements. Thus, the agreements may combine a zoning contract and a subsidy contract -- surely a unique combination.

2. **Other Necessary Agreement Provisions**

These above overriding requirements are spelled out in the Long Branch Project for a 400 dwelling unit, 100,000 commercial square foot oceanfront project (Appendix III). Other requirements are also essential in the contract. They include the following:

a. The specific development approval timetables, and the timetable for construction and completion of construction.

These provisions may involve reverters if the timetables are not followed.

b. The size of the subsidy from the public sector and the equity contribution from the developer.

c. Infrastructure improvements, and whether they are to be publically financed or privately constructed.

d. Tax abatements, and payment in lieu of taxes, or tax increment financing.

e. Responsibility for non-construction costs such as relocation, demolition and environmental clean up.

f. Level of state funding or other outside monies to be contributed to the project.

A particular agreement may in fact be contingent on receiving an adequate level of state or even federal assistance.

g. Land disposition (See Morton Fisher’s paper).

h. Legal Costs -- who will defray the expenses of condemnation proceedings or other costs.
This item may include a deposit from the developer for entry into the redevelopment agreement.

i. The usual real estate clauses with respect to defaults, cure periods, amendment to the agreement, adequacy of title, etc.

j. Provisions for institutional financing and the subordination of municipal liens, are typically required in exchange for municipal subsidies. For example, the parties may agree to repay the municipal subsidy contributions out of cash flow, rather than on a fixed basis, as part of a mechanism for subordinating the municipality’s lien for its contribution to institutional financing.

All these characteristics demonstrate the difference between redevelopment and the normal suburban development model of obtaining permit approvals. The redevelopment model is cooperation and joint management that is long term business relationship, and in this case subject to potentially intense public scrutiny.

Despite potential frustrations, the process is exciting. The potential for creativity, for developing great new projects that enjoy wide spread public support, far exceeds such opportunities in a suburban setting where the lawyer’s usual job is to wrest approvals from an unhappy planning commission. The legal opportunities particularly with respect to development agreements are awesome. The challenges in creating these agreements, which encompass many of the issues described above can challenge the creativity of any lawyer. This is a great field which can combine the best of real estate law, land use law, and municipal law.
APPENDIX I
WHEREAS, the New Jersey Department of Environmental Protection (the "Department") proposed the Long Branch Redevelopment Zone Permit (the "Zone Permit") as a Rule in the N.J. Register on September 15, 1997 based on findings that the Redevelopment Plan Ordinance and Design Guidelines of the City of Long Branch (the "City") comply with the Department's Rules on Coastal Zone Management (N.J.A.C. 7:7E); and

WHEREAS, the Department anticipates the adoption of the Zone Permit as a Rule will be published in the February 17, 1998 New Jersey Register; and WHEREAS, the City and the Department wish to establish additional procedures to facilitate consultation and cooperation as envisioned in the Zone Permit;

NOW, THEREFORE, it is agreed by the City and the Department as follows:

1. This Memorandum of Agreement ("MOA") is designed to implement the Zone Permit and shall be interpreted to carry out that purpose. In case of any inconsistency between this MOA and the Zone Permit, the terms of the latter shall control.

2. Long term parking will be provided and maintained as set forth in the Design Guidelines Ordinance. Short term parking on the streets for two hours or less may be phased in as soon as long term parking becomes available.

3. To accomplish the objectives set forth in Paragraph 2 and in the Parking Standards set forth in the Design Guidelines Ordinance, the City shall maintain in force a Parking Authority and Ordinance authorizing the Authority in the form adopted by the City Council of Long Branch on February 25, 1997. It is acknowledged that this Ordinance does include language that the Authority may not undertake actions which are inconsistent with the Redevelopment Plan Ordinance and the Design Guidelines Ordinance and that one of its purposes is to carry out and implement the Redevelopment Plan, including the recreational, as well as the commercial, residential and other objectives of the Plan.

4. The Department regards the following, if constructed by or on behalf or with the permission of the City, as being consistent with the Rules on Coastal Zone Management and as eligible for authorization under the Zone Permit:

(a) Steps that provide public access to the beach in accordance with designs to be developed by the City and approved by the Department. Once approved, these designs shall become an attachment to this MOA and be incorporated into it.
(b) Public developments which are seasonal or temporary structures related to the tourism industry as defined in N.J.A.C. 7:7-1.3 and which are not included in the definition of commercial development at N.J.A.C. 7:7-1.3.

(c) Beach and boardwalk improvements approved by the Design Review Committee of the City which meet the following conditions:

1. The development is a commercial development for the sale or rental of food, beverages or other merchandise related to the tourism industry;

2. The development does not include excavation, grading or filling seaward of the boardwalk;

3. The development is located at least 100 feet, from the spring high tide line;

4. The development remains in place only during the period from May 1 through September 30;

5. The footprint of any single development does not exceed 400 square feet;

6. The total number of such developments shall not exceed eight.

Beach and Boardwalk improvements are cited in the "Incentives" section of the Design Guidelines Ordinance. The only Beach and Boardwalk improvements authorized under the Zone Permit are those described in this MOA. Any other development on the beach will require an individual or general permit from the Department.

5. Reconstruction within the historic footprint of the beachfront amusements is authorized in the Village Center at Pier volume of the Design Guidelines. The historic footprint as agreed means the footprint as shown on the following two plans:

1. "The Chelsea, Condominium Tower Apartments, City of Long Branch, Monmouth County, Preliminary Site Inventory, Natural Features, Boundary and Topographic Map", sheets 2 of 5 dated July 11, 1988, last revised June 25, 1990 as prepared by Donald W. Smith Associates, P.A.; and


6. The City shall comply with the requirements of the Redevelopment Plan Ordinance and the Design Guidelines Ordinance in carrying out public developments and will comply with the Zone Permit notification procedures before commencing construction of any such development.
7. In the event the City and the Department disagree as to whether a proposed private or public development complies with the Zone Permit requirements or as to whether a waiver or variance should be granted as provided in the Zone Permit, the Department will consult with the City to attempt to resolve the conflict within the applicable time period for the type of project involved.

8. If the City proposes a change in the Redevelopment Plan Ordinance, the Design Guidelines Ordinance, or the Parking Authority Ordinance, it shall provide the Department thirty days to review the change before holding a public hearing on it. The Department and the City will consult with each other about any change, if there are disagreements as to whether the change is contrary to any provisions of the Rules on Coastal Zone Management N.J.A.C. 7:7E or the Coastal Permit Program Rules N.J.A.C. 7:7 and shall attempt to reconcile any such differences. The discussions will include an analysis of the change's impact on and consistency with the aforementioned rules, the importance of the change to the success of redevelopment in Long Branch, the extent to which any alterations to the proposed change can harmonize Department and redevelopment objectives, and whether any change in the aforementioned rules would be warranted. The Department and the City may also designate such person or entity as they shall deem appropriate to mediate any differences between them over the acceptability of such a change.

9. The City of Long Branch shall notify the Department of any action in Superior Court challenging an action of the City of Long Branch regarding a development within the redevelopment zone within thirty-five days of having been served with a complaint.

10. This Agreement may not be changed except by a writing signed by both the City and the Department. It shall take effect upon final adoption of the Rule establishing the Zone Permit and shall continue in force so long as the Zone Permit is effective.

IN WITNESS WHEREOF, the parties named below have approved this Agreement as of this day of , 1998.

CITY OF LONG BRANCH

STATE OF NEW JERSEY

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: ________________________________ BY: ________________________________
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1. Introduction

This Redevelopment Plan was adopted by the City of Long Branch, NJ in order to achieve redevelopment of an underdeveloped segment of the oceanfront and an underutilized commercial area west, north and south of the intersection of Broadway and Ocean Boulevard. The overall goal is to bring about a compact and integrated ensemble of public and private places that support year-round uses related to living, working, and recreation and visitation. All of the area covered by the Plan has been found to be in need of redevelopment.

The Oceanfront district includes five sectors or "Zones of Character" which are identified as:

- Beachfront South: Residential
- Pier/Village Center: Mixed Commercial, Entertainment, Residential
- Hotel Campus: Office, Hotel
- Beachfront North: Residential, Entertainment
- Broadway-Gateway: Mixed Commercial

These five sectors will be made available for redevelopment under development/design requirements described in this Plan. Further specificity will be added during the developer selection process. Density of development is a major factor in this Plan. It is reflected in building bulk and height, realized in specific building types, and expressed in commercial FAR (floor area ratio) or residential dwelling units per acre (du/acre).

The Plan sets out the City's objectives for redevelopment, describes how redevelopment rights will be awarded to private redevelopers, specifies relocation policies, and states how tax incentives may be applied to achieve needed improvements.

2. Boundaries and Area Descriptions

The area included in this Redevelopment Plan (Map 1) is described as follows:

Starting at a point at the intersection of North Bath Avenue and Ocean Boulevard, move northward along Ocean Boulevard to the intersection of Ocean Boulevard and Chelsea Avenue. Then move westward along Chelsea Avenue to the intersection of Chelsea Avenue and Second Avenue. Then move northward along Second Avenue to the intersection of Second Avenue and Broadway. Continue across Broadway in a northerly direction along Union Avenue until Union Avenue makes a 90 degree turn westward. At this point, continue in a northerly direction until
meeting the southerly property line of the abandoned Conrail Railroad right of way. At this point, follow the southerly side of the R.O.W. eastward to Long Branch Avenue. Continue in a northerly direction along Long Branch Avenue until the northerly property line of the Conrail R.O.W. is reached. From this point, follow the northerly side of the Conrail R.O.W. westward to a point which intersects the westerly fence line of the NJNG facility. Continue in a northerly direction along fence line past the foot of Brook Street (C.P. Williams Way). Continue to follow fence in northern and eastern directions along the property line, which divides NJNG/JCP&L property from City of Long Branch Housing Authority property, to Central Avenue. Continue in an easterly direction to the Open Brook. Follow the Open Brook in a northerly direction to the point of intersection with the northerly property line of the former Jerry Morgan Park. Follow this property line in an easterly and southerly direction until Long Branch Avenue is met. Continue in a southerly direction along Long Branch Avenue to the intersection of Long Branch Avenue and Cooper Avenue. Continue easterly along Cooper Avenue until the intersection of Cooper Avenue and Witmer Place. Continue northward along Witmer Place until the intersection of Witmer Place and Sea View-Avenue. Follow Sea View Avenue eastward until meeting the mean high water mark of the Atlantic Ocean. Follow mean high water line inclusive of existing Pier riparian lands southward until reaching a point created by the intersection of the mean high water line and a line projected from the right of way for north Bath Avenue. Then turn westward along this line and North Bath Avenue to the point of origin, which is the intersection of Ocean Boulevard and North Bath Avenue.

Virtually all of the area in the Plan is also within the State designated Urban Enterprise Zone (Map 2) which offers a variety of financial incentives to qualifying private investors.

Map 3 illustrates the five sectors or Zones of Character listed above. Boundary descriptions follow:

a. Beachfront South

This sector lies between Ocean Boulevard and Ocean Avenue and is bounded on the south by Bath Avenue North. It includes some residential development. Estimated size: 17.25 acres.

b. Village Center

This sector fronts on Ocean Boulevard. It includes the former amusement pier and land and buildings formerly part of an amusement complex, along with some residential units and a large amount of publicly held property. On the east edge, Ocean Avenue is a lightly used north-south street with some commercial buildings built over the beach. Little commercial activity remains here except for a small motel. Estimated size: 25.5 acres.

c. Hotel Campus

This sector includes the 250 room Ocean Place Hilton hotel, restaurant and spa, parking, a block of residential buildings, another restaurant and a former day care center. It is bounded by
the Promenade and beach, Ocean Boulevard, Laird Street, and Madison Avenue. Estimated size: 16.75 acres.

d. Beachfront North

This sector lies south of Monmouth County's Seven Presidents Park, west of the Ocean Place Promenade, east of Ocean Boulevard, and north of Madison Avenue. This area contains the former State Armory, expected to become a private recreation facility; a significant amount of vacant land; and a number of residential properties whose conditions range from well maintained to poorly maintained. Estimated size: 27.5 acres.

e. Broadway-Gateway

This sector includes approximately three quarters of a mile of frontage on Ocean Boulevard, an industrial area, the "Broadway Triangle" commercial area, and some residential properties in the northern and southern edges. Estimated size: 48.5 acres.

An additional sector may be created in the Broadway corridor, west of Second Avenue, extending to the railroad right-of-way, when it appears that use of redevelopment powers will be useful.

The Long Branch beaches are scheduled to be replenished in 1996 by the Army Corps of Engineers. The sand will extend approximately 250 feet eastward from the bulkhead.

3. General Redevelopment Objectives

a. Reestablish the identity of Long Branch as a multi-faceted community for residence, work and leisure, in a framework of both historic legacy and citizen consensus.

b. Create value in land and enterprise for public and private interests through high-yield projects that exploit ocean views from residential and commercial development and public spaces.

c. Strengthen retail trade and City revenues by increasing year-round population by creating housing types that will attract a diversified market, primarily of small households.

d. Insure public access to the restored beachfront, augmented with recreational amenities and civic purpose, and designed as a vital safe zone with year-round night/day uses.

e. Increase employment opportunities for residents, stabilize taxes and increase maintenance and amenities as part of a better quality of life.

f. Improve public facilities in commercial areas, at the beachfront and along various city streets, and facilitate pedestrian movement among residences, commercial areas and the beachfront.
g. Improve the city's image by replacing vacant lots and poorly maintained buildings with new, carefully designed buildings, both commercial and residential.

h. Attract more retail and service enterprises which will provide more commercial choices for residents and visitors.

i. Achieve shared parking where needed to facilitate use by residents, employees and visitors at different times, saving land and development costs.

j. Achieve State and local environmental objectives by restricting impervious surfaces on a sector basis, thereby eliminating the waste often associated with project-by-project attempts to meet these and similar standards, such as parking.

k. Conserve sound, well-maintained single-family housing to the extent possible, and encourage residential development through infill.

l. Encourage mixed use development which includes both commercial and residential uses.

4. Specific Objectives: Key Principles

a. Density and Use

A concentration of building density is encouraged in order to create a walkable environment and an enlarged base population to sustain a lively, year-round retail and residential core on Long Branch's Oceanfront.

Compared to the existing density of about 0.25 FAR, the objective should be to achieve FARs between 0.5 and 0.75. While such concentrated development is usually constrained by parking area requirements, a four pronged parking approach is envisioned to support this increased density by taking less land for unproductive vehicular uses. This approach is expected to include:

1. Optimizing the use of dedicated parking sites by sharing across complementary uses.

2. Re-evaluating parking requirements based upon actual demand at different times of the day and night.

3. Creating incentives to use public transit and shared ridership.

4. Realizing on-street parking, on a regular and "surge" basis.
b. Urban Form

This Plan requires a close relationship between built and open areas by maximizing street-fronting uses, controlling street scales, encouraging zero-lot line development, and minimizing marginal utilization of land given to driveways, unusable setback easements, stand-alone development, and underutilized parking lots. Building design guidelines and a set of performance and prescriptive codes will be provided during the developer selection process in order to control the quality, scale and compatibility of future development proposals in the redevelopment area.

c. Circulation

A hierarchy of streets, ranging from arterial roads to neighborhood streets and pedestrian ways, will be created in order to sustain safe and coherent access to regional, local and neighborhood uses.

d. Public Beach Access

Beach access will be enhanced by connecting existing highways and transit facilities to beachfront destinations and uses with pedestrian promenades, bike ways, trolley ways, and vehicular streets. Proposed improvements include gateways to the beach and the inland community from Ocean Boulevard, environmental signage and graphics, and the reopening of Ocean Avenue to vehicular traffic.

e. Temporary and Conditional Uses

Such uses shall be allowed on a per case basis to accommodate phased improvements and to prevent developments that underutilize resources for short-term gains.

5. Specific Objectives: Uses by Sector

The Redevelopment Plan includes the following component areas: entrance parkway, commercial gateway, beachfront with Boardwalk, a Village Center and Pier, flanked by two residential neighborhoods, one low-rise and one mid-rise. Within these cones, the objective is to establish individual Places of Character, where old blends into new, where people arrive, congregate, do business, and pursue pleasure in the community's everyday life. Each new proposed development project will be expected to support and realize these objectives. Further detail and enumeration of the specific objectives outlined hereunder will be included in the Design Guidelines Handbook being prepared by the City. By sector and by use, the objectives are the following:

a. Beachfront South: Mid-rise Residential

Residential development in this area is to continue the mid-rise residential pattern of 4-to 8-story structures that maximize views to the Atlantic. This community is to achieve a friendly
pedestrian environment unified by landscaping-lawns, hedges and walls, seating areas and
buffered parking areas, and good access on foot to the Boardwalk and beaches.

Development/design requirements for this sector include:

(1) Create a cohesive mid-rise residential district, built upon the existing type of residential development.

(2) Densities at a minimum of 15 and a maximum of 30 du/acre.

(3) Institute strict setback and coverage requirements: 10' on Ocean Avenue 30' on side streets 50' landscaped buffer on Ocean Boulevard 50' or height of building, between buildings (The setback between buildings must be reviewed on a per case basis, to encourage usable areas, rather than un-used "view" corridors.) Permitted ground coverage: 50%

(4) Give incentives for building types that provide terraces and balconies, stepping towards the Ocean, or that provide publicly accessible amenities on the boardwalk.

(5) Require mid-block "Pedestrian Greens", buffering parking areas and connecting adjacent sites.

(6) Combine entrances to parking lots to minimize the curb cuts on Ocean Boulevard by extending a driving lane between adjacent parking lots in a block, entered from side streets.

(7) Close and landscape unnecessary side streets off Ocean Boulevard.

(8) Allow permitted (short term) visitor parking on Ocean Avenue and side streets. Restrict new curb cuts and access to all new projects from Ocean Boulevard.

(9) Create a friendly pedestrian environment through uniform landscaping: evergreen trees and hedges on Ocean Boulevard side; lawns, hedges, and stone foot walls on the Ocean Avenue side; combined "gateways" and address markers on side streets, for the entire block; low pedestrian lights from parking to building entrances.

(10) Create sidewalks, cross walks and pedestrian-operated lights at intersections.

(11) Require multi-story residential developments to provide benches and trash cans on Ocean Avenue side.

(12) Encourage resident facilities and amenities (pools, clubs, community halls, inns, etc.) on ground floors and in existing historic structures that face Ocean Avenue and the boardwalk.
(13) Restrict non-conforming/ancillary uses to S% of each proposed development.

(14) Create landscape buffers between residential and other nonconforming uses.

(15) Create combined access to beaches from the boardwalk.

(16) Build small neighborhood shelters, bandstands, shuttle stops, and gazebos on the Ocean Avenue side.

b. Pier/Village Center: Commercial and Entertainment, Residential

A Village Center concept is to govern redevelopment of this area. A concentration of street-level retail and recreation-related development is anticipated, allowing second and third floors to be developed for restaurants, small office or residential uses. Current low-density patterns are to be increased to an FAR of at least 0.5 to 0.75 based upon the complementarity of existing and proposed uses, in optimizing parking demand and supply. The now derelict Pier is intended to become a public place restored by public action. The southerly half of this district is to feature a two-and three-story residential pattern, made more cohesive with infill on individual lots and some larger low-rise development of medium density (15 du/acre). No ground level residential uses shall be permitted on Ocean Avenue between Morris Avenue and Seaview Avenue, in the redevelopment area. Bed and Breakfast conversions will be allowed as part of the permitted conversion of single family homes to 2 and 3 units.

The commercial and entertainment uses in this sector consist of two areas:

Laird Street, and Ocean Avenue, between Morns Avenue and Laird Street.

Development/design requirements for the Commercial and Entertainment area on Ocean Avenue include:

(1) Retail/restaurant/small inns/entertainment/convenience, etc., catering to residential, worker, and visitor populations.

(2) Reparcel Ocean Avenue frontage into small lots (150' x 50' to 75' wide) where feasible.

(3) Require a continuous street frontage with transparent display windows and frequent store entrances (zero lot-line development).

(4) Allow small scale incremental development: FAR: 1.0 maximum Permissible Ground Coverage: 75% Maximum Height: 60'

(5) Improve public and private amenities through Joint Land Development where feasible.
(6) Widen Ocean Avenue R.O.W. to 115' between Morris Avenue and Laird Street.

(7) Provide easy access to front doors along "Main Street". Increase short term on-street parking. Create a tree-lined median with diagonal parking and curbside parallel parking on Ocean Avenue.

(8) No on-site parking requirements for Ocean Avenue commercial buildings.

(9) Phase in parking as required and reserve land for a municipal parking lot at rear (validated for customers) to share with hotel/office users. (Additional parking management specifics to be included in the City's parking plan.)

(10) Buffer adjoining residential neighborhoods from commercial activity.

(11) Widen wooden boardwalk to 25', and create paved crosswalks and drop-offs.

Development/design requirements for the Commercial and Entertainment area on Laird Street include:

(1) Extend the retail "Main Street" on Ocean Avenue to connect with the Commercial Gateway and the upper Broadway retail street.

(2) Continue small lot commercial development on the south side of Ocean Avenue.

(3) Wrap retail/commercial uses around the existing hotel garage. Move the garage's parking entrance, currently at the north-east corner, to the north-west corner of the garage near the hotel entrance.

(4) Create a distinctive "corner" that faces Ocean Avenue/Laird Street/Pier intersection. An anchor restaurant should be open day and night, all year around.

(5) Set the new building frontage to yield a 60' R.O.W. with a 10' planted median on Laird Street.

(6) Establish continuous street frontage (zero lot-line development) on either side of Laird Street.

(7) Small scale incremental retail development with a maximum FAR of 1:0 may be considered. Permissible ground coverage: 75%. Maximum height: 60'.

(8) Redo Laird Street intersection at Ocean Boulevard.
(9) No residential uses are permitted on the ground level on Ocean Avenue in this sector.

(10) Motel/hotel uses on Ocean Avenue are encouraged.

Development/design requirements for the residential area include:

(1) Close the entrances to all neighborhood streets (Franklin, Melrose and Chelsea East) at Ocean Boulevard, to deter through traffic.

(2) Extend alleys connecting these streets at mid-block.

(3) Require access such that neighborhood "gateways" occur on Ocean Avenue and Morris Avenue.

(4) Create a landscaped buffer at the perimeter of the residential neighborhood.

(5) Make "Pier Gateway" at the Laird/Garfield intersection with Ocean Boulevard.

(6) Develop a cohesive low-rise, medium-density (1 S du/acre) residential neighborhood compatible with existing neighborhood fabric, similar to that described for Beachfront North. Development proposals will be reviewed on a per case basis until Design Guidelines are drawn up for the area.

(7) Only residential uses are permitted in this section of the Pier/Village Center area, with the exception of Bed and Breakfast, and motel accommodations.

(8) Allow Bed and Breakfast conversions per new City ordinance.

c. Hotel Campus: Hotel, Commercial

The objective is to develop a distinctive Hotel "Campus" ensemble as a gateway to the City and to the oceanfront.

Development/design requirements for this area include:

(1) Mixed commercial development at an urban scale on the key corners.

(2) Change the context of the hotel on its isolated parking-based site.

(3) Introduce real urban streets into the campus to encourage a firm edge, movement through the site, and activity of vehicles and pedestrians.

(4) FAR permissible to 2.0.
(5) Make edge streets with prominent ground level uses and frequent entrances.

(6) An office building of at least 100,000 sf which is to be complementary to existing hotel.

(7) Develop parking facilities shared by hotel and office, and at least partially available to the public during off-hours and on weekends. Create short term on-street parking.

(8) Develop South Broadway as a frontage street.

(9) Create a pedestrian-friendly landscaped frontage street/square on the South Broadway extension to the hotel, connecting to modified Laird Street and Madison Avenue.

(10) A small convention facility or business hotel/inn facility should be built on the northwest corner of the hotel block.

(11) Create a landmark restaurant on the Laird Street corner of the hotel site, wrapped around the existing garage on the Pier side.

d. Beachfront North: Low Rise-Medium Density Residential

Beachfront North is a sector composed of a Waterfront Recreation Zone (sites fronting the Promenade/Ocean Avenue, and a Beachside Residential Village. Building types that are "street based" and "street dependent" shall be required in the entire sector. A neighborhood character is to be established, emphasized by controlled street traffic, bike and walking paths, on-street resident parking and through-block alleys for garages and secondary parking.

Development/design requirements for Beachside Village include:

(1) Create a transition between public and private spaces by introducing a hierarchy of access ways which move from regional to local to residential scale, and which are marked by identifiable "neighborhood gateways".

(2) Create a single cohesive neighborhood by connecting each existing East-West street with an extended Grant Street (North-South) as the primary "spine". Close North Broadway, Madison Avenue, and Ocean Terrace at Ocean Boulevard. Direct traffic away from Seaview Avenue, Cooper Avenue, and South Broadway.

(3) Create a block structure that replaces individual front driveways with shared mid-block alleys linked to garages. A 45-foot R.O.W. is required for residential streets, and 20-foot deeded R.O.W. for rear alleys. Existing 60-foot R.O. W.'s may accommodate diagonal (permit) parking.
(4) Create deeded pedestrian ways to the beach. 20-foot easements for pedestrian pathways required at locations to be specified during the developer selection process. Any existing or assembled sites that contain these paths are required to create and maintain such public pedestrian access ways.

(5) Create a Residential Parking Permit District. New development is to be restricted to providing no more than one on-site parking space per unit. Additional on-street parking space may be lease-purchased from the Parking Permit District.

(6) Building Design Guidelines to be prepared by the City to ensure that new developments do not conflict with desired residential scale and character.

(7) Permitted density to be at a consistent range between 12 du/acre and 15 du/acre (relative to site area).

(8) Maximum height: 40 feet.

(9) Zero-lot development (no side setback).

(10) Minimum ground coverage: 40%

(11) Maximum ground coverage: 75%

(12) Balconies/terraces should be encouraged for buildings over two stories high.

(13) Townhouse or alley based clustered development are building types which meet the broad criteria listed above.

(14) Bed and Breakfast use to be permitted.

(15) Create a landscaped buffer surrounding the area. All non-conforming uses required to create an on-site buffer separation to minimize impact on residential neighborhoods. (Setbacks and treatment to be delineated in Design Guidelines Handbook.)

(16) All uses, other than residential, are restricted and conditional in this area, subject to their impact on the residential neighborhood.

(17) No commercial (strip) development is permitted on Ocean Boulevard fronting sites. No new curb cuts or access ways are allowed off Ocean Boulevard, unless specified in the sector plans.

Development/design requirements for Beachfront North area which is part of Waterfront Recreation Zone:
(1) All projects must address the Promenade/Ocean Avenue as delineated in the Design Guidelines Handbook.

(2) Maximum permissible FAR: 0.25

(3) Maximum height: 40 feet

(4) A landscaped 30' setback required on west edge of site. Setback on Ocean Avenue to be reviewed on a per case basis.

(5) Parking requirements must be satisfied by shared public on-site or off-site parking. Public (beach) parking is a permitted use on all sites in this zone.

(6) One tree shall be planted for every five parking spaces provided.

(7) 20' easement for public pedestrian ways required at locations to be indicated in sector plans in the Design Guidelines Handbook.

(8) No residential uses permitted on all oceanfront sites between Hilton Hotel and Seven Presidents Park.

(9) Neighborhood retail and restaurants are permitted uses.

(10) All uses in the Waterfront Recreation Zone must adequately mitigate disturbance to the adjoining residential uses.

Development design requirements for the Armory Site:

(1) Maximum permissible FAR: 1.0. (Structured parking required for FAR over 0.3.)

(2) Maximum height: 40 feet.

(3) A landscaped 30' setback on all sides is required on the Armory site (treatment to follow Design Guidelines Manual.)

(4) The parking requirements for this site must be satisfied by a combination of dedicated on-site parking and shared (public) off-site parking.

Uses permitted are those reflected in the deed from the State of New Jersey, dated February 27, 1996. The reopened Ocean Avenue will suffice as primary access to the site. Cooper Avenue will be a neighborhood through-street with residential development only.

However, if the recreational use at the Armory has the high intensity of a regional destination, as measured by standard transportation analysis of traffic and destination patterns, Cooper Avenue will become a mixed use Frontage Street. Sites abutting Cooper Avenue up to
150' from the edge of R.O.W. will be subject to the following development criteria, and to Design Guidelines to be formulated by the city:

1. Maximum permissible FAR: 1.0 (structured parking required for FAR over 0.3).


3. Mandatory setback on Cooper Avenue (for diagonal parking and pedestrian path easement): 25 feet.

4. Parking to be integrated with street R.O.W., and Cooper Avenue access plan as described in the sector plans in the Design Guidelines Handbook.

5. 75% of approved FAR for each site must be built within 100' of property line at Cooper Avenue, leaving buffered rear for long term parking.

6. 20' mandatory landscaped buffer with alley facing residential development.

7. No more than 25% of proposed built uses may be approved commercial/retail uses.

8. Parking structures appropriately buffered may be a permissible nonconforming use on these sites, if not intruding on residential uses, and provided that they are in conformity with the City's shared parking requirements. Details per Design Guidelines and Parking Plan.

9. Parking requirements for mixed commercial/residential development: two on-site spaces per dwelling unit; five spaces per 1,000 sf of commercial space.

Temporary Conditional Use:

The Cooper Avenue sites, described above, may be occupied by temporary surface parking lots for a period approved by the City (not to exceed three years), at the end of which the developer is to be required to develop designated sites per criteria described above. The city shall set specific terms when developers are designated or approved for these sites.

e. Broadway-Gateway: Mixed Commercial

Commercial and retail uses with larger square footage requirements are encouraged for this area on the west side of Ocean Boulevard.
Development/design requirements include:

1. Close North Broadway from Second Avenue to Ocean Boulevard, and make South Broadway the gateway to downtown.

2. Create a four-building gateway complex that attracts daily commuters, shoppers, and residents.

3. Maximum permissible FAR: 2.0. (Structured parking required for developments with FAR greater than 0.7. This shall be detailed in the shared parking plan to be developed by the City.)

4. Lots abutting South Broadway are required to build 80% of gross (permitted) building area within 80 feet of South Broadway lot line.

5. Landscape, signage and access management of projects in this sector to be built as detailed in the Design Guidelines Handbook.

6. Buildings required to be built up to lot line on South Broadway, to create a street wall, with at least one major pedestrian entrance on South Broadway.

7. No building entrances or curb cuts permitted on Ocean Boulevard, unless specified in sector plans.

8. Extend Garfield Avenue to Ocean Boulevard as a new connection from the city to the beach aligned with Laird Street.

9. Use infill sites around the existing church for multi-family residential fronting on Second Avenue. Land shall be reserved close to Ocean Boulevard for buffered parking.

10. Add new curb cut for Supermarket/Big Box store to facilitate homeside access.

11. 24 hour public oriented mixed uses are encouraged.

6. Relationship of Redevelopment Plan to Local Objectives

All of the objectives listed in sections 4 and 5 above are considered by the Long Branch Planning Board and City Council to be local objectives with which this Redevelopment Plan is consistent. Prior to approving this Redevelopment Plan, both bodies found that the area addressed in this Plan was an "area in need of redevelopment". Both bodies subsequently found that this Redevelopment Plan's objectives are consistent with and appropriate to the objective of furthering redevelopment within the specified area.
7. Land Use Regulations

This subject is discussed earlier in the Plan, in sections 4 and 5, i.e., "Specific Objectives: Key Principles" and "Specific Objectives: Uses by Sector". More detailed requirements will be provided as a separate document accompanying the Design Guidelines Handbook.

8. Acquisition Plan

It is the City's intention that property acquisition necessary to implement this Plan will be carried out by designated private redevelopers negotiating with property owners.

The City reserves the right to condemn property if private negotiations fail and the property or properties in question are judged essential to achieve objectives intended by the Plan. In cases where the designated redeveloper and a private property owner cannot agree on the terms of purchase, and as a last resort after other means have been exhausted, the developer may request that the City use its power of eminent domain, specifying the means that have been applied to purchase the property. If the City agrees to acquire by condemnation, the developer will pay all costs of acquisition/condemnation, including legal and appraisal costs. The City may require a refundable cash deposit accompanying this request.

To the extent that properties may be subject to title problems, the City may relieve the properties of these problems through use of eminent domain.

9. Relocation

The amount of relocation required to implement the Redevelopment Plan is expected to be moderate at most, given the policy encouraging infill. In accordance with the requirements of State law, all persons (including families, business concerns and others displaced by project activities) will be assisted in finding other locations and facilities. Persons displaced from their homes will be assisted in finding housing which is decent, safe, sanitary and within their financial means in reasonably convenient locations and otherwise suitable to their needs.

Where relocation of any resident or business becomes necessary to improve and revitalize the Redevelopment Area, the City and/or any developer that enters into a developer agreement with the City or any party for the development of any portion of the Redevelopment Area, shall conform to and meet all the requirements of applicable State and Federal relocation laws.

All costs associated with relocation shall be the responsibility of designated developers.

10. Tax Incentives

The City Council has adopted the following policies regarding possible use of tax incentives which may be applied to Redevelopment Area projects seeking such financial assistance:
a. There is no presumption of need for tax abatement within the Redevelopment Area. The City Council will consider any application for tax abatement on its merits, depending upon the degree to which the project needs such an incentive in order to achieve City objectives, listed below as "projects of special community benefit".

b. Projects of special community benefit include, but are not limited to:

(1) Construction or substantial rehabilitation for office use.

(2) Construction of residential or hotel projects five or more stories in height.

(3) Construction of new retail space or substantial rehabilitation of existing space for retail use.

(4) Multi-level parking structures with provision for shared parking.

(5) Significant public amenities beyond the minimum State or local requirements, such as beach access, parks, public art, pedestrian lighting, etc., in accordance with this Plan.

(6) Conversion of non-residential space to residential or to mixed use.

(7) New buildings that combine residential and commercial uses.

(8) Redevelopment of areas requiring environmental cleanup for any approved use.

c. It is assumed that non-elevator residential structures will not require tax incentives.

11. Developer Selection

It is the policy of the City of Long Branch that selection of developers to implement redevelopment plans be accomplished through an open and competitive process. The City, however, reserves the right to waive this policy, by resolution of the governing body, if it judges that specific circumstances justify doing so. If the City determines that a competitive process is to be pursued for redevelopment of a sector or sub-sectors, the competitive developer selection process will include these steps:

a. Preparation of developer qualifications, guidelines to selection and phasing of solicitations.

b. Preparation and approval of developer solicitation materials (Request for Qualifications)

c. Advertisements and direct solicitation of developers
d. Review of developer qualifications. Selected developers invited to submit proposals (Request for Proposals).

e. Review of developer proposals, including conceptual site plans, leading to selection of developers.

f. Negotiations with selected developers, leading to developer agreements.

g. City Council designation of developers, based on agreements between developers and City.

If negotiation with a selected developer is unsatisfactory, the City will terminate the negotiation and begin again with another developer until a satisfactory agreement is reached. The City may also restart the developer solicitation process. It is the City's intention to continue this process until agreements have been reached with developers regarding all five sectors.

Developer agreements will include such issues as developer responsibilities for public facilities, relocation responsibilities, local employee recruitment policies, adherence to design guides, approval of all firms which become members of the development team, timely inception of construction, phasing, and other considerations. The City reserves the right to change developers in the event of failure to perform in accordance with the agreement. Developers will make a non-refundable payment of $50,000 to the City at the time agreements are signed. These funds will be applied to economic development programs, including incentives for facade and sign improvements and other business attraction projects.

12. Developer Designation Process

When the City determines that a competitive process is to be pursued for redevelopment of a sector or sub-sectors, the developer designation process will include the following steps:

a. Prepare and adopt a land use and parking and access management plan for affected sectors.

b. Begin developer solicitation process by releasing Requests for Qualifications (RFQ) for one or more of the five sectors.

c. Review responses to RFQ for: (1) Team qualifications (2) Experience (3) Financial capacity

d. Select developers to respond to Request for Proposals (RFP) for one or more sectors or a part of one sector.

e. Evaluate RFP responses on the basis of: (1) Project concept, program and phasing (2) Conceptual site plan (3) Parking plan (4) Acquisition plan (5) Relocation plan (6) Infrastructure cost responsibility plan (7) necessity for tax abatement
f. Award developers) exclusive right to negotiate with City

g. Negotiate developer agreements

h. Award "designated developer" rights by sector or sub-sector.

i. Begin development process leading to application to Planning Board for Preliminary and Final Site Plan approval.

13. Non-RFP development proposals:

a. Before the Design Guidelines Handbook for each sector is approved by the City, any developer or landowner must, prior to applying for preliminary or final development approval, obtain the approval of the City Council regarding the consistency of the proposed development with the design goals and objectives of this Redevelopment Plan. The Council shall act within 45 days, after submission of an application for such a consistency determination on such forms as the City shall require.

b. The City Council shall, prior to taking action, obtain advice from the Design Review Committee appointed by the Mayor with the advice and consent of the City Council.

14. Provisions Necessary to Meet State and Local Requirements

The proposals of this Plan are consistent with the general plan for the municipality. Local planning objectives having direct bearing on this project, and which have been planned as integral parts of the total planning for the City, are as follows:

a. The effectuation of the Redevelopment Plan will carry out major proposals of the Master Plan for the City and will comply with local objectives of the City as to appropriate land uses, improved street systems, and overall improvement of the area.

b. The effectuation of the Redevelopment Plan will improve the total living and working conditions of the City through improvement of a blighted area, removal of structures in poor condition and the provision of land for new commercial and residential development.

The various elements of this Redevelopment Plan set forth above are in compliance with the requirements of State and local law.

15. Procedures for Changing Redevelopment Plan

The Redevelopment Plan may be amended from time to time by the City Council of the City of Long Branch, provided that, if amended after the disposition of any land in the Redevelopment Area, the modification must be consented to in writing by designated developers. Any amendments to the Redevelopment Plan shall be reviewed by the Planning Board of the City of Long Branch. After such review, the Planning Board shall make recommendations to the
City Council, which may adopt the changes by ordinance. Such ordinance shall specify the relationship of the proposed changes or amendments to the City Master Plan and the goals and objectives of the Redevelopment Plan.

The Redevelopment Plan, as it may be amended from time to time, shall be in effect from the date of its adoption by the City Council on second reading and publication.

16. Maps (See Exhibits)

This Plan shall constitute an overlay zone on the Zoning Map for the areas covered by this Plan.

17. Miscellaneous

Uses in the redevelopment area shall be limited to those permitted in this Plan. In addition, the provisions of this Plan shall be the exclusive basis for regulation of all development within the redevelopment area with respect to subjects covered by this Plan. Any other development regulations otherwise applicable in the redevelopment area shall remain in effect unless inconsistent with the provisions of this Plan, provided that the Planning Board may grant waivers or variances from such regulations in order to carry out the intent and purposes of this Plan.
APPENDIX III
AMENDED AND RESTATED AGREEMENT BETWEEN THE CITY OF LONG BRANCH AND PIER VILLAGE, L.L.C. FOR THE REDEVELOPMENT AREA DESIGNATED AS PIER VILLAGE
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SECTION 1. INITIAL RECITALS

THIS AGREEMENT known as "AN AGREEMENT BETWEEN THE CITY OF LONG BRANCH AND PIER VILLAGE, L.L.C. FOR THE DEVELOPMENT OF THE PIER VILLAGE AREA" is made this 22nd day of February, 2000 by and between the City of Long Branch (the "City") and PIER VILLAGE, L.L.C. (the "Redeveloper"), in consideration of the provisions set forth hereinafter and the mutual promises contained therein, as well as the exhibits attached hereto.

WHEREAS, the City is a political subdivision of the State of New Jersey, located in the County of Monmouth, with offices located at 344 Broadway, Long Branch, New Jersey 07740; and

WHEREAS, the Redeveloper is formed as a Limited Liability Company under the laws of the State of New Jersey, with corporate offices located at 5 Marine View Plaza, Suite 500, Hoboken, New Jersey 07030; and

WHEREAS, the City seeks to cause the redevelopment of a portion of an area designated as PIER VILLAGE bordered by Ocean Avenue, Ocean Boulevard, Laird Street and Melrose Terrace (the "Site"); and

WHEREAS, in a further effort to stimulate development of the Site, the City has designated the Site consisting of approximately 15 acres and depicted in Exhibit A, a Boundary Tax Map, as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-4 and 5; and

WHEREAS, the City of Long Branch Planning Board (the "Board") was directed to prepare a Redevelopment Plan for an underdeveloped portion of the City’s oceanfront and an underutilized commercial area which includes the Site; and

WHEREAS, the Redevelopment Plan, known as the Oceanfront Broadway-Redevelopment Plan, divided the Oceanfront-Broadway Redevelopment Area into five sectors, one of which is the Site which is known as Pier/Village Center; and

WHEREAS, on or about April 16, 1996, the Board submitted the Redevelopment Plan to the City and advised the City that the Redevelopment Plan was consistent with the City Master Plan and, thereafter, on May 14, 1996, the City, by ordinance, adopted the proposed Redevelopment Plan; and

WHEREAS, the purpose of the portion of the Redevelopment Plan applicable to the Site, is to cause residential and commercial redevelopment as set forth in the Design Guidelines for PIER VILLAGE; and

WHEREAS, the City issued a Request for Qualifications ("RFQ") from interested developers for the purpose of qualifying interested developers in relation to the Project; and
WHEREAS, the City issued a Request for Proposals ("RFP") from interested developers for the purpose of entering into an agreement to redevelop the Site in accordance with the Redevelopment Plan; and

WHEREAS, the Redeveloper in concert with Fidelity Development, which would address retail issues, has responded to the RFQ and RFP with submissions to the City dated April 26, 1999, which envision various elements such as rental and for-sale housing and retail uses; and

WHEREAS, pursuant to that designation and the RFP, the City and the Redeveloper have entered into a Memorandum of Understanding ("MOU"), as extended, with regard to the issues and items that should be addressed in the development of the Site and the Parties have fulfilled their responsibilities under the MOU; and

WHEREAS, the Redeveloper has been designated as redeveloper of the PIER VILLAGE district of the Oceanfront-Broadway Redevelopment Area, which shall be developed as described herein.

WHEREAS, the City and the Redeveloper, as required by the RFP, desire to fully and thoroughly address the issues, items and conditions precedent to the development of the Site by way of a Redeveloper’s Agreement; and

WHEREAS, the City and Redeveloper entered into “An Agreement between the City of Long Branch and Pier Village, L.L.C. for the Redevelopment Area Designated as Pier Village” dated May 2, 2000 (the “Original Agreement”); and

WHEREAS, the City and Redeveloper desire to amend and restate the Original Agreement in its entirety to reflect certain amendments to the Original Agreement concerning various contingencies to the Redeveloper’s obligation to proceed with the Project, the jurisdiction of the Long Branch Planning Board to hear Redeveloper’s site plan application and the mortgage priority for the Public Mortgage; and

WHEREAS, the City and the Redeveloper acknowledge that the mutual promises contained in this Amended Agreement are good and valuable consideration for the binding execution of this Agreement;

IT IS ON THE DATE STATED ABOVE AGREED BY AND BETWEEN THE CITY AND THE REDEVELOPER AS FOLLOWS:

SECTION 2. DEFINITIONS

2.0 Governing Definitions 2.0. When used in this Agreement the following words, phrases or terms shall have the meanings set forth in the subsections which follow:

2.1.0 Acquisition Parcels shall mean all Project Parcels required for the Project, which are as of the date hereof privately-owned and which are listed on Exhibit B attached hereto.
2.1.0.1. Additional City Funding shall be as defined in Section 5.1.2.5(a).

2.1.1 Agreement or this Agreement 2.1.1 shall mean the instant document which is entitled "An Agreement Between the City of Long Branch and PIER VILLAGE, L.L.C. for the Development of the PIER VILLAGE Area".

2.1.2 Approval, Final Unappealable 2.1.2 shall mean an approval for which the limiting period on appeal or for an appeal set forth statutorily or in the rules of court has expired without an appeal or further appeal having been taken. An approval shall become final or approved upon expiration of such specific time period even if an administrative agency or a court has the power to waive or extend the specific time period.

2.1.3 Board or the Board 2.1.3 shall mean the City of Long Branch Planning Board.

2.1.4 Budget 2.1.4 shall be as set forth in Exhibit C.

2.1.5 CAFRA 2.1.5 shall mean the New Jersey Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.

2.1.6 City or the City 2.1.6 shall mean the City of Long Branch by and through its governing body and shall include all agencies, departments, boards or other subdivisions thereof unless otherwise stated.

2.1.7 City Funding Commitment 2.1.7 shall be as defined in Section 5.2.

2.1.8 City-Owned Parcels 2.1.8 shall mean Project Parcels which are required for the Project and are owned by the City of Long Branch and which are listed on Exhibit D attached hereto.

2.1.9 Closing of State Funding Commitment 2.1.9 shall mean the date the grant and/or loan funds represented by the State Funding Commitment are disbursed to the City or the Redeveloper for development.

2.1.10 Commence Construction 2.1.10 shall have the same meaning set forth in paragraph 5.8.1 of this Agreement.

2.1.11 County Resolution 2.1.11 shall have the same meaning set forth in Section 3.3.1.

2.1.12 Default or in Default 2.1.12 shall have the meaning defined in paragraph 5.10 of this Agreement.

2.1.13 Default Notice 2.1.13 shall mean such notice from the City to the Redeveloper as defined in paragraph 5.11.1.

2.1.15 Environmental Data 2.1.15 shall have the meaning defined in paragraph 4.2.2 of this Agreement.

2.1.16 Environmental Reports 2.1.16 shall have the meaning defined in paragraph 4.2.2 of this Agreement.

2.1.17 Excess Funds 2.1.17 shall mean any portion of the Pier Village Funds remaining after all items in the Budget have been completed.

2.1.18 For-Sale Component 2.1.18 shall mean approximately 105 town home units which shall be offered for sale as condominium units or fee simple units in a homeowners association, subject to modification as set forth in Section 3.1.

2.1.19 Institutional Financing 2.1.19 shall mean the loans from institutional lenders in amounts which taken together with Redeveloper’s equity and any grants or other loans from the City or State of New Jersey made available for the Project shall be sufficient to complete the Project.

2.1.20 Intersection Improvements 2.1.20 shall mean the improvements to the intersections of Ocean Boulevard and Cooper Avenue and Ocean Boulevard and Laird Street pursuant to drawings and specifications prepared by Thompson Design entitled “Ocean Boulevard Streetscape Improvement Project” dated May 15, 1999 and which are included in the Ocean Boulevard Improvements.

2.1.21 LOI 2.1.21 shall mean a wetlands regulatory line verification letter of interpretation from NJDEP pursuant to N.J.A.C. 7:7-8.3.

2.1.22 Memorandum of Understanding or MOU 2.1.22 shall mean the letter memorandum of understanding entered into between the City and the Redeveloper as of June 1, 1999.

2.1.23 NJDEP 2.1.23 shall mean the New Jersey Department of Environmental Protection.

2.1.24 Ocean Boulevard Contingency Period 2.1.24 shall have the meaning set forth in Section 3.3.1.

2.1.25 Ocean Boulevard Improvements 2.1.25 shall mean the improvements to be made to Ocean Boulevard between South Bath Avenue and Joline Avenue pursuant to drawings entitled “Ocean Boulevard Streetscape Improvement Project” prepared by Thompson Design Group dated May 15, 1999.
2.1.26 Offer Price 2.1.26 shall have the meaning set forth in Section 5.1.2.5(d).

2.1.27 Parties or the Parties 2.1.27 shall mean both the City and Redeveloper together and shall not refer to any other person or entity.

2.1.28 Pier Village Funds 2.1.28 shall mean a total of $12,650,000 consisting of $2,000,000 from the City of Long Branch, $5,250,000 from the Redeveloper and $5,400,000 from the State of New Jersey as more particularly set forth in Part 5 of this agreement.

2.1.29 Project or the Project 2.1.29 shall generally be depicted on Exhibit E to this Agreement.

2.1.30 Public Mortgage shall mean any mortgage granted by Redeveloper to any public entity, including without limitation, the City, the County, any State agency or any other public entity or instrumentality as security for the repayment of any loan made to provide funds to develop the Project.

2.1.31 Project Parcel or Project Parcels 2.1.31 shall mean all that land and premises, which include all Acquisition Parcels and all City-Owned Parcels set forth on Exhibits B and D to this Agreement.

2.1.32 Project Schedule shall have the meaning defined in paragraph 5.8 and Exhibit F of this Agreement.

2.1.33 Redeveloper 2.1.33 shall mean PIER VILLAGE, L.L.C.

2.1.34 Redevelopment Plan or Plan 2.1.34 shall mean the Village Center at Pier Redevelopment Plan adopted by the City on May 14, 1996, by Ordinance No. 15-96 and as may be amended in accordance with the terms of this Agreement.

2.1.35 Remediation 2.1.35 when used in this Agreement shall mean any clean up, correction or adjustment to any environmental contamination or environmental damage to any natural resource including but not limited to air, groundwater, surface water, or soil deemed necessary and advisable by the Redeveloper in order for the Redeveloper to move forward with the Project.

2.1.36 Rental Component 2.1.36 shall mean approximately 313 apartments and 104,000 square feet of retail space. The apartment units shall be subject to adjustment as set forth in Section 3.1.

2.1.37 Site or the Site 2.1.37 shall mean all that land and premises identified in the RFP as the "Project Area" and generally bounded by Ocean Avenue, Ocean Boulevard, Melrose Terrace and Laird Street, and consisting of the Project Parcels as depicted on Exhibit A and listed on Exhibits B and D.
2.1.38 State Funding Commitment 2.1.38 shall mean a letter or letters of commitment from one or more state agencies, departments or authorities agreeing to provide grant funds or loan funds on terms and conditions acceptable to Redeveloper in an aggregate amount of not less than $5,400,000 for the development of the Project.

2.1.39 Subordinate Mortgage shall mean a mortgage held by the City which is subject and subordinate as to lien and payment to the mortgages securing the Project’s construction financing but pari passu with other Public Mortgages.

2.1.40 Third Party or Third Parties 2.1.40 shall mean any person or entity other than the City or the Redeveloper as defined in this Agreement.

SECTION 3. PROJECT DEFINITION

3.0 Purpose. The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the City and the Redeveloper in connection with the development of the Project by the Redeveloper. The Redeveloper has been selected by the City through a resolution adopted simultaneously with the approval of this Agreement, wherein the City chose the Redeveloper to be the developer of the Site after the submission of qualifications and proposals by the Redeveloper and others in response to the RFQ and RFP issued by the City.

3.1 The Project. The Project which is the subject of this Agreement shall generally be designed in accordance with the initial development and design concept submitted by the Redeveloper in response to the RFP as same may be modified by the Redeveloper at the time that the Redeveloper submits its applications for development of the Site to the Board. The Project shall be developed as depicted on the map attached hereto as Exhibit E. The Project shall consist of approximately 420 residential units, 1,196 parking units, comprised of an approximately 806 space parking deck and 394 surface parking spaces (plus an additional 184 on street parking spaces for public use)and approximately 104,000 square feet of retail space. The City may permit the Redeveloper to alter the breakdown of the units between rental units and for sale townhomes upon a reasonable demonstration by Redeveloper submitted to the City Council that the market cannot support the number of townhomes originally planned and that an amendment to this Agreement is warranted. The City’s consent to such amendment shall not be unreasonably withheld. Any material alteration of the site layout shall be subject to approval by the Board consistent with the Design Standards.

3.1.1 The Project Concept. 3.1.1 The Redeveloper’s initial development and design concept is more specifically described on Exhibit E. The City agrees that the present state of the description of the Project is within the framework of the RFP and that it meets the criteria set forth therein for the development of the Site. However, if modified by the Redeveloper, the Project shall remain substantially similar to the initial development and design concept and consistent with the goals set forth in the RFP and the Redevelopment Plan. Furthermore, the Redeveloper acknowledges that it will be required to comply with the provisions of the Redevelopment Plan and Design Guidelines which have been adopted by the City for the Site which will require more detailed site plans and other documents to be submitted for review by the Board. Therefore, the City and the Redeveloper agree to this Agreement in order to establish
the provisions and considerations which will govern the development of the Site by the Redeveloper, the acquisition of real property by the City or the Redeveloper, the conveyance and assistance in acquisition of real property within certain areas of the Site to the Redeveloper, and the construction of the Project.

3.1.2 Retail Component Requirements.

A. Designation of Retail Entity. (1) The Redeveloper has represented that it has entered into a retail consulting agreement with Williams Jackson Ewing, Inc. (“WJE”), attached hereto as Exhibit M. Redeveloper shall comply with Exhibit M which may not be terminated except for good cause and upon thirty days advance written notice to the City of such termination. (2) In addition to any other service required by Exhibit M, it is agreed that Redevelopers and/or WJE shall prepare and submit to the City, on or before April 23, 2001, a pro-forma for the 104,000 square feet of retail space in the Project as defined in ¶3.1 and Exhibit E. (3) Further, Redeveloper shall hire or retain a qualified leasing, marketing and tenant coordinator on or before April 10, 2001. The city shall have thirty days to disapprove same but its disapproval shall not be a Default Event so long as Redeveloper is proceeding in good faith to implement the retail component of the Project. The City shall be provided with the identity, background and qualifications of the coordinator at the time of hiring or retention.

B. Retail Use Plan. (i) The Redeveloper shall develop the retail space in conformance with the plan attached as Exhibit N. Redeveloper shall give the City thirty (30) days advance notice of the name, address and business description of the proposed tenant prior to lease signing. In the event the City determines that any proposed tenant or use does not meet the criteria set forth in Exhibit N, the City may seek specific relief in Superior Court to prevent Redeveloper from leasing to such tenant or such use, provided that such relief is applied for within 30 days of the aforesaid notice.

C. Quality of Tenant Space Buildout/Finishes. Redeveloper shall cause the retail entity designated under subsection A of this section to comply with the Facade Guidelines Standards of the City of Long Branch.

D. No Reduction in Retail Density. The parties understand that the density of development as set forth in Exhibit E may require CAFRA approval. If CAFRA approval is required the City will support the density as set forth in Exhibit E in discussions with CAFRA. The Redeveloper understands that such approval may be necessary and agrees that if such approval is necessary, but is not obtained from CAFRA, any reduction in density shall not result in a reduction of the retail development but only in a reduction in residential development.

3.1.3 Site Improvements. Redeveloper agrees that it shall construct improvements on the public frontage streets (Ocean Avenue and Laird Street) at a level and quality as set forth in Exhibit O.

3.1.4 Phasing of Initial Construction. Redeveloper shall apply for a single development approval for the entire Project. The first 50,000 square feet of retail space shall be constructed and completed in conjunction with the first 205 residential units or 50% of the
approved residential units. The remaining approved residential and retail space shall be constructed upon issuance of certificates of occupancy for such 205 residential units or 50% of the approved residential units and shall be completed as provided in Section 5 of this Agreement.

3.1.4.1 Retail Phasing. The approved retail space may initially be leased for short term leases of up to three years for office or other purposes or uses permitted by the Design Guidelines provided that Redevelopers have complied with ¶3.1.2A and 3.1.4, and have provided the City with documentation showing its good faith efforts, to obtain leases consistent with Exhibit N, provided that all such space shall be converted to retail uses, in compliance with Exhibit N, within 60 days after the City obtains a construction permit for construction of improvements to the Long Branch Pier. The provisions of this ¶3.1.4.1 shall be set forth in bold print and incorporated in all leases for uses not consistent with Exhibit N, and shall operate to terminate any lease with a lease or expiration term or use not consistent with it.

3.2 The Redeveloper. 3.2 The Redeveloper represents and warrants as follows:

a. it is duly created under the Laws of the State of New Jersey and is duly organized and existing in good standing;

b. it has full power and authority to enter into this Agreement and to consummate the transactions contemplated herein;

c. that the person executing this Agreement on its behalf is authorized to do so and that this Agreement constitutes a valid and legally binding obligation of the Redeveloper.

d. it is financially capable to undertake and fulfill the obligations of the Redeveloper hereunder.

e. that the Redeveloper has the necessary expertise, qualifications, staff and resources to undertake and fulfill the obligations hereunder.

3.3 Contingency - State Funding Commitment. The Redeveloper shall have until February 22, 2001 to obtain the State Funding Commitment. The City agrees to give its full cooperation in assisting the Redeveloper to obtain the State Funding Commitment. The State Funding Commitment is a condition precedent to Redeveloper’s obligation to construct the Project pursuant to this Agreement. Notwithstanding the foregoing, if less than the full amount of the State Funding Commitment is awarded to Redeveloper, Redeveloper may, in its sole discretion elect to proceed with the Project. If Redeveloper is awarded less than the full amount of the State Funding Commitment, Redeveloper shall notify the City whether Redeveloper will proceed with the Project within thirty (30) days of the date it is notified of the amount awarded.

Redeveloper shall report to the City on the status of the State Funding Commitment on the first of each month until the State Funding Commitment is issued or the time period to obtain the State Funding Commitment, including all extensions, has expired.
3.3.1 Other Contingencies. 3.3.1 The Redeveloper shall not be obligated to proceed with the Project if any of the following conditions are found to exist:

a. If there are title issues that cannot be reasonably resolved or otherwise cleared by condemnation. Redeveloper shall give notice to the City of such title issues which affect the Project no later than one-hundred and twenty (120) days after execution of this Agreement. Redeveloper acknowledges that it has waived this title contingency.

b. If there are environmental issues affecting the City-Owned Parcels which Redeveloper determines in its sole discretion are unacceptable to Redeveloper, Redeveloper shall give notice to the City of such environmental issues which affect the Project no later than ninety (90) days after execution of this Agreement. The Redeveloper acknowledges that it has waived the environmental contingency in respect of the City-owned parcels; provided, however, the Redeveloper may request reimbursement from the City of the cost to remediate Block 252, Lots 11 and 17 in the Pier Village Sector.

c. Environmental issues affecting the Acquisition Parcels which Redeveloper determines are unacceptable to Redeveloper. Redeveloper shall give notice of such issues as they affect the Project to the City by the later of: (i) ninety (90) days after the City issues notices for access to the Acquisition Parcels pursuant to the Eminent Domain Act or (ii) one-hundred and twenty (120) days after access to all of the Acquisition Parcels is obtained.

d. The City acknowledges that the completion of the Intersection Improvements by the time frames set forth herein is critically important to the development of the Project. The Redeveloper’s obligations hereunder shall be contingent upon City obtaining from the Board of Chosen Freeholders of Monmouth County by no later than August 21, 2000, subject to extension as set forth below, (the “Ocean Boulevard Contingency Period”) a resolution (i) authorizing the phased construction of the Ocean Boulevard Improvements to enable the Intersection Improvements to be completed prior to the remainder of the Ocean Boulevard Improvements and (ii) authorizing the City and/or the Redeveloper to construct the Intersection Improvements if the County has not been able to secure sufficient County of State funding for the Intersection Improvements by the date the resolution is adopted (the “County Resolution”). If the Redeveloper has not obtained the State Funding Commitment by August 21, 2000, the period in which the City may obtain the County Resolution shall be extended to a date that is thirty (30) days after the date Redeveloper has been notified that the Redeveloper has been awarded the State Funding Commitment under Section 3.3. If the County is unable to secure such funds by the date it adopts the County Resolution, the City agrees to construct the Intersection Improvements, provided the city has obtain sufficient funds from the State, County or any other entity, which may include Redeveloper. The City shall award a contract for the Intersection Improvements by no later than one hundred and twenty (120) days after the adoption of the County Resolution, provided it has obtained sufficient funds for such construction. Such contract shall provide that the Intersection Improvements shall be completed within six (6) months from the date of the award of the contract for the Intersection Improvements by the City. Notwithstanding anything to the contrary contained herein, this contingency shall be deemed satisfied by the City if the City obtains funding for the Ocean Boulevard Improvements by the expiration of the Ocean Boulevard Contingency Period and is able to complete the entire Ocean Boulevard Improvements.
Boulevard Improvements, including the Intersection Improvements within the time period set forth herein for completion of the Intersection Improvements assuming phased construction as set forth herein.

3.3.2 Satisfaction or Waiver of Contingencies. If Redeveloper has failed to provide written notice to the City that any of the contingencies set forth in this Agreement has been satisfied or waived by the Redeveloper within thirty (30) days of the date the City gives written notice of the expiration of such contingency deadline, the City may de-designate Redeveloper for the Project.

3.4 Entry Into Land. 3.4 Redeveloper has had the right and shall continue to have the right to enter any portion of each City-Owned Parcel at any time and from time to time during the term of this Agreement for the purpose of conducting surveys and any engineering, architectural and environmental studies or tests or preparing any engineering, architectural or environmental data deemed necessary by the Redeveloper, provided (i) Redeveloper furnishes to the City prior to any such entry satisfactory evidence of liability insurance in an amount not less than $5,000,000 insuring the Redeveloper and the City against claims for bodily injury, death and property damage and (ii) executes and delivers the indemnification and hold harmless agreement in form annexed hereto as Exhibit H.

3.5 Redeveloper’s Commitments. 3.5 The Redeveloper agrees to assemble information pertinent to site acquisition and development, at its expense, and present the City with the following findings every thirty (30) days from the date of this Agreement as applicable:

a. Results of discussions with site/building owners in the designated area; City to cooperate to identify owners and tenants in the area.

b. Investigations related to likely costs of acquisition, as well as any necessary relocation, demolition and environmental site remediation.

c. Opportunities to secure options whenever possible to establish private control over property(s) within the designated area.

d. Any required off-site improvements necessary to establish project feasibility.

e. The status of efforts to obtain the State Funding Commitment.

f. The status of efforts to obtain Institutional Financing for the Project.

3.6 City’s Commitments. 3.6

a. The City covenants and agrees that within thirty (30) days of execution of the Original Agreement the City shall:
(i) Introduce a bond ordinance to finance the City Funding Commitment, if deemed necessary by the City’s Chief Financial Officer and proceed diligently with final passage; and

(ii) Introduce an ordinance to amend the Redevelopment Plan if necessary; and

(iii) Introduce an ordinance to provide tax abatement for elements of the Project as set forth in Section 5.12.1;

(iv) Issue notices to all owners of the Acquisition Parcels for access to such parcel pursuant to the Eminent Domain Act in accordance with Section 5.1.2.5(c) hereof.

b. Within thirty (30) days of being advised of confirmation of the State Funding Commitment, the City shall introduce an ordinance to authorize the condemnation of the Acquisition Parcels in the Project and proceed diligently with final passage.

3.7 Notification by Redeveloper. 3.7 The Redeveloper may cancel this Agreement if, in its sole discretion, it does not receive the State Funding Commitment, if there is a failure of any of the contingencies set forth in Section 3.3.1 or if the City defaults under any of its obligations under this Agreement and fails to cure same as provided for in Section 5.11.2.2. Notice of such termination, to be effective must be given no later than 30 days after expiration of the time provided for satisfaction of such contingencies or at any time after the City fails to comply with any of its obligations hereunder; the absence of such notice shall operate as a waiver of the contingency. In the event the Redeveloper cancels this Agreement, the balance of any funds remaining on deposit with the City, except $50,000, which is agreed to be non-refundable, shall be returned to the Redeveloper and neither party shall have any further liability to the other, except that the Redeveloper shall be entitled to exercise its remedies under Section 5.11.2.2 in the event the City fails to meet any of its obligations set forth in the Agreement.

3.8 The City. 3.8 The City represents and warrants that it is the fee owner of the City-Owned Parcels and that there are no known defects in title that have not been set forth herein. The City further represents and warrants that it is undertaking to execute this Agreement in its capacity as a political subdivision of the State of New Jersey and the County of Monmouth, as the designated redevelopment agency for the Site and that this Agreement constitutes a valid and legally binding obligation of the City or Redevelopment Agency.

3.9 The Site. 3.9 The Site which is the subject of this Agreement as described in the Fourth Recital and more particularly described in Exhibit A is known as the PIER VILLAGE Area consisting of approximately 15 acres. The Site has been designated by the City as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-4 et seq.

3.10 Parking. 3.10 The residential parking shall consist of approximately one off-street parking space for each dwelling unit and one on-street parking space per dwelling unit located on the public streets within the Site subject to reduction based on discussions between the parties. Within thirty days of receipt by the Redeveloper from the Board of subdivision and
site plan approval for each phase of the Project, the City shall introduce an ordinance restricting parking on all streets within the Project (except Ocean Avenue) to residents of the Project. The City shall diligently proceed to adopt the ordinances. A preliminary parking plan, which may be subject to change is shown on Exhibit E. Parking for the retail areas shall be available to the City or the Long Branch Parking Authority for reasonable shared use for commercial or seasonal parking, the specific terms of which shall be contained in an agreement to be negotiated by the City and Redeveloper, provided that such shared use shall not interfere with Redeveloper’s parking needs. Parking fees and rates for such shared parking shall be established by the Long Branch Parking Authority.

SECTION 4. ENVIRONMENTAL ISSUES

4.0 Environmental Issues. 4.0 Provided Redeveloper proceeds with the Project under Section 3.7, the Redeveloper will undertake the Project or part thereof, subject to any and all environmental problems and conditions as may exist or be determined to exist. The Redeveloper understands that the City's financial assistance is limited to the financial assistance set forth in Section 5.2, the conveyance of the City-Owned Parcels, and that together with other incentives provided by the City constitute full consideration for Redeveloper’s assumption of responsibility for all environmental matters other than those caused by the City.

4.1 Environmental Responsibility. 4.1 The City has no responsibility with respect to environmental problems or conditions caused in whole or in part by Redeveloper or any Third Party. The City shall only be responsible for environmental problems or conditions caused by the City. The Redeveloper may request reimbursement for the cost to remediate Block 252, Lots 11 and 17. In addition to the obligations of Redeveloper under Section 4.0, Redeveloper shall be solely responsible for environmental problems or conditions caused by the Redeveloper.

4.2 Wetlands Investigation. 4.2 The Redeveloper and City have no knowledge of any areas of the Site that are freshwater wetlands, pursuant to the New Jersey Freshwater Wetlands Protection Act, or as coastal wetlands pursuant to other regulatory requirements. In the event there are freshwater wetlands or coastal wetlands on the site, Redeveloper will make application to the New Jersey Department of Environmental Protection ("NJDEP") for a presence or absence letter, or if applicable, a regulatory line verification letter of interpretation ("LOI") pursuant to N.J.A.C. 7:7A-8.3 in order to establish the exact location of any wetlands on the Site and diligently pursue such application. The City agrees that it will cooperate in obtaining the LOI from NJDEP if an LOI is necessary.

4.2.1 Other Environmental Assessments.

The City and the Redeveloper acknowledge that there may be areas of the Site which are subject to investigation and possible environmental remediation for various reasons. The City agrees that it will cooperate with the Redeveloper in any such investigation effort, analysis, application to NJDEP or other governmental or regulatory body, or any similar undertaking of the Redeveloper designed to address the existence of any possible environmental contamination at the Site.
4.2.2 Availability of Environmental Data to City.

It is acknowledged by the parties that as a consequence of the studies, investigations and other work being performed or to be performed at the Site by the Redeveloper related to all environmental issues, certain data, information, studies, recommendations, analyses, reports or conclusions ("Environmental Data") and written documents which contain such Environmental Data ("Environmental Reports") will be generated by Redeveloper, its consultants or other agents. Both parties acknowledge that these Environmental Data and Environmental Reports have and will be generated through legal counsel for the Redeveloper in a confidential manner in anticipation of the regulatory process and that such data and reports are, for that reason, privileged documents pursuant to the attorney-client privilege and/or the attorney work product doctrine. However, Redeveloper acknowledges and agrees that the City has an important interest in acquiring information regarding the condition of the Site as a party to this Agreement in order to be assured that the Site is properly redeveloped. Accordingly, the Redeveloper and the City agree that the City will be entitled to receive information from the Redeveloper regarding Environmental Data generated about the Site in the following manner.

The Redeveloper will discuss with the City not less than every two months the Environmental Data which it has in its possession related to the Site. Environmental data suggesting immediate action or attention by the City shall be made known to the City as soon as practicable. Such discussions will be limited to the raw data about the conditions of the Site obtained by Redeveloper’s or City’s consultants or agents which such consultants or agents deem to be of significant importance to the redevelopment of the Site, as well as general discussions between Redeveloper and the City about steps Redeveloper intends to undertake to address or remediate any environmental conditions found at the Site if Redeveloper has decided to proceed with the Project. The Redeveloper shall also inform the City when it makes any application to a governmental or other regulatory body with respect to environmental conditions at the Site and if necessary for said application, obtain authorization from the City to do so provided such request is consistent with the Project, the Redevelopment Plan, the Design Guidelines and this Agreement. The City shall expeditiously provide any such authorization. Under no circumstances shall Redeveloper be obligated to inform the City of recommendations, conclusions or opinions reached by the Redeveloper or its consultants and agents regarding raw data or other Environmental Data except under the conditions set forth in paragraph 4.2.2.1.

4.2.2.1 Release of Reports and Opinions. The City shall be entitled to receive, and the Redeveloper shall release any recommendations, conclusions, or opinions Redeveloper obtains from experts or consultants retained by Redeveloper and any reports containing such recommendations, conclusions or opinions (hereinafter "opinions or reports"), only when any of the following occur:

1. In the event such opinions or reports are required to be released for purposes of Redeveloper submitting any applications or obtaining any permits or other permission from any governmental entity to perform any work on any environmental conditions at the Site, the Redeveloper shall provide the City with a copy of such documents at the time of such submission, or
(2) In the event that Redeveloper obtains or receives any final, unappealable permits or approvals from any governmental authority which allow it to proceed with certain environmental work on the Site, the Redeveloper shall permit the City to review and/or copy any opinions or reports which it has in its possession that were used in obtaining said permits or approvals, or

(3) In the event that the Redeveloper is found to be in material default under this Agreement and any cure period has elapsed, and the City takes possession of the Site prior to completion of the Project in accordance with the provisions of this Agreement, the City shall be entitled to receive copies of all Environmental Data and Environmental Reports in the possession or control of the Redeveloper regarding the Site.

4.3 Remediation Activities. 4.3 At the time of the execution of this Agreement, Redeveloper has made no determination as to whether any specific remediation activities may or may not be needed with respect to any areas of the Site. In addition, neither the City nor the Redeveloper has any knowledge and warrants that, to the best of each party’s knowledge, as of the date of this Agreement, no governmental entity has determined that any specific remediation will be required on the Site in order to proceed with the Project. It is expressly understood and agreed, that if any environmental condition shall exist that would increase the cost of remediating the Project Parcels beyond what was contemplated by Redeveloper or which shall prevent the Redeveloper from obtaining governmental or regulatory approval of its initial development and design concept, or a development and design concept otherwise acceptable to Redeveloper and the City, other than one caused by the Redeveloper, the Redeveloper shall not be required to proceed with the Project. The Redeveloper warrants that, as of the date of this Agreement, it knows of no environmental concerns that would prevent the development of the Project on the Site in accordance with the Redeveloper’s initial development and design concept.

4.4 Remediation Costs. 4.4 The City and the Redeveloper acknowledge that the investigation, analysis and potential remediation of any environmental contamination or other environmental condition which may exist at the Site may be a considerable expense that must be undertaken in order to make the Site viable for the development of the Project. The parties acknowledge and agree that the Redeveloper shall not be responsible for any remediation unless and until all of the following shall occur: (i) the Redeveloper shall have been satisfied in its reasonable discretion with the results of environmental testing of the City-Owned Parcels, (ii) the Redeveloper is satisfied, in its reasonable discretion, with the results of environmental tests conducted by City or by it on the Acquisition Parcels under Section 5.1.2.5(c) and (iii) the Redeveloper has obtained title to the Project Parcels.

4.4.1 Costs on Abandonment or Default.

In the event that Redeveloper is deemed to have abandoned the Project prior to completion as defined in Section 5.8.2 of the Agreement, or in the event that Redeveloper is deemed to be in default of this Agreement as defined in Section 5.11.2 of the Agreement, the Redeveloper shall indemnify and hold the City harmless for all costs that the City may be required to expend in order to remediate any environmental contamination at the Site which was caused by the acts of the Redeveloper, its consultants or its agents in the
performance of work on the Project, and the Site shall be left in the same or substantially similar environmental condition as it was when the Redeveloper took title to the Site or performed activities on the Site. This paragraph shall not create any obligation to reconstruct any improvements that may have been present when the Redeveloper took title except to the extent that the Board has required a bond or other security pursuant to the Municipal Land Use Law for construction of improvements.

4.5 Environmental Approvals. 4.5 It is acknowledged by both parties that it may be necessary for the Redeveloper to obtain various environmental permits and approvals in order to undertake development of the Project. These permits and approvals may include but are not limited to those obtained from NJDEP, the United States Environmental Protection Agency, the United States Coast Guard, the United States Army Corps of Engineers and other such agencies and may include a wetlands LOI, CAFRA review, a stream encroachment permit, a treatment works approval, a Water Quality Certificate, a Wetlands Development Permit and State Riparian Grants. The Redeveloper agrees that, provided Redeveloper elects to proceed with the Project under Section 3.7, it will take all necessary steps to prepare and apply for and proceed diligently to attempt to obtain any needed permits for the Project or portion thereof in a timely fashion and utilizing its best efforts, such that the development of the Project will not be jeopardized. The City agrees to provide any pertinent information in its possession and to provide any reasonable assistance, without cost or expense to the City other than payroll and internal administrative costs, which may be required of it to enable the Redeveloper to properly apply for and obtain such permits or approvals in a timely fashion, including making applications in the name of the City when reasonably advantageous or otherwise required to do so. The City agrees to support and endorse any applications required hereunder. Redeveloper shall obtain all such approvals by no later than thirty-six (36) months after Redeveloper shall have submitted the applications for such approvals provided (i) Redeveloper shall submit fully completed applications for the Planning Board approval required for the Project by April 10, 2001, said period may be extended to May 10, 2001 by the City Administrator if he determines, in writing, that the Redeveloper is diligently working towards the submission of a complete application by such date.

SECTION 5. DEVELOPMENT OF THE PROJECT

5.0 General. 5.0 The Redeveloper, pursuant to the RFP, shall develop the Project Parcels in a manner substantially consistent with the RFP and the Redevelopment Plan and Exhibit E and in conformance with the Design Guidelines.

5.0.1 Deposit. 5.0.1 Upon execution of the Original Agreement by the Parties, Redeveloper deposited with the City a non-refundable deposit of $50,000 (the “Deposit”), as required by the Redevelopment Plan. The Deposit has been placed in an interest-bearing account, but any interest thereon, shall be the property of the City.

5.1 Covenant to Convey City-Owned Parcels. 5.1 In consideration of the promises of the Redeveloper herein to develop and construct the Project in accordance with this Agreement, and other mutual covenants and agreements contained herein, the City covenants and agrees that within thirty (30) days of the date the City has acquired all of the Acquisition Parcels, the City shall transfer and convey title to the City-Owned Parcels by Bargain and Sale Deed with
covenants against Grantors Acts. The conveyance of the City-Owned Parcels shall be at no cost to the Redeveloper. The Redeveloper agrees to accept such title as conveyed in accordance with the terms of this Agreement. The property to be conveyed in accordance with this provision is more specifically identified in Exhibit D and shall be conveyed and accepted subject to standard title exceptions.

5.1.2 Condemnation of Acquisition Parcels.

5.1.2.1 Amendment of Redevelopment Plan.

The City has taken all steps necessary to give it jurisdiction to acquire the Acquisition Parcels through its powers of eminent domain and has amended, by Ordinance, the Redevelopment Plan to identify all property within the Redevelopment Area which it proposes to acquire as required under N.J.S.A. 40:12-7a(4), to provide for the temporary and permanent relocation, as necessary, of residents in the Project area as required under N.J.S.A. 40:12-7(a)(3) and may adopt any other amendments in consultation with the Redeveloper.

5.1.2.2 Negotiations by Redeveloper.

The Redeveloper may at its option commence negotiations to acquire the Acquisition Parcels directly with the owners of the Acquisition Parcels at any time before or after the Redevelopment Plan is amended.

5.1.2.3 City Assistance In Property Acquisition.

The City agrees that it will use its best efforts, without cost or expense to the City, except for payroll and internal administrative costs, to assist in arranging for and facilitating discussions with tenants/owners of parcels to be acquired, or to be utilized in conjunction with relocation or other Project purposes.

5.1.2.4 Commencement of Condemnation of Acquisition Parcels.

In the event that Redeveloper concludes that it is unable to acquire through negotiation any Acquisition Parcel, Redeveloper shall notify the City in writing of such conclusion and, in accordance with the following provisions, instruct the City to acquire said parcel.

5.1.2.5 Procedure and Costs of Acquiring Acquisition Parcels

(a) Total Acquisition Costs. The parties have established a maximum total consideration for acquisition of the Acquisition Parcels of $8,010,000 as set forth in Schedule C. In the event that all Acquisition Parcels cannot be acquired for a total consideration of $8,010,000 the City has agreed to fund additional consideration up to $500,000 in addition to the City Funding Commitment (hereinafter, the “Additional City Funding”). The parties agree that consideration only includes payment for the purchase price and shall not
include other costs, such as appraisal, legal or filing fees, environmental analysis or similar costs ("Related Acquisition Costs"), except that if the purchase price and the Related Acquisition Costs do not exceed $8,010,000, the Related Acquisition Costs may be included with the purchase price of the parcels as authorized acquisition costs within the Budget.

In the event the total consideration required to obtain the Acquisition Parcels exceeds $8,510,000, the excess consideration shall come from the State Funding Commitment or the Redeveloper, in which case the Redeveloper may acquire any parcel at any price it deems appropriate, without the consent of the City.

(b) Title Search. Within one-hundred and twenty (120) days after execution of the Original Agreement Redeveloper shall, at its own cost, cause a title search to be performed of the Acquisition Parcels by a reputable title insurance company doing business in the State of New Jersey. If upon examination of the preliminary title report, Redeveloper finds that title is subject to encumbrances, restrictions, conditions, licenses, leases, charges, easements or adverse claims which (i) were not listed in the Redeveloper's title commitment with respect to the Acquisition Parcel; (ii) cannot be removed by condemnation; and (iii) would materially interfere with proposed Project, Redeveloper may: (i) waive any such objection and instruct the City to condemn such parcel subject thereto; (ii) elect to undertake the Project without such parcel and instruct the City not to condemn such parcel; or (iii) terminate this Agreement without penalty.

(c) Appraisal and Environmental Audit. Prior to commencing a condemnation proceeding for any Acquisition Parcel, the City shall, subject to approval by the Redeveloper, which shall not be unreasonably withheld, select a New Jersey MAI certified appraiser to undertake the appraisal of such parcel and an environmental engineer to conduct an environmental inspection of the parcel. The appraiser and environmental engineer shall accompany the City on its inspection of the parcel, pursuant to the City’s right of preliminary entry under N.J.S.A. 20:3-16. The notice given to the owner pursuant to N.J.S.A. 20:3-16 shall expressly advise the owner that the City will be conducting environmental tests and borings of the property. The environmental engineer shall conduct a full inspection of the property, including testing for the presence of underground storage tanks.

Redeveloper waives any claim it may have against the City for any errors or omissions of the environmental engineer, provided the environmental engineer was approved by the Redeveloper.

(d) Offer Price. The environmental engineer shall be instructed to complete its audit within thirty (30) days of entry onto the Acquisition Parcel and the appraiser shall complete the appraisal within twenty (20) days of the date the City sends the environmental audit to the appraiser. If the environmental report shows that the Acquisition Parcel will require remediation, the appraisal shall take into account the estimated cost to remediate the Property to residential standards without engineering controls and without imposition of a deed restriction. The City shall provide the Redeveloper with a copy of the appraisal and environmental audit. The appraised value shall become the “Offer Price” for the Acquisition Parcel, provided the Offer Price is agreed to by the Redeveloper and the City. If the Redeveloper concludes that the
Offer Price would materially affect Redeveloper’s ability to proceed with the Project, Redeveloper shall have the option to (i) proceed without such parcel or (ii) terminate this agreement without penalty.

(e) Deposit of Offer Price in Court. The funds required to be deposited in Court under Section 5.1.2.5 (g) shall come from the City Funding Commitment or the State Funding Commitment, to the extent available. Any balance which cannot be funded through the City Funding Commitment or the State Funding Commitment shall be furnished by the Redeveloper to the City by certified or cashier check within twenty (20) days of written request by the City.

(f) Negotiations with Owners of Acquisition Parcels. Upon receipt of all funds required to be furnished under Section 5.1.2.5 (e) with respect to an Acquisition Parcel, the City shall proceed to negotiate for the purchase of such Acquisition Parcel or of the lesser interest being acquired with the owner or owners, as the case may be, as required by N.J.S.A. 20:3-6. The City may not agree in settlement or compromise to any amount in excess of the Offer Price without the written consent of the Redeveloper. If the Redeveloper does not consent, the parcel shall be acquired through condemnation.

(g) Commencement of Condemnation. In the event no voluntary purchase agreement is reached within a reasonable time period, but in any event within thirty (30) days of the Closing of the State Funding Commitment, then the City shall promptly commence an eminent domain proceeding and shall file a Declaration of Taking and deposit the Offer Price with the Court. The City shall diligently prosecute the action before the commissioners appointed to render a determination as to compensation. If the Redeveloper so requests the City in writing, the City will appeal the award of the condemnation commissioners and will prosecute same. To the extent reasonable, prudent and consistent with the City’s obligations to deliver the Acquisition Parcels to Redeveloper in order to meet the time frames contained in this Agreement, the City agrees to exhaust all remedies and recourse available at law to accomplish a fair and equitable outcome to any proceedings brought by it to acquire title to the Acquisition Parcels.

(h) Appeal of Condemnation Commissioners’s Award. If the condemnation commissioners’ award shall be appealed by any property owner or the City, and the Court shall determine that the fair market value of the parcel exceeds the Offer Price deposited in Court by the City, the City shall be responsible for paying the property owners any increase in the condemnation awards as follows: (i) if the total consideration for the Acquisition Parcels is less than $8,010,000, the City shall pay for any increases in an amount equal to $500,000 minus the difference between $8,010,000 and the total consideration for the Acquisition Parcels and (ii) if the total consideration for the Acquisition Parcels is $8,010,000 or more, the City shall be responsible for any increases to the extent there remains any funds in the Additional City Funding. The Redeveloper shall be responsible for any such increases in the condemnation awards which are not the obligation of the City pursuant to the preceding sentence.
(i) Relocation. The City shall, with the assistance of the Redeveloper, perform all relocation of eligible homeowners, residential tenants and commercial businesses or of any eligible occupant, tenant or possessor of the Acquisition Parcels as same may be required by applicable law. All proper and reasonable relocation expenses not funded by the City Funding Commitment or State Funding Commitment shall be reimbursed by the Redeveloper to the City.

(j) The Parties agree to regularly confer and to cooperate with respect to all matters relating to acquisition of the Acquisition Parcels.

5.1.2.6 Conveyance of Acquisition Parcels. Redeveloper may request conveyance of title to the Acquisition Parcels acquired by the City at any time after the City acquires an Acquisition Parcel, but in any event the Redeveloper must take title no later than thirty (30) days after the City has acquired all Acquisition Parcels, whether by negotiated sale or the filing of a Declaration of Taking, provided that any balance of the costs and expenses to be paid to the City in accordance with Section 5.1.2.5. shall be paid from the State Funding Commitment or the Redeveloper, to the extent not paid from the City Funding Commitment.

5.1.2.7 Title and Closing. The City shall convey the Acquisition Parcels by Bargain and Sale Deed with Covenants against Grantor's Acts. Title shall be good, marketable and insurable at regular rates and subject only to exceptions agreed to by the Redeveloper prior to the date the City commits to purchase any Acquisition Parcel or, if applicable, the date the City commences condemnation proceedings against any Acquisition Parcel.

5.1.2.8 Excess Funds. Excess Funds may be used by Redeveloper for another project in the City of Long Branch to be developed by an affiliate of Redeveloper.

5.2 City Funding Commitment. The City has agreed to make available a total of $2,000,000 for the Project, of which $1,272,000 is represented by the conveyance of the City-Owned Parcels to Redeveloper for no consideration in accordance with Section 5.1 hereof and $728,000 is represented by City funds to be used for the purposes set forth in the Budget.

5.2.1 Project Funds.

The Parties understand that the City Funding Commitment as described in Section 5.2, and the Closing of the State Funding Commitment are conditions precedent to proceeding with the Project. Any Excess Funds may be used in accordance with Section 5.1.2.8 of this Agreement. The City shall approve all disbursements of City Funding Commitment within ten days of a written request, such approval not to be unreasonably withheld. The City, the State and the institution financing construction of the Project shall, if necessary, enter into an intercreditor agreement governing the disbursement of the City Funding Commitment, the State Funds and the construction loan and the relative lien priority, if applicable, provided, however, that the City shall control the City funds subject to auditing controls.
5.3 Security For City Funding Commitment. To secure the City Funding Commitment for the Project and the Additional City Funding, the Redeveloper shall grant to the City (i) a Subordinate Mortgage on the land and buildings comprising For-Sale Component in the amount of (x) $500,000 plus one-quarter of the Additional Funding Commitment and (ii) a Subordinate Mortgage on the land and buildings comprising the Rental Component equal to the difference between $2,000,000 plus the Additional City Funding advanced by the City less the amount of the Subordinate Mortgage on the For-Sale Component. The allocation between the mortgages shall be adjusted on a pro rata basis if the Redeveloper seeks and is granted an alteration in the breakdown of the units pursuant to Section 3.1 hereof. The City’s rights under said mortgages shall be paramount to any other rights in the property, except for easements or restrictions of record existing as of the date hereof, development easements necessary to construct the Project and the rights of permitted institutional mortgagees and pari passu with the rights of the holders of any other Public Mortgages. The note and mortgage shall be in the form attached hereto as Exhibits I and J. Each mortgage loan shall accrue simple interest at 3% per annum. Each “For-Sale” unit shall be released from the lien of the mortgage secured by the For-Sale Component upon payment of a release price of $10,000 per unit. The release price shall include a pro-rata share of accrued and unpaid interest on the mortgage encumbering the For-Sale Component. The mortgage loan secured by the Rental Component shall be repaid annually from 25% of surplus cash, if any, remaining after Redeveloper receives a 9% return on its equity, until such time as interest and principal have been paid in full. Any remaining balance, together with any interest thereon, shall be paid in full on sale or refinancing of the Rental Component or a pro rata payment shall be due and payable upon a sale of a portion of the Rental Component. The pro rata calculation shall be in proportion to the ratio of the sale or refinancing proceeds to the face amount of the original financing.

If the Redeveloper advances any funds to the City to complete the Intersection Improvements pursuant to Section 3.3.1(d), the principal balance of each of the above-described Subordinate Mortgages shall be reduced by the amount of the funds advanced, pro rata, such reduction of the principal balance to be effective on the date the funds are advanced by the Redeveloper to the City.

5.4 Redeveloper’s Commitment. Redeveloper shall make available not less than $5,250,000 toward acquisition of the Acquisition Parcels and shall provide a reasonably current financial statement of Redeveloper or an affiliate of Redeveloper evidencing the availability of such funds.

5.5 City Cooperation to Help Secure Development Financing. The City agrees that it will use its best efforts, without cost or expense to the City, except for payroll and internal administrative costs, to assist in securing the State Funding Commitment. The City will execute subordination documents, if required to obtain such financing.

5.5.1 City Subordination. In the event of a default under this Agreement, the City agrees that any remedies of the City shall be subordinated to the interests of any financial institution which holds the first mortgage on all or a portion of the Project.
5.6 Redeveloper’s Commitment for Institutional Financing. Redeveloper shall secure loan commitments in amounts sufficient to complete the Project from an institutional lender that shall (a) approve this Agreement; (b) allow the City to ensure that the City funds are spent appropriately and consistent with this Agreement; (c) allow the City to secure the City Funding Commitment with the second mortgage described in Section 5.3 hereof; and (d) provide for no contingencies to the commitment beyond those set forth in this Agreement, in form reasonably acceptable to the City within the later of (i) nine months from the date the Redeveloper receives all Approvals for the Project or (ii) three months after the date the State Funding Commitment is issued for the Project. Redeveloper has provided an expression of interest from an institutional lender for the Project attached hereto as Exhibit M. The City agrees to make reasonable amendments to this Agreement as required by the Redeveloper’s construction lenders provided such lenders shall approve this Agreement as amended pursuant to its request.

5.7 Necessary Governmental Approvals.

In addition to the environmental approvals referenced in Section 4.5, the Parties acknowledge that the construction of the Project will require a number of other governmental approvals and permits that will be necessary for the Redeveloper to obtain prior to the commencement of any work on the Site. Such approvals may include, but are not limited to local and county planning approvals, highway access permits, construction permits, and other various federal, state and local approvals. The Redeveloper agrees that it is its responsibility to obtain all planning approvals which may be necessary to commence and complete the Project. The City has provided an opinion to the Redeveloper that Redeveloper has, by virtue of its designation by the City as Redeveloper for the Project and the execution of the Original Agreement, sufficient interest in the land comprising the Project to have standing to make all applications to any governmental body and agency for site plan, subdivision and other governmental approvals necessary to develop the Project. The City will provide any written confirmation of Redeveloper’s right to make such applications requested by any public agency. The City will reimburse and hold the Redeveloper harmless from any extra costs or expenses incurred by Redeveloper for meeting attendance and preparation in the event that it is judicially determined that Board jurisdiction to review and/or approve an application for development does not exist until actual acquisition by the City of the property covered by the application. The City further agrees at its cost and expense promptly to seek a judicial determination that the Board jurisdiction does exist. Redeveloper shall join in such litigation and need only bear such costs as it chooses to incur. Accordingly, Redeveloper agrees that Redeveloper will apply for all local and County site plan approvals referenced above for the Project by April 10, 2001. This period may be extended to May 10, 2001 by the City Administrator if he determines, in writing, that Redeveloper is diligently working towards the submission of a complete application by such date. Redeveloper shall obtain all local and County site plan approvals by no later than thirty-six (36) months after Redeveloper shall have submitted the applications for such approvals provided (i) Redeveloper shall submit fully completed applications for the site plan approvals required for the Project as set forth above; (ii) Redeveloper shall actively and diligently proceed to obtain the approvals and (iii) Redeveloper shall report to the City on a monthly basis the status of such approvals. The City agrees that it will use its best efforts, without cost or expense to the City except for payroll and internal administrative costs, to assist or provide information in its possession to the Redeveloper when such assistance or information is needed by the Redeveloper.
to obtain necessary permits or approvals including, but not limited to, signing any and all applications for permits or other approvals necessary for the development of the Project and the Site. The City agrees to support and endorse any applications required hereunder.

Notwithstanding the foregoing, if it is determined that the Board did not have jurisdiction to hear Redeveloper’s application, the submission date for the commencement of the 36 months within which the Redeveloper must obtain the local and County site plan approvals shall be the date Redeveloper submits a subsequent application for which the Board has jurisdiction.

5.7.1 City Council Review.

In addition to the above approvals, it is understood that the City Council, as Redevelopment Agency, must review and approve the Project and its design pursuant to the Redevelopment Plan Ordinance and the Design Guidelines.

5.8 Project Schedule.

It is acknowledged by the parties to this Agreement that the construction of the Project will be a substantial undertaking on the part of the Redeveloper and that it will require the coordination of a multitude of efforts by the Redeveloper, the City and other governmental and private concerns. Furthermore, the Parties acknowledge that at this stage of the planning for the Project, no definitive construction schedules or deadlines have been established by the City or the Redeveloper because of the many undefined parameters and issues affecting the Project. It is also acknowledged that the Redeveloper has made an assessment of the time needed to construct the Project and established a schedule which is attached hereto as Exhibit F. Based on that assessment, the City and the Redeveloper agree to the provisions of 5.8.1. through 5.8.3. herein. It is agreed that the Project will be constructed in a single phase.

5.8.1 Commencement of Project.

The City acknowledges that the Redeveloper is not currently in a position to Commence Construction of the Project. Accordingly, the Redeveloper agrees that it will obtain the necessary building permits and commence Construction of the Project within 180 days of receipt of all financial commitments from the institutional lenders financing the Project and diligently prosecute the Project to completion. For purposes of this paragraph and this Agreement, "Commence Construction" shall mean any affirmative act or event undertaken by the Redeveloper to begin physical construction or site preparation work at the Site in furtherance of the plans for the construction of the Project.

5.8.2 Completion of Project.

The Redeveloper agrees that the expeditious completion of the Project is of critical concern to the City and that the public benefit to be derived from the Project includes significant general benefits to the community at large. Therefore, the Redeveloper agrees that it will meet each milestone, shown on the Project Schedule, will obtain building permits and
commence construction within the time period set forth in Section 5.8.1 and substantially complete construction of the Project within thirty-six months of Commencement of Construction subject to Force Majeure.

5.8.3 Certificate of Occupancy and Certificate of Completion.

Upon completion of the construction of each condominium unit, townhouse or building, the Redeveloper shall apply to the construction code official for a certificate of occupancy for said unit or space. The City agrees to issue a Certificate of Completion as to each condominium unit, townhouse or building, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of such condominium unit, townhouse or other building in accordance with the requirements of this Agreement. Such Certificate of Completion shall constitute a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to the obligations of the Redeveloper to construct such condominium, townhouse or other building. In the event that the City shall fail or refuse to provide such Certificate of Completion within thirty (30) days after written request by the Redeveloper, the City shall provide the Redeveloper with a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete such condominium unit, townhouse or building and what reasonable measures or acts will be necessary in the opinion of the notifying party in order for the Redeveloper to be entitled to such Certificate of Completion.

5.8.4 Exemption.

The City agrees that the Project will be exempt from any special assessment or impact fees except with respect to the creation of a Special Improvement District pursuant to N.J.S.A. 40:56-65, et seq.

5.8.5 Fees.

Redeveloper shall be subject to normal application fees for City approvals and review processes and shall be subject to any applicable incentive provisions of the design guidelines and such fees shall not be considered as part of the Redeveloper's Contribution.

5.9 Construction Assurances.

Redeveloper, once it commences construction of the Project, will proceed diligently to complete construction. The City and the Redeveloper agree that it is essential for the City to be assured that the Project will be completed once the Redeveloper commences construction as defined in paragraph 5.8.1.

5.10 Redeveloper’s Default.

The City shall have the right to declare the Redeveloper in default of this Agreement ("Default") in the event that any of the events set forth below in paragraph 5.11
occur. For purposes of this Agreement, the term Default shall mean a determination made by the City which is based on the occurrence of any of the events set forth in paragraph 5.11 and which may result in the City exercising any or all of its remedies under paragraph 5.11.3 of this Agreement to terminate the Redeveloper’s rights under this Agreement.

5.11 Default Events. The City shall have the right to declare the Redeveloper in Default of this Agreement in the event of the occurrence of any of the following:

1. A determination in the reasonable judgment of the City of any substantial failure to perform, or substantial defect in performance of the Redeveloper, under the terms of this Agreement; or

2. A final and unappealable determination by a court of competent jurisdiction that the Redeveloper is insolvent; or

3. The Redeveloper shall file a voluntary petition in bankruptcy;

4. A notice to the City by the Redeveloper that it has determined not to proceed with the Project, unless the Redeveloper has the right not to proceed, under the terms of this Agreement.

5. Any judgment as to the Redeveloper of bankruptcy, or any general assignment for the benefit of creditors by the Redeveloper, or any appointment of a receiver for the Redeveloper.

6. Abandonment of the Project by the Redeveloper which shall mean the failure to adequately staff or diligently prosecute the Project to ensure the achievement of each milestone in Exhibit F as shall be determined in the reasonable discretion of the City, subject to Force Majeure.

7. Failure by the Developer to meet the times for commencement and completion set forth in Section 5.8.1. and 5.8.2, or to meet the milestones contained in the Project Schedule set forth in Exhibit F (Items 10, 16, 17, 18 and 19). Failure to comply with any time frames contained in the Project Schedule with the sole exception of the milestones (Items 10, 16, 17, 18 and 19) shall not constitute a Default.

5.11.1 Default Notice.

In the event that the City declares the Redeveloper in Default pursuant to paragraphs 5.11, it shall do so by advising the Redeveloper in writing, pursuant to the notice provisions of paragraph 9.9, that it has declared Redeveloper in Default (hereinafter "Default Notice"). Absent such Default Notice, no declaration of Default shall be deemed binding against the Redeveloper. The Default Notice shall be given by the City within ten (10) days of action by the governing body of the City or its designee determining that the Redeveloper is in Default and shall state with specificity the reasons for declaring the Redeveloper in Default. Upon receipt of the Default Notice, the Redeveloper shall have fifteen (15) days in the case of a financial
obligation, to correct such failure or defect, or in the case of a non-financial obligation; the Redeveloper shall have twenty-five (25) days to commence to cure said failure or defect and shall diligently proceed to correct same in a reasonable period of time given the nature of the breach. In the event that the Redeveloper does not cure the Default as set forth herein, the City shall have the right to exercise the remedies set forth in paragraph 5.11.2. The Parties may agree, notwithstanding the provisions of this paragraph, to extend the period of time by which the Redeveloper must respond to the Default Notice or the period of time in which the Redeveloper must cure the Default.

5.11.2 Default Rights and Remedies.

In addition to any other rights and remedies which the City may have at law or in equity, upon the occurrence of a Default which has not been cured pursuant to Section 5.11.1, the City shall, to the fullest extent permitted by law, have each of the following rights and remedies:

a. The right to a writ in lieu of mandamus or an injunction or other similar relief against Redeveloper including its board of directors and its officers, agents or representatives.

b. The right to maintain any and all actions at law or suits in equity or other proper proceedings to enforce the curing or remedying of such default.

c. The termination of this Agreement in whole or in part upon expiration of the applicable cure period.

d. The right to dispossess Redeveloper and terminate Redeveloper's interests in the Project by any legal or equitable procedure or mechanism, including but not limited to summary dispossess in the case of a ground lease or foreclosure in the case of a mortgage, provided however any dispossess of Redeveloper shall always be subject to and limited by, and shall not defeat, render, invalid or limit in any way (i) the lien of any permitted institutional mortgage securing the construction financing for the Project, or (ii) any rights or interests provided by this Agreement for the protection of holders of such mortgages and shall not apply to any part of the Project for which a Certificate of Completion was issued by the City.

e. Obtain, retain and use for its own purposes the balance of all remaining funds in any escrow account established pursuant to this Agreement.

f. Delivery from the Redeveloper or its agents of the Environmental Data and Environmental Reports generated by Redeveloper, its consultants or other agents, as set forth in paragraph 4.2.2.1.

g. Right to de-designate Redeveloper.

In the event the City exercises any remedy which involves the de-designation of Redeveloper as redeveloper of the Project or which dispossesses Redeveloper and
terminates Redeveloper’s interest in the Project, the City shall, as a condition to such de-
designation or dispossession and termination of Redeveloper’ interest in the Project (i) repay to
Redeveloper any funds deposited with the City for deposit in court pursuant to Section 5.1.2.5 (e)
with respect to any parcel of land for which City intends to de-designate Redeveloper and (ii)
return the consideration paid by Redeveloper for any parcel of land from which City intends to
dispossess Redeveloper.

5.11.2.1 Rights and remedies of City Cumulative.

The rights and remedies of the City whether provided by this
Agreement or by law, shall be cumulative, and except as otherwise specifically provided by this
Agreement, the exercise by the Authority of any one or more of such rights or remedies shall not
preclude the exercise, at the same or at different times, of any other such rights or remedies for
the same default, or for the same failure in respect to any of the terms, covenants, conditions or
provisions of this Agreement or any of its remedies for any other default or breach.

5.11.2.2 City Default.

The failure by the City to meet any of its obligations hereunder
(“City Default”), including without limitation, failure to amend the Redevelopment Agreement,
failure to adopt the ordinances authorizing the City Funding Commitment and tax abatement,
pursuant to Sections 5.2 and 5.12.1, failure to give the notices of entry pursuant to Section
5.1.2.5 (c), failure to provide the City Funding Commitment given under Section 5.2, failure to
transfer property as required under this Agreement or failure to complete the Ocean Avenue
improvements pursuant to Section 6.3.2. shall constitute a default by the City. It is understood
and agreed that the City’s failure to procure the County Resolution under Section 3.3.1.(d) shall
not be a City Default. The City may cure any City Defaults provided the City commences cure
within 25 days of the date Redeveloper notifies the City the City is in default under this
Agreement and the City diligently proceeds to cure the City Default in a reasonable period of
time given the nature of the default. In the event the City does not cure the City Default as set
forth herein, the Redeveloper shall be entitled to monetary damages in an amount equal to the
reasonable third party out-of-pocket expenses incurred by Redeveloper through the end of the
cure period. In view of the fact that the Redeveloper has agreed to limit its monetary damages to
out-of-pocket expenses and that damages, in any event, may not be an adequate remedy,
Redeveloper shall be entitled to all equitable remedies, including specific performance of this
Agreement as an alternative to availing itself of its right to monetary damages.

5.11.3 Rights of Institutional Mortgagee.

Any financial institution lending money on the security of real property in
the Project shall be entitled to the protection of N.J.S.A. 55:17 providing for notification, right to
cure, right to possession, right to assume control of mortgagor, right to enter into possession of
and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the
underlying loan obligation without first proceeding with foreclosure, right to proceed to
foreclosure, separately from or together with suit on the underlying obligation, and such other
rights all as specifically provided in N.J.S.A. 55:17-8.
This Agreement as a lease or financial arrangement made by a governmental body or agency of the State of New Jersey pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the project, as though such default or foreclosure had not occurred, subject to the provision of N.J.S.A. 55:17.

The City agrees to execute subordination and attornment documents that may reasonably be required by any institutional lender and further to make any technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

5.11.4 Rights of Mortgagees.

Notwithstanding any other provision of this Agreement, the holder of any mortgage (including any such holder who obtains title to the Site or any part thereof), or any other party who thereafter obtains title to the Site or such part from or through such holder or any purchaser at foreclosure sale shall in no way be obligated by the provisions of this Agreement to construct or complete the Project except to secure and make the Project site safe, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any deeds conveying the Project Parcels to Redeveloper be construed to so obligate such holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted under the Redevelopment Plan or approved by the City. Any property which is not under construction shall be returned to the City for the consideration paid, subject to the prior rights of institutional mortgagees.

5.11.4.1 Notice to Mortgagee.

Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper of its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage at the last known address of such holder shown in the land records of the County.

5.11.4.2 Mortgagee’s Right to Cure Default and Assume Developer’s Obligations.

After any breach or default referred to in Section 5.11, each holder shall (insofar as the rights of the City is concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to its mortgage, provided that, if the breach or default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to require the holder to obtain the City’s approval, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the City, to receive the certificate of
occupancy for the units or buildings within the Project and the Certificates of Completion as set forth in Section 5.8.3 hereof.

5.12 Tax Assessments. The Parties understand that pursuant to law, the Tax Assessor for the City of Long Branch must act independently with respect to the establishment of assessments on the value of the improvements to be constructed pursuant to this Agreement. The City of Long Branch will cause the Tax Assessor to meet with and discuss anticipated assessments on the proposed improvements as well as comparable properties for basis of decision-making by the Redeveloper.

5.12.1 Tax Abatement. The Parties shall enter into an agreement for payments in lieu of taxes on improvements for all rental units and retail elements in accordance with the Five Year Exemption and Abatement Law (N.J.S.A. 40A:21-10c), to be phased in as follows:

- year one - 0%
- year two - 20%
- year three - 40%
- year four - 60%
- year five - 80%
- year six and thereafter - 100%.

The “for sale” units shall not receive any abatement and shall pay such taxes as provided by law.

5.13 Restrictions on Transfer. Prior to the issuance of a Certificate of Completion for the Project or any part thereof, pursuant to N.J.S.A. 40A:12A-9(a), the Redeveloper shall be without power to sell, lease or otherwise transfer the Project or any such part, without the written consent of the City, except the Redeveloper may enter into Contract to sell or lease individual apartments, condominium units, townhouse or commercial space to Third Parties. This prohibition shall apply to any sale, transfer, pledge, or hypothecation by the Redeveloper of all or substantially all of its assets or all or substantially all of its stock, or if the Redeveloper is a publicly traded corporation, a merger of the Redeveloper with another corporation or a sale of ten percent (10%) or more of its stock or a sale of substantially all its assets; or the sale, transfer, pledge, or hypothecation of fifty percent (50%) or more of the stock of the Redeveloper if the Redeveloper's stock is not publicly traded; or the sale, transfer, pledge, or hypothecation of fifty percent (50%) or more of the beneficial ownership interest in the Redeveloper if the Redeveloper is a partnership. Any of the foregoing cases whether or not accomplished by one or more related or unrelated transactions, constitute a prohibited assignment. The foregoing shall not apply, however, to a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of the Redeveloper.
5.14 Subsequent Conveyance by Redeveloper. Subject to the requirements of any agreement for payments in lieu of taxes, upon issuance of a Certificate of Completion for any portion of the Project, the Redeveloper shall have the right to sell, lease or otherwise transfer the real property of such portion of the Project thereof without the consent of the City.

SECTION 6. TITLE ISSUES

6.0 Title Issues Generally. The Parties acknowledge that there are numerous issues concerning the status of the title to the Project Parcels. These issues, as of the date of this Agreement, require investigation by the Redeveloper in order to ascertain their status and the need to correct or address them. These title issues consist of a variety of concerns which may include, but are not limited to, issues related to:

1. Tidelands Restrictions
2. Riparian Rights
3. Easements of Record
4. Sufficiency of Title Obtained Through Tax Foreclosure
5. Potential Deed Restrictions
6. Vacation of Dedicated Streets
7. Other Title Issues Generally

The Redeveloper acknowledges that not all title issues can be eliminated by the efforts of the City due to the fact that certain of these issues are such that unilateral action of the City will not eliminate or affect such issue. The City acknowledges however, that it has the ability to cure or eliminate some of the title issues by taking certain actions under its exclusive control. In light of the above, the Redeveloper agrees to undertake such reasonable actions as are necessary to cure, correct or otherwise address title issues regarding the Project Parcels that cannot be resolved by unilateral action of the City unless the Redeveloper determines, in the exercise of reasonable discretion, that the costs thereof are unreasonable. The City, in return, agrees to undertake such actions as are necessary to resolve such title issues that it has the ability, through its own unilateral action, to cure, resolve, correct or remove; provided, however, that the City shall not be responsible to expend any funds other than the City Funding Commitment, its own attorneys fee and payroll and internal administrative costs in connection with any such acts to clear title. The Parties agree, to the extent that they have been able to do so as of the date of this Agreement, that they have addressed the title issues below in paragraphs 6.1 through 6.5.

6.1 State Title Issues. The Parties agree that there may be certain title issues regarding the Project Parcels and the Site which must be submitted to and addressed by the State of New Jersey, and more specifically NJDEP. As of the date of this Agreement the Parties have identified the following issues that may fall into this category: Riparian Rights, Tidelands, Wetlands (both freshwater and coastal), and other issues. The Parties acknowledge that this list may not be all-inclusive. The Redeveloper agrees that they will undertake its best efforts to address these issues and acknowledges that it will not hold the City responsible in any way for the resolution of these issues prior to the Closing Date and the conveyance of title to the Project Parcels, however, the Redeveloper shall not be obligated to undertake such efforts if it determines, in its sole discretion, the cost thereof to be unreasonable. The City, however, agrees
that, without cost or expense to the City, other than payroll and internal administrative costs, its own attorneys fees and the City Funding Commitment, it will assist and use its best efforts to facilitate the undertakings of the Redeveloper to address the state title issues and will provide any information, documents, or other assistance necessary regarding the Project Parcels, to the Redeveloper in the course of the Redeveloper’s action undertaken to address such issues.

6.2 Tax Foreclosure Issues. 6.2 Tax foreclosure issues may be dealt with by the City through its power of eminent domain subject to the limit of the City Funding Commitments.

6.3 Vacation of Streets. 6.3 The Site contains a number of lots and blocks which may contain between them public rights of way and dedicated streets as set forth on the official tax map of the City which is made a part of this Agreement by reference. The City acknowledges that in order for the Redeveloper to adequately develop the Site in accordance with the Project, certain of the streets and other publicly dedicated rights of way may need to be eliminated or modified, but only where consistent with the Design Guidelines. The streets and other rights of way that, as of the date of this Agreement, the Parties acknowledge and agree should be eliminated or modified are identified and described on Exhibit K to this Agreement. The City agrees that it is in the best interests of the public that these rights of way and streets be eliminated or modified in order to allow the Project to be completed. Accordingly, the City agrees to take all necessary steps, within 30 days of request by Redeveloper, after waiver or meeting of the State Funding Commitment, to commence adoption of all ordinances, resolutions or other actions that may be necessary to vacate or alter such streets and other public rights of way.

6.3.1 Dedication of Streets. 6.3.1 The City agrees to accept the dedication of any new streets created as part of the approved Project.

6.4 Deed Restrictions. 6.4 If any deed restrictions interfere with the proposed use of the Project Parcels, the City will use its right of eminent domain to eliminate them, subject to the limitation of the City Funding Commitments.

6.5 Undetermined Title Issues. 6.5 The City herein acknowledges the importance of Redeveloper obtaining the Project Parcels with clear title and further acknowledges the importance of clear title to the successful completion of the Project. To the extent that the Parties have not herein identified any issue, problem or concern related to the title to any or all of the Project Parcels, the City, without cost or expense to the City other than payroll, internal administrative costs and its own attorney’s fees, agrees it will cooperate and give any assistance necessary to the Redeveloper in order to clear or remove any title problem subsequently identified in order to facilitate the completion of the Project. If the City must use its eminent domain powers to obtain title, its costs, including acquisition, legal and expert witness fees, court and other costs in so doing shall be deducted from the City Funding Commitment amount set forth in paragraph 5.2.

6.6 Limitation On Use Of Eminent Domain. 6.6 Pursuant to N.J.S.A. 40A:12A-9a, upon completion of the Project, the conditions determined to exist at the time the area was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and
improvements thereon shall no longer be subject to eminent domain as a result of those determinations.

SECTION 7. NEIGHBORHOOD ISSUES

7.0 Neighborhood Impacts. 7.0 The Redeveloper acknowledges that the construction and completion of the project will have certain impacts on the neighborhoods in the vicinity of the Site. Although it is anticipated that the Project will provide many positive effects on the Community, it is also recognized that it may result in some temporary inconveniences during the time that construction takes place and for a short time thereafter. Therefore, the Redeveloper, in concert with the City, desire to take all steps that are reasonably necessary in order to minimize any potential negative effects that the construction or completion of the Project may produce.

7.1 Traffic. 7.1 The Redeveloper and the City agree that the direction, flow and amount of traffic in and around the site is an issue to be addressed during the construction of the Project as well as after its completion. The Redeveloper will address the specific concerns related to traffic through the application for subdivision and site plan approval to be filed before the Board pursuant to its responsibility to perform a subdivision and site plan review of the Project as the designee of the City.

7.2 Illumination, Noise and Pollution. The Redeveloper commits to follow all applicable construction laws, regulations and standards in the industry to address concerns relating to illumination, noise and pollution.

7.3 Security and Safety. 7.3 The Redeveloper further commits to be cognizant of and address all traffic safety issues by complying with all applicable traffic safety provisions both during and after construction of the Project.

7.4 CAFRA. 7.4 The requirements of CAFRA shall be addressed through compliance with the Redevelopment Area Permit, as set forth in N.J.A.C. 7:7-7.5 (30 N.J.R. 645 (1998)).

SECTION 8. JOBS AND BUSINESS OPPORTUNITIES

8.0 Purpose. 8.0 The City and the Redeveloper recognize that one of the primary purposes of the Project is to foster and create an improved economic climate in the City and to provide its residents with enhanced opportunities for economic well-being. One of the most fundamental aspects of this purpose is to provide increased employment opportunities to the residents of the City such that they will be in a better position to provide for that economic well-being. Accordingly, the City and the Redeveloper agree herein to utilize reasonable efforts to hire City residents wherever feasible.

SECTION 9. MISCELLANEOUS

9.0 Force Majeure. 9.0 Failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute a Default or breach of this
Agreement: labor, disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, extreme weather conditions, accidents, war (whether or not declared), riots, acts of God, acts of government (including without limitation any agency or department of the United States of America or the State of New Jersey and failure of the City to perform in accordance with the terms of this Agreement), acts or omissions of other parties (including litigation by third parties) or other causes which are reasonably beyond the control of the defaulting or breaching Party.

9.1 Agreement Provisions.

9.1.1 Paragraph Headings. 9.1.1 The headings and numbering of paragraphs and sections of this Agreement are set forth for ease of reference only and are not to be construed or considered to impart meaning to any provision of this Agreement.

9.1.2 Governing Law. 9.1.2 This Agreement shall be governed by and construed under the laws of the State of New Jersey and any litigation relating to this Agreement shall be brought in the Superior Court of New Jersey and venued in the County of Monmouth after the parties have availed themselves of mediation procedures.

9.1.3 Amendments to Agreement. 9.1.3 This Agreement represents the entire agreement by and between the Parties with respect to the development of the Site, the construction of the Project and the conveyance of the project Parcels. No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the City and the Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in the amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect.

9.1.4 Severability. 9.1.4 Should any provision, term, paragraph or other portion or portions of this Agreement be held by any court of competent jurisdiction to be in violation of any applicable law, or against public policy or held to be null and void for any reason whatsoever, such portion shall be deemed severable so that such determination, unless it prohibits the conveyance of the Project Parcels to the Redeveloper or development of the Project, shall not affect the validity of any other provisions of this Agreement, and such other provisions shall be deemed to be in full force and effect and binding on the Parties unless amended in accordance with paragraph 9.1.3 of this Agreement.

9.1.5 Incorporation of Recitals. 9.1.5 The recitals set forth in section 1 of this Agreement are hereby incorporated by reference and are considered part of this Agreement.

9.2 Condemnation/Casualty. 9.2 In the event that all or any substantial portion of the Site is condemned or taken by Eminent Domain or is damaged or destroyed by casualty prior to the Closing, the Redeveloper may, at its option, terminate this Agreement by written notice to the City within thirty (30) days after the Redeveloper is notified by the City of the condemnation,
taking, damage or casualty. For purposes of this provision "substantial portion" shall be defined as any portion which is equal to or in excess of ten percent (10%) of the total acreage of the Project Parcels or that portion which, in the sole opinion of the Redeveloper, would prevent the successful completion of the Project as envisioned by this Agreement. The City agrees not to condemn or take title by exercise of its eminent domain powers to any portion of the Site without the Redeveloper's consent.

9.3 Cooperation by City. 9.3 In the event that a Third Party commences litigation or otherwise challenges the validity or legality of this Agreement and its terms or the development of the Project as provided herein, the City agrees, without cost or expense to the City other than payroll and internal administrative costs, that it will fully cooperate with and give full assistance to the Redeveloper in the defense or handling of such litigation or challenge, including but not limited to, cooperation with Redeveloper's attorneys, consultants or other agents engaged to represent the Redeveloper in such action. In the event the City is required to engage outside counsel in the defense or handling of such litigation, as a result of any act or omission of Redeveloper, Redeveloper agrees to reimburse the City for the reasonable costs and attorneys' fees the City incurs as a result of engaging outside counsel. Any outside counsel so engaged by the City is likewise bound by the cooperation provisions of this paragraph.

9.4 City Consultants reports and Services. 9.4 The City makes no representations to Redeveloper with respect to the accuracy or validity of any reports, data or documents or services rendered by any of the city's consultants, advisors or experts.

9.5 Waivers. 9.5 Any right or remedy which any party may have under this Agreement may be waived in writing by the relevant party without the execution of a new or supplemental agreement. Except as otherwise provided in this Agreement, said right of waiver shall include the right to waive a default. No waiver made by any party with respect to the performance, or manner or time thereof, of any obligation of any other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition of its own obligation beyond those expressly waived and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver.

9.6 Commissions. 9.6 The Parties agree that no commissions to any broker, agent, or any other intermediary is due hereunder, and further agree to indemnify and save harmless the other party in the event of any claim whatsoever for any commission or other remuneration payable or alleged to be payable by any broker, agent or other intermediary.

9.7 No Significance of Party Drafting. 9.7 The Parties agree that in the construction or interpretation of this Agreement no significance shall be attributed in presumption or otherwise to the identity of the party drafting the provision or provisions in question.

9.8 Recordation. 9.8 A short form memorandum of this Agreement, and any modifications thereof or additions thereto, in the such form attached hereto as Exhibit L, may be duly recorded by Redeveloper in the Book of Deeds of the county of Monmouth and the cost of
such recordation and the cost of any and all federal revenue stamps, which legally must be
attached to any of said papers, shall be paid by the Redeveloper.

9.9 Notices. 9.9 Any notice provided or required to be given under this Agreement
must be in writing and shall be served (and shall be deemed to have been served) (1) by hand
delivering a copy thereof to the party being served in person or by commercial courier, or by (2)
facsimile, evidenced by confirmed receipt, to the person or persons set forth below for each party
to this Agreement.

As to the City:

    Mayor of City of Long Branch
    Municipal Building
    344 Broadway
    Long Branch, NJ 07740

With a copy to:

    Municipal Attorney, City of Long Branch
    Municipal Building
    344 Broadway
    Long Branch, New Jersey 07740
    Greenbaum, Rowe, Smith, Ravin, Davis & Himmel LLP
    Metro Corporate Campus I
    99 Wood Avenue South
    Iselin, New Jersey 08830-2712

As to the Redeveloper:

    c/o The Applied Companies
    5 Marine View Plaza, Suite 500
    Hoboken, New Jersey 07030
    Attn: Mr. Joseph Barry

With a copy to:

    Barbara Of Stack
    General Counsel
    The Applied Companies
    5 Marine View Plaza
    Hoboken, New Jersey 07030

    From time to time either party may designate a different person or address for all the
    purposes of this Notice provision by giving the other party no less than ten (10) days notice in
    advance of such change of address in accordance with the provisions hereof.
9.10 Future Access. The Parties undertake all actions necessary to ensure that in the event of future development this Project and any future project shall have necessary and appropriate access to public streets.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date appearing on page one (1) hereof.

Attest:                        THE CITY OF LONG BRANCH

----------------------------------  By: ----------------------------------
Title

Attest:

----------------------------------  By: ----------------------------------
Title
EXHIBITS

EXHIBIT A
   Boundary Tax Map

EXHIBIT B
   List of Acquisition Parcels - for Phases I & II

EXHIBIT C
   Budget for Phase I

EXHIBIT D
   List of City owned Parcels - Phase I & II

EXHIBIT E
   Project depicted in 11x17 sheets

EXHIBIT F
   Project Schedule with Designated Milestones

EXHIBIT G
   Title Policies For City Owned Parcels

EXHIBIT H
   Indemnification and Hold Harmless Agreement

EXHIBIT I
   Note

EXHIBIT J
   Mortgage

EXHIBIT K
   Streets to be Vacated

EXHIBIT L
   Short Form Memorandum of Agreement

EXHIBIT M
   Qualification of Retail Entity Selected by Applied

EXHIBIT N
   Standards of Retail Leasing

EXHIBIT O
   Standards for Public Frontage Street Improvements
ENVIRONMENTAL PROTECTION

Law Review and Journal Commentaries
Implications of the New CAFRA Legislation. Michael J. Gross, Jeffrey S. Beenstock, 168
N.J.Law. 13 (Mag.) (April 1995).

7:7-7.4 Long Branch Redevelopment Zone Permit

(a) The construction of any development regulated under N.J.A.C. 7:7-2.1 within the
Redevelopment Zone of the City of Long Branch, as defined in the Redevelopment Plan
Ordinance of the City of Long Branch and as described at (a)1 below, is authorized, provided the
conditions at (b) through (i) below are met:

1. The Redevelopment Zone of the City of Long Branch comprises that area
circumscribed by a line start-ing at the point of intersection of North Bath Avenue and Ocean
Boulevard, then moving northward along Ocean Boulevard to the intersection of Ocean
Boulevard and Chelsea Avenue. Then move westward along Chelsea Avenue to the intersection
of Chelsea Avenue and Sec-ond Avenue. Then move northward along Second Ave-nue to the
intersection of Second Avenue and Broad-way. Continue across Broad-way in a northerly
direction along Union Avenue until Union Avenue makes a 90 degree turn westward. At this
point, continue in a northerly direction until meeting the southerly property line of the abandoned
Conrail Railroad right-of-way. At this point, follow the southerly side of the right-of-way
eastward to Long Branch Avenue. Continue in a northerly direction along Long Branch Avenue
until the northerly side of the Conrail right-of-way is reached. From this point, follow the
northerly side of the Conrail right-of-way westward to a point which intersects the westerly fence
line of the New Jersey Natural Gas facility. Continue in a northerly direction along the fence line
past the foot of Brook Street (C.P. Williams Way). Continue to follow fence in northern and
eastern directions along the property line, which divides New Jersey Natural Gas/Jersey Central
Power & Light property from City of Long Branch Hous-ing Authority property, to Central
Avenue. Continue in an easterly direction to the Open Brook. Follow the Open Brook in a
northerly direction to the point of intersection with the property line of the former Jerry Morgan
Park, known as Block 309, Lot 6.02. Follow this property line in an easterly and southerly
direction until Long Branch Avenue is met. Continue in a southerly direction along Long Branch
Avenue to the intersection of Long Branch Avenue and Cooper Avenue. Continue in an easterly
direction along Cooper Avenue until the intersection of Cooper Avenue and Witmer Place. Con-
tinue northward along Witmer Place until the intersection of Witmer Place and Sea View
Avenue. Follow Sea View Avenue eastward until meeting the high water mark of the Atlantic
Ocean. Follow the mean high water line inclusive of existing Pier riparian lands, known as Block
298, Lots 1.01 and 1.02, southward until reaching a point created by the intersection of the mean
high water line and a line projected from the right-of-way for North Bath Avenue. Then turn
westward along this line to North Bath Avenue to the point of origin, which is the intersee-
tion of Ocean Boulevard and North Bath Avenue.
(b) The development shall be in compliance with the Redevelopment Plan Ordinance and the Design Guidelines Ordinance of the City of Long Branch.

(c) The development must be approved by the Planning Board of the City of Long Branch, or, if it is a public development, by the City Council or the Redevelopment Agency of the City of Long Branch.

(d) The Long Branch Redevelopment Zone Permit established under this section does not apply to applications for development before the Board of Adjustment of the City of Long Branch or any other agency not specified in (c) above.

(e) If the Planning Board, the City Council, or the Redevelopment Agency of the City of Long Branch approves a development with a variance or waiver from a provision of the Redevelopment Plan Ordinance or the Design Guidelines Ordinance of the City of Long Branch, and if the Department concurs in writing with such variance or waiver, the development is authorized under this section. The Department shall concur if the waiver or variance complies with the Rules on Coastal Zone Management, N.J.A.C. 7:7E, and if, notwithstanding the waiver or variance, the developments within the Redevelopment Zone continue to comply individually and collectively with the Rules on Coastal Zone Management.

(f) Construction, including site preparation, of a development proposed under this section shall not be started until either 45 days after receipt by the Department of the final Planning Board approval under (h) below or 90 days after receipt by the Department of notice under (i) below, whichever is applicable.

(g) For any development within the Redevelopment Zone of the City of Long Branch that does not meet the conditions for approval under this section, the applicant shall, pursuant to the applicable requirements of this chapter, either obtain from the Department a CAFRA individual permit or meet the requirements for authorization under a CAFRA general permit or permit-by-rule.

(h) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch requiring Planning Board approval are as follows:

1. The Planning Board of the City of Long Branch shall provide notice to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, that an application for a development within the Redevelopment Zone has been filed with the Planning Board as soon as the Planning Board determines under the Municipal Land Use Law, N.J.S.A. 40:SSD-10.3, that the application is complete for review. This notice shall include a copy of the application and of the development plan(s).
2. If the Department intends to comment on the development application prior to the Planning Board's taking action on the application, it shall provide the Planning Board with written comments within 30 days after receipt by the Department of notice under (h)1 above. The Department's comments may include suggestions regarding how the development should be modified in order to meet the requirements of the Long Branch Redevelopment Zone Permit.

3. The applicant shall provide notice, via certified mail, to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, of the date of the Planning Board hearing on the development application at least 10 days prior to the hearing.

4. The applicant shall provide notice of the preliminary and final Planning Board approvals to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, within seven days of the Planning Board's adoption of each memorializing resolution. This notice shall include a copy of the approved development plan(s) and of the resolution.

5. If the Department determines that the Long Branch Redevelopment Zone Permit under this section is not applicable and that a CAFRA individual permit, general permit or permit-by-rule is instead required, the Department shall, within 45 days of its receipt under (h)4 above of notice of preliminary and final Planning Board approval, so notify the applicant and the Planning Board.

(i) The notification requirements for developments within the Redevelopment Zone of the City of Long Branch not requiring Planning Board approval are as follows:

1. The City Council or the Redevelopment Agency of the City of Long Branch shall provide notice to the Land Use Regulation Program, Supervisor of the Monmouth County Region, NJ Department of Environmental Protection, PO Box 439, Trenton, New Jersey 08625-0439, that a development within the Redevelopment Zone is under consideration by the City Council or Redevelopment Agency 90 days prior to the solicitation of bids for construction of the development. This notice shall include a copy of the development plan(s).

2. If the Department intends to comment for the purpose of suggesting modifications to the development plan(s), it shall provide the City Council or the Redevelopment Agency with written comments within 30 days after receipt by the Department of notice under (i)1 above.

3. If the Department determines that the Long Branch Redevelopment Zone Permit under this section is not applicable and that a CAFRA individual permit, general permit or permit-by-rule is instead required, the Department shall, within 90 days of its receipt under
(i) 1 above of notice that a development is under consideration by the City Council or the Redevelopment Agency, so notify the City Council or the Redevelopment Agency.

(j) The Department shall publish notice in the DEP Bulletin of its decision under (h)5 or (i)3 above that the Long Branch Redevelopment Zone Permit is applicable or inapplicable.

(k) Subject to the limitation on third-party hearing rights specified in (k)5 below, any interested person who considers himself or herself aggrieved by a decision of the Land Use Regulation Program under (h)5 or (i)3 above may, within 10 days of publication of such decision in the DEP Bulletin, appeal to the DEP Commissioner by submitting a written request for a hearing addressed to the Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Department of Environmental Protection, 401 East State Street, PO Box 402, Trenton, New Jersey 08625-0402 and including a completed "Administrative Hearing Request Checklist and Tracking Form for Permits" incorporated herein by reference as chapter Appendix A.

1.  The request for a hearing shall include the appropriate Department file number and, where the request is submitted by someone other than the applicant, evidence that a copy of the hearing request has been mailed to the applicant.

2.  The request for a hearing shall include a statement describing, in detail, how the person submitting the request is aggrieved by the decision, and which findings of fact and conclusions of law are being challenged.

3.  The person submitting the request for a hearing shall mail a copy of the request to the Monmouth County Clerk and the City of Long Branch Clerk, and shall include proof of such mailing with the hearing request submitted to the Department.

4.  A hearing request may include a request that the permit be stayed.

5.  Nothing in this subsection shall be construed to provide a right to an adjudicatory hearing in contravention of N.J.S.A. 52:14-3.1 through 3.3 (P.L. 1993, c.359).

6.  The procedures set forth at N.J.A.C. 7:7-5.2 through 5.4 shall govern the response to the appeal request, action on appeal request, and review of the revised application to settle appeal.


7:7-7.4
ENVIRONMENTAL PROTECTION

Law Review and Journal Commentaries
7:7-7.5 Coastal general permit for amusement pier expansion

(a) This coastal general permit authorizes the expansion of an existing, functional amusement pier as defined at N.J.A.C. 7:7-1.3, provided that the expansion complies with the following:

1. The amusement pier was-existing and functional as of July 19, 1993;

2. The expansion does not exceed by more than 25 percent the footprint of the amusement pier as it existed on July 19, 1993;

3. The expansion is located more than 150 feet land-ward of the mean high water line;

4. The expansion will not eliminate or affect existing, direct public access from the boardwalk to the beach, unless for each access point eliminated another access point is provided immediately adjacent to the expanded amusement pier;

5. The expansion includes a provision for public seating and viewing at the terminal end of the expansion;

6. The expansion may consist of either structures or beach grading which does not result in change in existing beach elevations of more than one foot;

7. The expansion shall not result in excavation or grading of a dune; and

8. The expanded amusement pier shall continue to be used only for amusements.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. Three copies of a site plan(s) showing the following:
   i. The amusement pier as it existed on July 19, 1993, as it exists at the time of the application, and as it will appear with the proposed expansion;
   ii. Existing and proposed direct public access points from the boardwalk to the beach;
   iii. The proposed public seating and viewing area at the terminal end of the expansion; and
   iv. Location of the mean high water line of the Atlantic Ocean at or in proximity to the site; and
2. A Compliance Statement prepared in accordance with N.J.A.C. 7:7-6, demonstrating how the proposed expansion complies with (a) above, including supplemental documents as appropriate, such as maps or surveys.


7:7-7.6 Coastal general permit for beach and dune maintenance activities

(a) This coastal general permit authorizes beach and dune maintenance activities provided:

1. The beach and dune maintenance activities are conducted in accordance with Best Management Practices as defined by the Department in the Coastal Zone Management rules at N.J.A.C. 7:7E-3A.1, 3A.2 and 3A.3 (routine beach maintenance, emergency post-storm beach restoration, and dune creation and maintenance, respectively); and

2. The beach and dune maintenance activities shall not be conducted in any wetlands.

(b) In addition to the application and information required under N.J.A.C. 7:7-7.3, the following information shall be submitted:

1. A plan showing the specific location of all proposed beach and dune maintenance activities;

2. The name, title, address and telephone number of the persons responsible for supervising the proposed activities to ensure compliance with N.J.A.C. 7:7E-3A.1, 3A.2 and 3A.3; and

3. The schedule for conducting the specific beach and dune maintenance activities.


7:7-7.7 Coastal general permit for voluntary reconstruction of certain residential or commercial development

(a) This coastal general permit authorizes the voluntary reconstruction of a non-damaged legally constructed, currently habitable residential or commercial development landward of the existing footprint of development, provided that:

1. Such reconstruction is in compliance with existing requirements or codes of municipal, State and Federal law;
2. The reconstruction does not result in the enlargement of the footprint of the development;

3. In the case of residential reconstruction, the reconstruction does not result in an increase in the number of dwelling units;

4. In the case of commercial reconstruction, the re-construction does not result in an increase in the number of parking spaces or equivalent parking area associated with the development;