REDEVELOPMENT AGREEMENT

By and Between

BOROUGH OF BELMAR

and

SACHEM POND, LLC

Dated as of April 7, 2020

THIS REDEVELOPMENT AGREEMENT (this "**Agreement**" or "**Redevelopment Agreement**") dated as of this 7th day of April, 2020 (the "**Effective Date**"), by and between the Borough of Belmar (the "**Borough**"), in the County of Monmouth, State of New Jersey, having its offices at 601 Main Street, Belmar, New Jersey 07719 and **SACHEM POND, LLC** (the "**Redeveloper**"; together with the Borough, the "**Parties**," and each a "**Party**"),

W I T N E S S E T H

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

WHEREAS, on April 4, 2017, the Borough Council adopted Resolution 2017-74 in accordance with *N.J.S.A.*40A:12A-6 authorizing and directing the Planning Board of the Borough (the "**Planning Board**") to conduct an investigation to determine whether certain area of the Borough commonly known as Block 95, Lots 7-13 on the tax maps of the Borough satisfies the criteria to be designated as an "area in need of redevelopment" without the power of condemnation; and

WHEREAS, on May 4, 2017, the Borough Council adopted Resolution 2017-84 in accordance with *N.J.S.A.*40A:12A-6 authorizing and directing the Planning Board to conduct an investigation to determine whether certain area of the Borough commonly known as Block 95, Lot 5 (together with Block 95, Lots 7-13, the "**Study Area**") on the tax maps of the Borough satisfies the criteria to be designated as an "area in need of redevelopment" without the power of condemnation; and

WHEREAS, on June 19, 2017, the Planning Board held a public hearing in accordance with *N.J.S.A.* 40A:12A-6 at which it reviewed the findings of a report prepared by Francis Reiner, LLA/PP, entitled "Preliminary Investigation for Determination of an Area in Need of Redevelopment for Block 95, Lots 5, 7, 8, 9, 10, 11, 12, & 13," dated June 2017 (the "**Redevelopment Study**,") which determined that the Study Area met the criteria for designation as an "area in need of redevelopment" under the Redevelopment Law, and adopted a resolution which endorsed the findings of the Redevelopment Study and recommended to the Borough Council, pursuant to *N.J.S.A.* 40A:12A-6, that the Study Area be designated as an "area in need of redevelopment" (the "**Redevelopment Area**"); and

WHEREAS, at its June 19, 2017 meeting, the Planning Board further recommended that the Borough consider whether Block 95, Lots 14 and 15 on the Borough tax maps be considered as an "area in need of redevelopment" pursuant to the Redevelopment Law; and

WHEREAS, on August 1, 2017, the Borough Council adopted Resolution 2017-140 in accordance with *N.J.S.A.*40A:12A-6 authorizing and directing the Planning Board to conduct an

investigation to determine whether certain area of the Borough commonly known as Block 95, Lots 14 and 15 (together with Block 95, Lots 5 and 7-13, the "**Amended Study Area**") on the tax maps of the Borough satisfies the criteria to be designated as an "area in need of redevelopment" without the power of condemnation; and

WHEREAS, at its September 18, 2017 meeting, the Planning Board held a public hearing in accordance with *N.J.S.A.* 40A:12A-6 at which it reviewed the findings of a report prepared by Francis Reiner, LLA/PP, entitled "Preliminary Investigation for Determination of an Area in Need of Redevelopment for Block 95, Lots 5, 7, 8, 9, 10, 11, 12, 13, 14 & 15" dated August 2017 (the "**Amended Redevelopment Study**") which determined that the Amended Study Area met the criteria for designation as an "area in need of redevelopment" under the Redevelopment Law, and endorsed the findings of the Amended Redevelopment Study and recommended to the Borough Council, pursuant to *N.J.S.A.* 40A:12A-6, that the Amended Study Area be designated as an "area in need of redevelopment" (the "**Amended Redevelopment Area**"), without the power of condemnation; and

WHEREAS, on October 17, 2017, the Borough Council adopted Resolution 2017-178 which designed the Amended Study Area as an "area in need of redevelopment" pursuant to the Redevelopment Law; and

WHEREAS, on November 6, 2019, the Borough Council introduced Ordinance 2019-35, which was duly referred to the Planning Board, and subsequently adopted at a meeting on December 16, 2019, in accordance with the Redevelopment Law, implementing a redevelopment plan entitled the "Block 95 Redevelopment Plan" prepared by DMR Architects, and finalized by Leon S. Avakian, Inc., and dated October 11, 2019 as revised through December 2019 (the "**Redevelopment Plan**") for the Amended Redevelopment Area; and

WHEREAS, Redeveloper has made application to be designated as the redeveloper for the Property, for which Redeveloper is the owner, and Redeveloper has provided information consisting of documentation evidencing financial responsibility and capability with respect to the Project (as defined herein), estimated total development costs, and estimated time schedule for commencement and completion of construction; and

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

WHEREAS, on April 7, 2020 the municipal council of the Borough of Belmar (the "**Borough Council**") adopted a resolution designating Redeveloper as the Redeveloper for the Project and authorizing the execution of this Redevelopment Agreement.

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

ARTICLE I
DEFINITIONS AND INTERPRETATION

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

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

Agreement
Amended Study Area
Amended Redevelopment Area
Amended Redevelopment Study
Borough
Borough Council
Effective Date
Party or Parties
Planning Board
Redeveloper
Redevelopment Agreement
Redevelopment Area
Redevelopment Law
Redevelopment Plan
Redevelopment Study
Study Area

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

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

"**Affordable Housing Regulations**" shall be as defined in Section 8.11.

"**Affordable Housing Requirements**" shall be as defined in Section 8.11.

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

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

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

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

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

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

"**Borough Indemnified Parties**" shall be as defined in Section 10.1.

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

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

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

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

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

"**Declaration**" shall be as defined as in Section 6.3.

"**Default Notice**" shall be as defined as in Section 12.1(a).

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

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

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

"**Event of Default**" shall be as set forth in Section 12.1.

"**Financial Agreement**" shall mean a financial agreement between the Borough and Redeveloper in accordance with the Long Term Tax Exemption Law, as amended from time to time.

"**Force Majeure**" shall be as defined in Section 12.3.

"**Foreclosure**" shall be as defined in Section 4.4(d).

"**General Contractors**" shall be as defined in Section 4.3.

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

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

"**Governmental Body**" means any federal, State, county or local Borough, department, commission, authority, court or tribunal and any designee or successor thereto, exercising executive, legislative, judicial or administrative functions of or pertaining to government, including without limitation, the Borough, State and Environmental Authorities.

"**Holder**" shall be as defined in Section 4.4(a).

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

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

"**Long Term Tax Exemption Law**" shall mean the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq.*, as amended from time to time.

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

"**NJDOT**" shall mean the New Jersey Department of Transportation.

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

"**Performance and Maintenance Bonds**" shall be as defined in Section 4.3.

"**Permitted Transfers**" shall be as defined in Section 11.2.

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

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

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

"**Project Area**" shall mean the property consisting of Block 95, Lots 5, 7, and 14 in the Borough.

"**Project Costs**" shall be as defined in Section 4.1(a).

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

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

"**State**" shall mean the State of New Jersey.

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

"**Total Project Costs**" shall be as such term is defined under the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-3(h).

"**Transfer**" shall be as defined in Section 11.1.

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

"**Unit**" shall mean one of thirty (30) residential rental units, or the office space created in the Project.

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

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

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

(b) Words importing a particular gender mean and include correlative words of every

other gender and words importing the singular number mean and include the plural number and vice versa.

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

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

(e) Any headings preceding the text of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify or dictate.

(f) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed, where withheld, a statement in reasonable detail shall be provided setting forth the reason for withholding of consent, approval or acceptance.

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

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

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

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

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

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

ARTICLE II
IMPLEMENTATION OF THE PROJECT

Section 2.1 Description of the Project. (a) Subject to the terms and conditions in this Agreement, Redeveloper agrees, at its sole cost and expense (except to the extent financed, reimbursed by, or paid by third parties in the ordinary course of business in connection with the development of the Project, other than the Borough), to implement and complete the redevelopment of the Project Area which shall consist of the following, as applicable: (i) construction of a four (4) story mixed use building with approximately 3,000 s.f. of office or commercial use on the first floor, parking at grade beneath the building, and a total of thirty (30) residential apartment units on the floors above; (ii) the procurement of all applicable Governmental Approvals for all Project Improvements; (iii) financing, design, construction and Completion of all Project Improvements; (iv) marketing of the Project as necessary to ensure sufficient tenants to facilitate the financing, leasing, sale and occupancy of the improvements; and (v) payment of the Borough Costs in accordance with the terms of this Agreement (collectively, the "**Project**").

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

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

Section 2.2 Term. This Agreement shall have a term of ten (10) years from the Effective Date subject to: (a) any extension by reason of a Force Majeure Event in accordance with Section 2.5, or (b) any extension granted by the Borough, or its successor, pursuant to a request of Redeveloper which shall be governed by Section 2.3(e), or (c) the Project Schedule. Notwithstanding any of the foregoing, this Agreement shall terminate upon the issuance of Certificate of Completion in the form attached as Exhibit A.

Section 2.3 Project Schedule. (a) The Project Schedule shall control the Commencement, progress and Completion of the Project or Phases. The Parties agree and acknowledge that adherence to the Project Schedule is of the essence, subject to the provisions of Section 2.5. Redeveloper shall use commercially reasonable efforts, subject to obtaining Governmental Approvals, to Commence construction no later than the date set forth in the Project Schedule.

(b) Redeveloper may modify the Project Schedule from time to time; provided that (i) any such modification shall not change the Completion Date for the Project without the prior

written consent of the Borough, and (ii) any material changes to the Project Schedule shall be subject to the Borough's review and consent, provided that in the case of either clause (i) or (ii) herein, the Borough will not unreasonably withhold, condition or delay its consent.

(c) Subject to the provisions of Section 2.5, Redeveloper shall use commercially reasonable efforts to Complete the Project in accordance with the Project Schedule.

(d) Upon Completion of the Project, Redeveloper shall apply to the appropriate Governmental Body for a Certificate of Occupancy for the Project.

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

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

(g) In the event the Borough does not issue any such Certificate of Completion, as applicable, within fifteen (15) days after submission of written request by Redeveloper, the Borough shall provide Redeveloper with a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to Complete the Project in accordance with the provisions of this Agreement, the Redevelopment Plan and Applicable Laws and what measures or acts the Borough deems will be necessary in its reasonable opinion in order for Redeveloper to be entitled to the applicable Certificate of Completion (the "**Certificate Denial Statement**"). Redeveloper may rely on the Certificate Denial Statement in determining what action it must take in order to achieve the requested Certificate of Completion, as applicable. In the event of a dispute over issuance of a Certificate of Completion, the Parties shall cooperate in good faith to resolve such dispute and, thereafter, either Party may take such legal action as it deems appropriate.

(h) Upon the issuance of the Certificate of Completion, the conditions determined to exist at the time the Amended Redevelopment Area was determined to be an area in need of redevelopment shall be deemed to no longer exist with respect to the portion of the Amended Redevelopment Area upon which the Project is located. The land and improvements within the Project shall no longer be subject to any covenant herein encumbering the Amended Redevelopment Area.

Section 2.4 Project Oversight. (a) Redeveloper agrees to hold a reasonable number of regular progress meetings with designated representatives of the Borough (each a "**Borough Representative,**" a complete list of whom are attached as **Exhibit E**) upon the Borough's reasonable request, to report on the status of the Project and to review the progress under the Project Schedule, provided that Redeveloper need not hold more than one progress meeting each calendar month. To the extent practicable, the meetings shall be held within five (5) business days of Redeveloper's receipt of the Borough's request for such a meeting, at such office as is maintained by Redeveloper in the Borough, as designated by Redeveloper, or at the Project Area.

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

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

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

Section 2.6 Infrastructure Improvements. Redeveloper will design and construct the Infrastructure Improvements in a good and workmanlike manner and in substantial accordance with all Applicable Laws. Redeveloper acknowledges the presence of certain existing utility structures, including but not limited to electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television cable lines and other utilities, and agrees to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and easements therefor, in order to complete the Project as provided by this Agreement. Site plan approval may be conditioned upon other on-site and off-site improvements specific to the Project, consistent with the authority of the Planning Board and consistent with the Land Use Law, as amended from time to time. If site plan approval is so conditioned, Redeveloper shall exercise reasonable efforts to ensure the effective coordination of such improvements and shall cooperate with the Borough in all respects to ensure that the implementation of the Project does not unreasonably interfere with the operation of the existing utilities. Redeveloper agrees to provide the Performance and Maintenance Bonds as required by the Planning Board, consistent with the authority of the Planning Board under the Land Use Law, as amended from time to time, and in accordance with the provisions of Section 4.3.

Section 2.7 Prohibition Against Suspension, Discontinuance or Termination. Redeveloper shall not suspend or discontinue its performance of its obligations under this Agreement for a period exceeding thirty (30) days or terminate this Agreement (other than in the manner provided for herein) for any reason except to the extent permitted by Section 2.5, but only to the extent and for the period of time permitted by Section 2.5. The normal construction industry shutdown of certain products in the winter months shall not be considered a suspension or discontinuance by Redeveloper.

Section 2.8 Certificate of No Default. Redeveloper shall deliver to the Borough a certificate to the effect that Redeveloper is not aware of any condition, event or act which constitutes a violation of this Agreement or which would constitute an Event of Default hereunder and to its act and knowledge no condition, event or act exists which, with notice or lapse of time, or both, would constitute such a violation, or Event of Default, or if any such condition, event or act exists, specifying the same (the "**Certificate of No Default**"). The Certificate of No Default shall be delivered to the Borough on an annual basis within ninety (90) days after the close of each fiscal year for Redeveloper.

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

Section 2.10 Estoppel Certificates. At any time, and from time to time, prior to the issuance of a Certificate of Completion, the Borough shall, within thirty (30) days of its receipt of a written request by the Redeveloper or of any Qualified Transferee, mortgagee, lender, purchaser, tenant or other party having an interest in the Project, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, Qualified Transferee, purchaser, investor, tenant, etc.) designated by the Redeveloper, an instrument in which the Borough (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the Borough the Redeveloper or Qualified Transferee is in Default under this Agreement, and, if so, specifying each such Default of which the Borough shall have knowledge; and (iii) confirms such other factual matters within the Borough's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project.

ARTICLE III
PROJECT APPROVALS

Section 3.1 Governmental Approvals and Third Party Approvals. (a) Redeveloper shall use commercially reasonable effort to secure, or cause to be secured, any and all Governmental Approvals and Third Party Approvals for the Project in order to cause Commencement, Completion and Remediation of the Project and Project Area in accordance with the Project Schedule and the provisions of Section 2.3.

(b) The Borough agrees to reasonably cooperate with Redeveloper and use reasonable efforts to support any application for and to obtain any Governmental Approvals and Third Party

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

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

(d) Redeveloper shall have the right but not the obligation to contest any unsatisfactory requirement or condition with respect to the Project imposed on Redeveloper as a condition to a Governmental Approval; provided that Redeveloper shall comply with any such requirement or condition if Redeveloper is unsuccessful in contesting same and the requirement or condition will not have a material adverse financial or operational impact on Redeveloper in connection with the Project, as determined by Redeveloper in the exercise of its reasonable business judgment. If Redeveloper is unsuccessful in contesting any unsatisfactory requirement or condition, or Redeveloper determines that such condition will have a material adverse financial or operational impact on Redeveloper in connection with the Project, in the exercise of Redeveloper's reasonable business judgment, Redeveloper may terminate this Redevelopment Agreement pursuant to Section 12.2(c) of this Agreement.

(e) In the event that Redeveloper's application for any Governmental Approval is denied or any Person brings an action that contests or challenges the grant of any Governmental Approval, then Redeveloper shall have the right in its sole discretion to (i) modify and resubmit such application, if applicable, in order to secure such Governmental Approval, provided that such modification is consistent with this Redevelopment Agreement and the Redevelopment Plan, and does not result in a material change to the Project as contemplated herein, or (ii) appeal or defend against such action, or (iii) terminate this Agreement by providing written notice to the Borough in accordance with the provisions of Section 12.2(c) of this Agreement.

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

Section 3.3 Financial Agreement. As of the Effective Date, Redeveloper will submit or has submitted to the Borough applications for tax exemption in accordance with the Long Term Tax Exemption Law, *N.J.S.A.* 40A:20-1 *et seq.*, as amended from time to time. In furtherance of the Project, Redeveloper shall enter into a Financial Agreement. Further, Redeveloper shall enter into any other agreements required in connection with the financing and development of the project. The obligations of Redeveloper under this Redevelopment Agreement are specifically conditioned upon the execution of the Financial Agreement on terms acceptable to Redeveloper and the approval of the tax exemptions by the Borough permitted by Applicable Law.

The Parties understand that the current taxes for the Property is $12,631.00. The aforementioned receipts of taxes shall continue. Payments will be made in quarterly installment payments, in the same manner in which all real estate tax payments are made to Belmar. After the Certificate of Occupancy is issued, standard tax payments will be based upon the assessment of the land and improvements, in total. Payments shall start at 10% of the taxes which would normally be due on the full assessment (land and improvements). The taxes paid will increase every year by an additional 10% for the next nine years thereafter.

ARTICLE IV
FINANCING OF THE PROJECT

Section 4.1 Redeveloper Financial Commitment. (a) **Project Costs.** Except with respect to the provisions of Section 3.3, all costs of implementing and Completing the Project, including but not limited to the cost of obtaining all Governmental Approvals, the cost of the acquisition of the Project Area, the cost of designing and constructing (including the costs of any construction observation services) all Project Improvements, all financing costs, all marketing and leasing costs for the Project Improvements, the Borough Costs and the Total Project Cost (collectively, the "**Project Costs**") shall be borne by Redeveloper (except to the extent financed, reimbursed by, or paid by third parties in the ordinary course of business, other than the Borough).

(b) **Payment of Borough Costs.** Redeveloper initially funded an escrow in the amount of $20,000 with the Borough, as supplemented and replenished at the request of the

Borough, to provide funding to the Borough for all out of pocket costs incurred by the Borough in connection with the Project. Such out of pocket costs shall include, but are not limited to, all fees and costs of any outside professional consultant, legal, engineering or financial advisory services retained by the Borough related to the Project (the "**Borough Costs**"). The Borough shall provide the Redeveloper with a copy of each invoice reflecting the Borough Costs to be paid. Unless the Redeveloper promptly (within 20 days of its receipt of any such copy) provides a written objection to any invoiced item as not being an Borough Cost, the Borough shall be free to withdraw funds from the Escrow for payment of such invoiced services. From time to time during the implementation of the Project and until its completion, the Redeveloper agrees to maintain, and if necessary, replenish the Escrow to Twenty Thousand Dollars ($20,000.00) if and when the Escrow is drawn down to or below Ten Thousand Dollars ($10,000), upon the request of the Borough to provide for the requisite minimum balance, to cover anticipated costs as provided in this Agreement. Use of the Escrow shall be subject to the same standards as set forth in *N.J.S.A.* 40:55D-53, and any dispute concerning payment of the Borough Costs shall be resolved in accordance with the procedures set forth in *N.J.S.A.* 40:55D-53.2a. Upon the issuance of the Certificate of Completion, or upon termination of this Agreement, except in the event of a termination caused by a default of the Redeveloper, any money remaining in the Escrow shall be disbursed to the Redeveloper, except that the Borough may retain an amount sufficient to cover reasonably budgeted expenses.

Section 4.2 Governmental Approval Fees. Redeveloper shall pay all fees for permits required by the Borough (in accordance with standard fees provided in the Borough's municipal code) and any other Governmental Body for the construction and development of the Project in accordance with Applicable Laws. Redeveloper shall pay all other permit fees, which include any permit fees payable by the Borough or Redeveloper to all required Governmental Bodies other than the Borough, or for which the Borough is required to reimburse other Governmental Bodies or for which the Borough pays to the County of Monmouth or is required to pay other third party contractors retained by or on behalf of the Borough to perform services which the Borough would otherwise be required to perform itself.

While the Redeveloper agrees to construct the Project Infrastructure, as required by the terms of the Agreement and the Governmental Approvals, should the cost of such Project Infrastructure or any off-site or off-tract improvements required by any Governmental Approvals or Governmental Body cause the economic feasibility of the Project to be prohibitive in the Redeveloper's reasonable business judgment, the Redeveloper shall notify the Borough in writing that it has determined same, and the Parties agree to work together to determine a viable solution to address the cost of such Project Infrastructure, during which period all other timelines in this Agreement shall be tolled. If within ninety (90) days of receipt by the Borough of the notice required herein, the Parties are unable to determine a viable solution to address the cost of such Project Infrastructure, the Redeveloper may terminate this Agreement pursuant to Section 12.2(c).

Section 4.3 Performance and Payment Bonds. Redeveloper shall require its general contractors or project managers (collectively "**General Contractors**") for the Project Improvements to furnish a performance bond and a payment bond each in forms as specified in the Land Use Law, as amended from time to time, (collectively, the "**Performance and Maintenance Bonds**") as security for the performance of the obligations of the General Contractors under the contracts for the Project Improvements. In the event Redeveloper is entitled to and fails to exercise its rights under the Performance and Maintenance Bonds and/or if there occurs an Event of Default by Redeveloper, then the Borough shall thereafter have the right to the protections and guarantees available through and from the surety provided by the Performance and Maintenance Bonds. The Performance and Maintenance Bonds shall name Redeveloper and the Borough, as their respective interests may appear, as beneficiaries of the Performance and Maintenance Bonds and of all rights, payments and benefits flowing or deriving from the Performance and Maintenance Bonds. The Performance and Maintenance Bonds must include coverage for any approved change orders to work material to Completion of the Project Improvements (provided the changes are bonded), and Redeveloper agrees that it will comply and cause its contractors to comply with all requirements set forth in the Performance and Maintenance Bonds in connection therewith. The cost of obtaining the Performance and Maintenance Bonds shall be borne by Redeveloper or its contractors. The Redeveloper shall be required to furnish Performance and Maintenance Bonds only as required by the Land Use Law, and shall not be required to post Performance and Maintenance Bonds for any "private" improvements (i.e. all "onsite" drainage, curbing, sidewalk, paving, landscaping, etc. that does not affect any public rights-of-way).

Section 4.4 Mortgage Financing; Notice of Default to Mortgagee; Right to Cure.

(a) **Mortgage Financing**. (i) Redeveloper shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Area, whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to the Project Area in excess of ninety percent (90%) of the Project Costs except as may be approved by the Borough for the purpose of obtaining funds in connection with the development and construction of the Project; provided, however, that upon the issuance of a Certificate of Completion for the Project, such prohibition shall no longer apply with respect to the Project Improvements. Redeveloper, or its successor in interest, shall notify the Borough in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any part thereof (the mortgagee thereunder or its affiliate, a "**Holder**") and, in any event, Redeveloper shall promptly notify the Borough of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Project Area, whether by voluntary act of Redeveloper or otherwise, upon obtaining actual knowledge or notice of same.

(ii) To the extent reasonably requested by Redeveloper, the Borough shall execute such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Borough) as may be requested or required by any Holder; provided,

however, that any such agreement or document shall not materially and adversely alter any of the rights or obligations of Redeveloper or the Borough under this Agreement.

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

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

(c) **No Guarantee of Development, Construction or Completion of the Project.** A Holder shall have the right at its sole discretion to, but in no manner shall be obligated by the provisions of this Redevelopment Agreement to, develop, construct or Complete the Project (or portion to which its mortgage relates), or to guarantee such development, construction or Completion; nor shall any covenant or any other provisions be construed to so obligate a Holder. Notwithstanding the foregoing, nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the development, construction or Completion of the Project, or portion to which its mortgage relates (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having expressly assumed Redeveloper's obligations to the Borough going forward from and after the date of such assumption with respect to the Project (or portion to which its mortgage relates) by written agreement reasonably satisfactory to the Borough and the Holder.

(d) **Foreclosure.** If a Holder forecloses its mortgage secured by the Project Area (or portion to which its mortgage relates), or takes title to the Project Area (or portion to which its mortgage relates) by deed-in-lieu of foreclosure or similar transaction (collectively a "**Foreclosure**"), the Holder shall have the option to sell the Project Area and the Project to a

Person reasonably acceptable to the Borough, which shall assume the obligations of Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the Person assuming the obligations of Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to Complete the Project in the manner provided in this Redevelopment Agreement, but subject to reasonable extensions of the scheduled Completion Date, and shall submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder or Person assuming such obligations of Redeveloper, properly Completing Project Improvements shall be entitled to a Certificate of Project Completion in accordance herewith. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other Person assuming such obligations of Redeveloper, to devote the Project Area, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement.

ARTICLE V
GENERAL REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

been filed as of the Effective Date.

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

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

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

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

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

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

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

ownership interests of Redeveloper owning ten percent (10%) or more of the ownership interest in Redeveloper.

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

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

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

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

(p) To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by insurance purchased by Redeveloper, Redeveloper shall indemnify and hold harmless the Borough and employees of the Borough against claims, damages, losses and expenses, including but not limited to attorney's fees arising out of or resulting from construction of the Project, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death or to injury to or destruction of tangible property but only to the extent caused by the negligent acts or omissions of Redeveloper or anyone directly or indirectly employment by Redeveloper for whose acts Redeveloper may be liable.

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

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

(b) Upon the execution of this Agreement by the Borough, all requisite action will

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

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

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

(e) If required for the Project, the Borough represents that publicly owned property under the control of the Borough shall be utilized by Redeveloper to meet its parking obligation pursuant to and permitted by the Redevelopment Plan, and that the Borough shall enter into any required agreements to permit the use of municipally owned property designated as Lot 14, Block 95, or such other property that is either contiguous with Redeveloper's property, within the Project Area, or within 500' of a primary pedestrian entrance to the Project Area.

Section 5.3 Mutual Representations. In the event that any contractual provisions that are expressly required by Applicable Law have been omitted, then the Borough and Redeveloper agree that this Redevelopment Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Redevelopment Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the Parties, the Borough and Redeveloper agree to act in good faith to mitigate such changes in position in order to conform as nearly as possible to the terms of this Agreement at the time of execution. In the event despite the efforts of the Parties to mitigate, such change results in a material adverse financial impact on either Party, either Party may terminate this Redevelopment Agreement by providing written notice to the other Party within thirty (30) days of the discovery of the deemed incorporation of any such clause.

Section 5.4 CAFRA and Waterfront Act Permits. The redeveloper shall be responsible for securing and providing all temporary and/or permanent permits as required by the Coastal Area Facility Review Act, *N.J.S.A.* 13:19-1 *et seq.* ("**CAFRA**") and the Waterfront Development Act, *N.J.S.A.* 12:5-1 *et seq.* (the "**Waterfront Act**") for the development of the

Project in the Project Area. Evidence that the Project and Project Area is in compliance with all CAFRA and Waterfront Act requirements and that all New Jersey Department of Environmental Protection permits have been issued for the construction of the Project and other improvements on the Project Area shall be a condition precedent for the issuance of any Certificate of Completion for the Project.

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

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

ARTICLE VI
COVENANTS AND RESTRICTIONS

Section 6.1 Redeveloper Covenants. Redeveloper covenants and agrees that:

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

(b) Subject to the terms of this Agreement, including without limitation Section 12.3, Redeveloper shall undertake with due diligence (i) the financing of the Project, (ii) construction and development of the Project, (iii) to begin and complete each item in the Project Schedule on or prior to the date set forth in the Project Schedule (and for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period), and (iv) to seek tenants for the Project Improvements. All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first class developments of the same type and nature as the Project.

(c) Redeveloper shall undertake with due diligence the Remediation of the Project Area, if required, or, as applicable, enforce all rights it has against third parties with respect to Remediation of the Project Area.

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

(e) Redeveloper shall use diligent efforts to obtain all Governmental Approvals and Third Party Approvals requisite to the construction, development, use and occupancy of the

Project and Remediation of the Project Area, including evidence reasonably satisfactory to the Borough that the Project is in compliance with all Applicable Laws, including the Environmental Laws.

(f) Subject to the provisions of Sections 2.5 and 2.7 of this Agreement, Redeveloper shall not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project (if not caused by a Force Majeure Event).

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

(h) Until a Certificate of Completion has been issued for the Project, Redeveloper cannot sell, convey, lease, or otherwise transfer all or any portion of the Project without consent from the Borough, except as otherwise permitted by this Agreement (including as set forth in Article XI), provided that nothing contained in this Agreement shall prevent Redeveloper from entering into contracts of leases which are conditioned upon obtaining a Certificate of Occupancy or Certificate of Completion as applicable.

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

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

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

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

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

(a) The Borough shall fully cooperate with Redeveloper to ensure that all Governmental Approvals and additional financing sources, if necessary, are obtained for the Project.

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

Section 6.3 Declaration of Covenants and Restrictions. Redeveloper shall execute and record a Declaration of Covenants and Restrictions, approved by the Borough (the "**Declaration**"), imposing the Redeveloper's covenants on the Project Area, together with such other matters indicated in this Redevelopment Agreement as to be included in the Declaration, and the provisions hereof relating to Transfers, all as may be limited by the rights of a Holder granted hereunder in substantially the form attached hereto as **Exhibit F**.

Section 6.4 Effect and Duration of Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the covenants and restrictions contained in this Article VI shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project Area or any part thereof until issuance of the Certificate of Completion. However, such agreements and covenants shall be binding on Redeveloper itself, each successor in interest to Redeveloper and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall be in possession or occupancy of the Project Area, the buildings and structures thereon or any part thereof.

Section 6.5 Enforcement by the Borough. (a) In amplification, and not in restriction, of the provisions of this Article VI, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the terms and covenants set forth in this Redevelopment Agreement. Such agreements and covenants shall (and the Declaration shall so state) run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein. The Borough shall have the right, in the event of any material breach of any such agreement or covenant beyond any applicable notice and cure period, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other lawful proceedings to enforce the curing of such breach of agreement or covenant, to which it may be entitled.

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

(c) Upon Completion of the Project, the conditions that were found and determined to exist at the time the Amended Redevelopment Area was determined to be in need of

redevelopment shall be deemed to no longer exist and the conditions and requirements of *N.J.S.A.* 40A:12A-9 shall be deemed to have been satisfied with respect to the Project.

ARTICLE VII
ENVIRONMENTAL OBLIGATIONS

Section 7.1 Remediation of Project Area. To the extent required, Redeveloper shall be responsible for any and all remediation required with respect to the development of the Project Area, whether known or unknown, located on, under or migrating from the Project Area to the extent required by the NJDEP in accordance with Environmental Laws ("**Remediation**").

Section 7.2 Indemnification of Borough. Redeveloper shall defend, protect, indemnify and hold harmless the Borough Indemnified Parties from any Claims which may be sustained as a result of any environmental conditions on, in, under or migrating to or from the Project Area to the extent that any such liabilities, obligations, claims, damages, losses, proceedings or costs attached to the Borough Indemnified Parties as a result of this Agreement or the actions or omissions of Redeveloper or its General Contractors pursuant to this Agreement, including, without limitation, Claims against the Borough Indemnified Parties by any third party.

ARTICLE VIII
REQUIRED UNDERTAKINGS

Section 8.1 First Source Employment. Until the issuance of the Certificate of Completion, Redeveloper shall make good faith efforts to employ, and shall provide in its contracts with its General Contractors that they must make good faith efforts to employ qualified residents of the Borough in the construction of the Project by Redeveloper. Redeveloper's good faith efforts will include without limitation cooperating with the Borough in job fairs and similar endeavors and giving adequate consideration to potential employees and businesses as referred by the Borough. In addition, consistent with market wages and to the extent feasible, Redeveloper shall make good faith efforts that qualified residents of the Borough, and businesses located in the Borough, are employed in Redeveloper's operation of the Project. Inclusion of the requirements in this Article VIII in Redeveloper's general contract agreements shall fully satisfy this obligation of Redeveloper under this Article VIII. Redeveloper, in its sole discretion, shall determine if, and the extent to which, it shall use union labor for the construction of the Project.

Section 8.2 Affirmative Action. Redeveloper, during the construction of the Project, shall undertake a good faith effort to comply with, and shall provide in its contracts with its General Contractors an obligation to undertake good faith efforts to comply with the following:

(a) Where applicable, Redeveloper and/or its General Contractors will at all times conform to all Applicable Laws with respect to affirmative action and equal employment

opportunities requirements, and particularly those which are imposed as a condition to receipt of any government sponsored funding (which specifically excludes the Financial Agreement referenced in Section 3.3) for the Project, notwithstanding any other provision of this Agreement to the contrary.

Section 8.3 Equal Opportunity Employment. Redeveloper agrees, during implementation of the Project, as follows:

(a) Redeveloper and/or its General Contractors will not discriminate against any employee of Redeveloper and/or its General Contractors or applicant for employment because of race, color, religion, sex, or national origin. Redeveloper and/or its General Contractors will take appropriate action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Redeveloper and/or its General Contractors agree to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Borough that are consistent therewith.

(b) Redeveloper and/or its General Contractors will, in any solicitations or advertisements for employees placed by or on behalf of Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The obligations contained in this Article VIII shall be binding on all General Contractors to the extent that any work is done by any General Contractors, and Redeveloper's and/or its General Contractors' obligation with regard thereto shall be to provide that any General Contract entered into by Redeveloper shall so provide.

Section 8.4 Supervision. Redeveloper and/or its General Contractors, Project and/or construction manager(s) acting on Redeveloper's behalf shall supervise and direct the contractors and subcontractors. Redeveloper and/or its General Contractors shall use reasonable efforts to cause the contractors and subcontractors to (a) confine operations in the Project Area, or areas appurtenant thereto, to areas permitted by the Governmental Approvals and Applicable Laws, and (b) not unreasonably encumber the Project Area or areas appurtenant thereto with materials or equipment.

Section 8.5 Neighborhood Impacts. Redeveloper shall take all commercially reasonable steps to minimize negative effects that the construction of the Project may produce the areas immediately surrounding the Project Area.

Section 8.6 Traffic. Redeveloper and the Borough agree that the direction, flow and amount of traffic in and around the Project Area during the time of construction are an issue to

be addressed during the construction of the Project. Redeveloper herein commits to exert commercially reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods during construction.

Section 8.7 Rodent, Insect and Animal Control. Redeveloper will take all commercially reasonable steps necessary to minimize and control the migration of rodents, insects, or other animals from the Project Area during the construction of the Project. Redeveloper will undertake to provide controls in accordance with all Applicable Laws and other construction standards such that the issue of rodent, insect and animal control is reasonably addressed prior to the Commencement of Construction. Redeveloper agrees to coordinate this effort with the Borough's Department of Health.

Section 8.8 Illumination, Noise, Pollution or Damage. Redeveloper is mindful of the size of the Project and the potential effects that the construction of such an undertaking may have on the surrounding communities during construction. Therefore, Redeveloper agrees that it will take all steps reasonably necessary to minimize the passage of excessive or unwarranted illumination, noise or pollution into the surrounding communities during construction. Redeveloper shall take measures necessary to ensure that the improvements within the perimeter of the Project Area shall not be damaged or disturbed during construction. To the extent any damage or disturbance occurs within the perimeter of the Project Area as a result of Redeveloper's negligence during its construction activities, Redeveloper shall repair or replace such damage or disturbance to its original condition at its sole cost and expense. Redeveloper shall be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to illumination issues related to the Project and will address the issue in the context of review of site plan applications. Notwithstanding the foregoing Redeveloper may appeal any condition imposed by the Planning Board that is arbitrary, capricious, or unreasonable in Redeveloper's discretion.

Section 8.9 Maintenance and Landscaping. During construction but not during demolition and clearing of the Project Area, Redeveloper shall keep the Project Area free from any substantial accumulation of debris or waste materials. Following completion of construction, Redeveloper will be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to maintenance and landscaping issues related to the Project and will address the issue in the context of review of site plan applications.

Section 8.10 Speculative Development. Redeveloper represents its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Project Area and not for speculation in land holding. Redeveloper shall not use the Project Area, or any part thereof, as collateral for an unrelated transaction.

Section 8.11 Affordable Housing Requirement. The Parties recognize and acknowledge that the Project could generate a fair share housing requirement (the "**Affordable Housing Requirements**") for the Borough pursuant to the Fair Housing Act, *N.J.S.A.* 52:27D-

301 to 329 and the regulations promulgated by the Council on Affordable Housing, *N.J.A.C.* 5:93, then in effect, all as amended and supplemented from time-to-time (collectively, the "**Affordable Housing Regulations**"). The developer shall pay to the Borough's Affordable Housing Trust Fund in the amount of 1.5% of the equalized assessed value for each unit, or meet the obligation as provided for in the Redevelopment Plan.

ARTICLE IX
INSURANCE

Section 9.1 General Requirements. From and after the date of execution of this Redevelopment Agreement, Redeveloper shall provide and maintain, or cause to be maintained, insurance for the Project Area in the Amended Redevelopment Area as provided below until a Certificate of Completion has been issued with regard to the Project.

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

Section 9.2 Insurance Required. (a) All insurance policies required by this Article IX shall be obtained from insurance companies licensed to conduct business in the State and rated at least A- in Best's Insurance Guide.

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

(c) Redeveloper shall furnish or cause to be furnished to the Borough evidence satisfactory to the Borough of Commercial General Liability Insurance, and Umbrella Excess Liability Coverage, insuring Redeveloper against losses, costs, liabilities, claims, causes of action and damages for bodily injury, property damage and personal injury on the Project Area in the Amended Redevelopment Area, or related to the construction thereon, including claims made by subcontractor personnel, in the amounts set forth in **Exhibit H**. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other customary covered losses, however

occasioned, occurring during the policy term, and shall be endorsed to add the Borough as an additional insured and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough.

(d) Redeveloper shall furnish or cause to be furnished to the Borough evidence satisfactory to the Borough of Builder's Risk Insurance for the benefit of Redeveloper (subject and subordinate to the interests of any lender or Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be as set forth in **Exhibit H,** including items of labor and materials, whether in or adjacent to the structures insured, connected therewith, and materials in place or to be used as part of the permanent construction of the Project.

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

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

ARTICLE X
INDEMNIFICATION

Section 10.1 Redeveloper's Indemnity. (a) Redeveloper covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend and hold the Borough and its employees, officers and agents (the "**Borough Indemnified Parties**") harmless from and against all Claims resulting from or in any way connected with the acquisition, condemnation, condition, use, possession, conduct, management, planning, design, construction, or installation, of the Project on the Project Area, or other cause of action arising from the nexus of the Borough to Redeveloper as a result of this Redevelopment Agreement or the Financial Agreement, including but not limited to, the death of any person or any accident, injury, loss, and damage whatsoever caused to any person or to the property of any person that shall occur on the Project Area and that, with respect to any of the foregoing, are directly related to or resulting from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors.

(b) In any situation in which the Borough Indemnified Parties are entitled to receive and desire defense and/or indemnification by Redeveloper, the Borough Indemnified Parties

shall give prompt notice of such situation to Redeveloper. Failure to give prompt notice to Redeveloper shall not relieve Redeveloper of any liability to indemnify the Borough Indemnified Parties, unless such failure to give prompt notice materially impairs Redeveloper's ability to defend. Upon receipt of such notice, Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Parties, including the employment of counsel reasonably acceptable to the Borough Indemnified Parties, the payment of all expenses and the right to negotiate and consent to settlement. All of the Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized in advance by Redeveloper, provided, however, that if the defense of such action is assumed by Redeveloper's insurance carrier, employment of such separate counsel by the Borough Indemnified Parties shall be at the sole discretion of such carrier, as provided in its endorsement of insurance. Redeveloper shall not be liable for any settlement of any such action effected without its written consent, but if settled with the written consent of Redeveloper or if there is a final judgment against Redeveloper in any such action, Redeveloper shall indemnify and hold harmless the Borough Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Borough Indemnified Parties are entitled to indemnification hereunder.

(c) Notwithstanding anything to the contrary in this Article X, Redeveloper's indemnity shall not extend to any claims if caused by or as a result of the gross negligence, unlawful conduct or willful misconduct of the Borough, Borough Representatives, or their respective employees, officers or agents.

Section 10.2 Survival of Indemnity. The provisions of this Article X shall survive the termination of this Redevelopment Agreement due to an Event of Default by the indemnifying Party and shall exist until such time as Redeveloper's covenants under the Declaration are discharged as a result of the recording of a Certificate of Completion, as applicable, provided, however, that until such time, such indemnity shall be binding on Redeveloper itself, each successor in interest to the Project, the Project Area, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall have title to the Project Area, the Project Improvements or any part thereof.

ARTICLE XI
RESTRICTIONS ON TRANSFER

Section 11.1 Prohibition Against Transfers. Redeveloper recognizes the importance of the Project to the general welfare of the community and that the identity of Redeveloper and its qualifications are critical to the Borough in entering into this Redevelopment Agreement. The Parties acknowledge and agree that a material change in ownership of Redeveloper from that which is noted in **Exhibit D** attached hereto, or any other act or transaction involving or resulting

in a significant change with respect to the identity of the parties in control of Redeveloper is, for practical purposes, a transfer or disposition of the Project then owned by Redeveloper.

Except for Permitted Transfers, prior to the issuance of a Certificate of Completion, Redeveloper shall not, without the prior written consent of the Borough, which consent shall not be unreasonably withheld, conditioned or delayed: (a) effect or permit any change, directly or indirectly, in the control of Redeveloper (except in the case of death of an individual(s) having or affecting such ownership or control), (b) assign or attempt to assign this Redevelopment Agreement or any rights herein or in the Project Area, or (c) until a Certificate of Completion has been issued for the Property in accordance with the Redevelopment Plan, Redeveloper shall not sell, lease or otherwise transfer all or any portion of the Property without the written consent of the Borough, provided however that nothing contained in the Redevelopment Agreement shall prevent Redeveloper from entering into contracts or leases that are conditioned upon obtaining a Certificate of Occupancy or Certificate of Completion as applicable (collectively a "**Transfer**"); provided, however, that these restrictions shall not be in effect following the issuance of the Certificate of Completion, provided Redeveloper constructs the Project in accordance with the Redevelopment Plan.

Section 11.2 Permitted Transfers. The following Transfers are exceptions to the prohibitions of this Article XI and the Borough's consent is deemed given hereby (the "**Permitted Transfers**"), provided that notice of same is given to the Borough as required in Section 11.3 below: (a) a mortgage or related security (including conditional assignments to mortgagees or Holders required as a condition to the closing of the financing so secured) granted by Redeveloper to a Holder or of a Project tenant to a leasehold mortgagee, provided further that the occurrence of an Event of Default as to Redeveloper hereunder constitutes an event of default under the loan documentation for such financing; (b) mortgages, leases, and other liens and encumbrances for the purpose of financing the costs associated with, or incurred in connection with the acquisition, development, construction and or utilization of the Project; (c) the Declaration, provided that such Declaration shall otherwise be in compliance and consistent with the Redevelopment Plan and this Agreement; (d) utility and other development easements; (e) an urban renewal entity created and controlled by Redeveloper as required by the Long Term Tax Exemption Law, as amended from time to time; (f) a lease to a tenant occupying premises in the Project for the purpose of operating a permitted business of that Tenant as a part of the intended use of the Project, (g) an Affiliate of the Redeveloper; (h) transfers to immediate family members or trusts established for the benefit of same for estate planning purposes; (i) the Transfer of any interest in this Agreement or in any portion of the Project Area to a Transferee Controlled by, or controlling, the Redeveloper (or Controlled by, or controlling, one or more members of the Redeveloper with Control of the Redeveloper) and provided the Transferee is subject to the applicable terms of this Agreement; and (j) the lease and/or sale of a Unit.

Section 11.3 Notice of Permitted Transfers. With respect to any Permitted Transfers, Redeveloper shall provide to the Borough written notice at least twenty (20) days prior to such Permitted Transfers, including a description of the nature of such Permitted Transfers, and the

name(s) and address(es) of the parties and any parties, individuals and/or entities comprising such parties.

Section 11.4 Transfers Void. Any transfer of Redeveloper's interest in violation of this Article XI shall be an Event of Default of Redeveloper and shall be null and void *ab initio*. Such Event of Default shall entitle the Borough to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Redevelopment Agreement. In the absence of Permitted Transfer or specific written consent by the Borough, no such sale, transfer, conveyance or assignment of the Project Area or Project Improvements, shall be deemed to relieve Redeveloper from any obligations under this Redevelopment Agreement. The Declaration shall contain a restriction against transfers as set forth in this Article XI and, in addition, shall provide that in the event of any attempted transfer in violation of the restrictions in this Article XI the Borough shall be entitled to the seek issuance of an injunction restraining such transfer. Provided the Borough is adjudicated the prevailing party by the final and unappealable judgment of a court of competent jurisdiction the Borough is entitled the award of legal fees and related expenses of the Borough reasonably incurred by the Borough in connection with any such legal action. Upon the recording of the Declaration in the Office of the Monmouth County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens. Upon recording of the Certificate of Project Completion, the provisions of the Declaration set forth in this Article XI shall be deemed terminated for the Project.

ARTICLE XII
EVENT OF DEFAULT, REMEDIES

Section 12.1 Events of Default. Either of the Parties shall have the right to declare the other Party in default of this Agreement if any of the following events (each an "**Event of Default**") occur:

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

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

(c) Redeveloper fails to substantially comply with the Project Schedule, as the same may be modified or extended from time to time in accordance with this Agreement, or shall abandon or substantially suspend construction work for a period of sixty (60) consecutive days (subject to the provisions of Section 2.5) and any such default, or violation shall not be cured, ended, or remedied within sixty (60) days after written demand by the Borough to do so, provided, however, if the default or violation is one which cannot be completely remedied within ninety (90) days after such written notice has been given, it shall not be an Event of Default as long as Redeveloper has commenced the cure within the sixty (60) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties, to reach compliance; or

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

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

(f) (i) Subject in all cases to Applicable Law, Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of Redeveloper; (iii) Redeveloper (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) Redeveloper has filed an

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

(g) A representation made by Redeveloper in Article V was false on the Effective Date.

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

Section 12.2 Remedies Upon Default; Termination. (a) Upon an Event of Default by the Borough which is continuing and remains uncured beyond any applicable notice and cure dates, Redeveloper may take whatever action at law or in equity, as may appear necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. Further, Redeveloper shall have the right to terminate this Agreement upon sixty (60) days written notice to the Borough, in which event the Declaration shall be null and void and the Borough shall discharge same of record.

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

(c) In the event that either Party exercises its right to termination pursuant to Section 3.1(d) and (e), Section 4.2, and Section 5.3, the terminating Party shall provide the other Party with not less than thirty (30) days prior written notice of such election. Within thirty (30) days of such termination: (i) Redeveloper shall pay to the Borough all outstanding Borough Costs; and (ii) upon full payment of all Borough Costs, the Borough shall return the balance of the amounts,

if any, in the Escrow Account. In such case neither Party shall have any further rights, claims or obligations against the other Party arising out of this Redevelopment Agreement.

Section 12.3 Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following acts, events or conditions or any combination thereof that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the Parties to this Redevelopment Agreement; provided, however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Redevelopment Agreement (**"Force Majeure"** or **"Force Majeure Event"**):

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

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

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

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

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

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

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

Section 12.4 Default Notice to Holders. Upon the occurrence of an Event of Default by the Redeveloper, the Borough shall afford to any Holder all notices and rights in accordance with the terms of Section 4.4 of this Agreement.

Section 12.5 Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

Section 12.6 Litigation Costs. In the event that a Party successfully pursues an action to enforce any remedy provided in this Article XII that Party shall be entitled to seek payment by the other Party of all reasonable costs and expenses incurred in connection with such action.

Section 12.7 Mitigation. The Parties shall act reasonably to mitigate any damages that may be incurred as the result of an Event of Default hereunder.

Section 12.8 Survival of Termination. The provisions of this Article XII shall survive the termination of this Redevelopment Agreement as a result of an Event of Default by Redeveloper.

Section 12.9 Use of Documents. Redeveloper hereby agrees that is shall provide to the Borough, copies of all documents, reports, studies and analyses prepared by it or on its behalf in connection with the Project. Upon termination of this Agreement, Redeveloper hereby agrees that the Borough has the right to all such documents, including but not limited to the Governmental Applications and Governmental Approvals, without cost to the Borough in furtherance of the Project.

ARTICLE XIII
MISCELLANEOUS

Section 13.1 Notices and Demands. A notice, demand or other communication under this Agreement by any Party to the other shall be in writing and shall be hand delivered by messenger (with receipt acknowledged in writing), delivered by overnight delivery service (guaranteeing overnight delivery, with receipt acknowledged in writing), delivered personally, or delivered by electronic transmittal or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number or electronic mail address) to the Parties at their respective addresses (or facsimile numbers, at the case may be) set forth herein, except that notice of (a) an Event of Default and (b) the institution of legal proceedings may not be delivered by facsimile:

As to the Borough:
Business Administrator
Borough of Belmar
Borough Hall
601 Main Street
Belmar, New Jersey 07719

With copies to:
Municipal Attorney, Borough of Belmar
Borough Hall
601 Main Street
Belmar, New Jersey 07719

Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors
620 West Lacey Road
P.O. Box 1057
Forked River, NJ 08731
Attn: Jerry J. Dasti, Esq.

As to the Redeveloper:
SACHEM POND, LLC
124 Inlet Terrace
Belmar, New Jersey 07719
Attn: Alexander B. Taylor

With a copy to:
John A. Sarto, Esq.
Giordano Halleran & Ciesla
125 Half Mile Road, Suite 300
Red Bank, NJ 07701-6777
jsarto@ghclaw.com

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

Section 13.2 Conflict of Interest. No member, official or employee of the Borough shall have any direct or indirect interest in Redeveloper or this Agreement, nor participate in any decision relating to this Agreement that is prohibited by law.

Section 13.3 No Improper Consideration For Agreement. Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper and the Borough warrant that redeveloper has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Agreement, nor has the Borough or any officer or official of the Borough has not received any such payment or accepted any such obligation.

Section 13.4 Non-Liability of Officials and Employees of the Borough. No member, official, or employee of the Borough shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement, unless such member, official, or employee shall have willfully acted unlawfully, in bad faith or in gross negligence.

Section 13.5 Non-Liability of Officials, Members and Employees of Redeveloper. No member, officer, shareholders, director, partner, or employee of Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of Redeveloper or the members of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Agreement, unless such member, officer, shareholder, director, partner, or employee shall have willfully acted unlawfully, in bad faith or in gross negligence.

Section 13.6 Reserved.

Section 13.7 Modification of Agreement. No modification, waiver, discharge, or amendment of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by Redeveloper and the Borough.

Section 13.8 Severability. To the extent that any article, section, subsection, clause, provision, or term of this Agreement or the application thereof to any party or circumstance

shall, to any extent, be invalid or unenforceable, the remainder of any such article, section, subsection, clause, provision, or term of this Agreement or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, clause, provision, or term of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either of the Parties of the enjoyment of its substantial benefits under this Agreement.

Section 13.9 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their successors and assigns.

Section 13.10 Governing Law. This Agreement shall be governed by and construed by the laws of the State. Any legal action filed in this matter shall be heard in the Superior Court of New Jersey, Monmouth County Vicinage.

Section 13.11 Borough Approvals. All approvals or disapprovals required by the Borough shall, unless otherwise stated herein, be valid if given in writing by the Borough Representative or her authorized designee, or designee with apparent authority.

Section 13.12 Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute one and the same instrument.

Section 13.13 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter.

Section 13.14 Waiver. No waiver made by any Party with respect to any obligation of any other Party under this Agreement shall be considered a waiver of any other rights of the Party making the waiver beyond those expressly waived in writing and to the extent thereof.

Section 13.15 Counting of Days; Saturday, Sunday, or Holiday. The word "days" as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day. The term "Business Day" as used herein means any day other than a Saturday, Sunday, or a day on which banks and public offices are not open under the laws of the State.

Section 13.16 Review by Counsel. This Agreement shall be construed and enforced in accordance with the laws of the State without regard to or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both Redeveloper and the Borough have collectively reviewed same.

[Signature Page Follows]

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

Attest:

THE BOROUGH OF BELMAR

_____

By:_____
Edward D. Kirschenbaum, Sr.,
Business Administrator

Attest:

SACHEM POND, LLC

By:_____

EXHIBIT A

Certificate of Completion

Record and Return to:
_____, Esq.
_____
_____
_____

CERTIFICATE OF COMPLETION

Date: _____, 201_

Project: Construction of a mixed use development consisting of approximately 3,000 s.f. of commercial and/or office space and thirty (30) residential apartment units along with associated parking and site improvements (the "Project").

Location: Block 95, Lots 5 and, 7 in the Borough of Belmar, Monmouth County, New Jersey as shown on the tax maps of the Township (the "Property")

Pursuant to Section 2.3(d) of the Redevelopment Agreement by and between the Borough of Belmar (the "Agency") and Sachem Pond, LLC (the "Redeveloper"), dated as of _____, 2020 (the "Redevelopment Agreement"), the undersigned, an authorized representative of the Agency, certifies as of the date hereof that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of _____, in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for the Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) such Completion has been further evidenced by a written certificate of the Redeveloper and a certificate of the Redeveloper's engineer evidencing completion of the Project, which certificate is attached hereto as **Exhibit 1**;

(iv) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws; and

(v) a copy of the Certificate of Occupancy issued with respect to the Project is attached hereto as **Exhibit 2**.

The conditions determined to exist at the time the Amended Redevelopment Area was determined to be an area in need of redevelopment no longer exist with respect to the Property. The Property shall no longer be subject to (i) any covenant running with the land covered by this Certificate of Completion for the benefit of the Agency, and (ii) eminent domain for purposes of redevelopment as a result of those determinations.

The Declaration recorded in the office of the Monmouth County clerk on _____ in deed book ____, page ____ is hereby discharged of record and is void and of no further force and effect.
This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

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

WITNESS OR ATTEST: **THE BOROUGH OF BELMAR**

By: _____ By: _____
, Business Administrator

Acknowledgment

STATE OF NEW JERSEY :
:SS
COUNTY OF MONMOUTH:

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

_____

EXHIBIT B

Redeveloper's Site Plan and Architectural Elevations

EXHIBIT C

Project Schedule

Governmental Approvals, Commencement of Construction. Subject to the provisions of Section 2.3, 2.5 and 12.3 of the Redevelopment Agreement, Redeveloper shall apply for and diligently pursue all other Governmental Approvals required to Commence and Complete Construction within such times as are consistent with implementation of the Project in accordance with the timetable set forth below. The deadlines set forth below are subject to revision as described in Section 2.3 of the Redevelopment Agreement.

a) Within six (6) months of the Effective Date of the Redevelopment Agreement, Redeveloper shall submit all applications for Governmental Approvals necessary for the Project.

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

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

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

e) Within three (3) years of the Effective Date, Redeveloper shall Complete construction of the Project.

EXHIBIT D

Ownership Disclosure

Member	Percent Interest
Alexander B. Taylor	33.33%
Joseph S. Taylor	11.11%
Kenneth A. Griffin 2019 GRAT	12.50%
William Stapleton	13.89%
Gary Hans	12.50%
James Francis Frawley	11.11%

EXHIBIT E

List of Borough Representatives

Business Administrator
Borough of Belmar
Borough Hall
601 Main Street
Belmar, New Jersey 07719

EXHIBIT F

Form of Declaration of Covenants

Record and Return to:
Jerry J. Dasti, Esq.
Dasti, Murphy, McGuckin, Ulaky, Koutsouris & Connors
620 West Lacey Road
P.O. Box 1057
Forked River, NJ 08731

DECLARATION OF COVENANTS AND RESTRICTIONS

(as to Block 95, Lots 5 and 7 of the Borough of Belmar, County of Monmouth (the "Property"))

This Declaration of Covenants and Restrictions ("**Declaration**") is made this __ day of _____, 2020, by and between the **BOROUGH OF BELMAR**, municipal corporation of the State of New Jersey (the "**Borough**"), a public body corporate and politic of the State of New Jersey having its offices at 601 Main Street, Belmar, New Jersey 07719, in its capacity as redevelopment entity pursuant to *N.J.S.A.* 40A:12A-4(c);

and

Sachem Pond, LLC, a limited liability company of the State of New Jersey authorized to do business in the State of New Jersey, having offices at 124 Inlet Terrace, Belmar, New Jersey (together with its permitted successors or assigns as hereinafter provided, the "**Redeveloper**" or "**Owner**").

WITNESSETH

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

WHEREAS, on April 4, 2017, the Borough Council adopted Resolution 2017-74 in accordance with *N.J.S.A.*40A:12A-6 authorizing and directing the Planning Board of the

Borough (the "**Planning Board**") to conduct an investigation to determine whether certain area of the Borough commonly known as Block 95, Lots 7-13 on the tax maps of the Borough satisfies the criteria to be designated as an "area in need of redevelopment" without the power of condemnation; and

WHEREAS, on May 4, 2017, the Borough Council adopted Resolution 2017-84 in accordance with *N.J.S.A.*40A:12A-6 authorizing and directing the Planning Board to conduct an investigation to determine whether certain area of the Borough commonly known as Block 95, Lot 5 (together with Block 95, Lots 7-13, the "**Study Area**") on the tax maps of the Borough satisfies the criteria to be designated as an "area in need of redevelopment" without the power of condemnation; and

WHEREAS, on June 19, 2017, the Planning Board held a public hearing in accordance with *N.J.S.A.* 40A:12A-6 at which it reviewed the findings of a report prepared by Francis Reiner, LLA/PP, entitled "Preliminary Investigation for Determination of an Area in Need of Redevelopment for Block 95, Lots 5, 7, 8, 9, 10, 11, 12, & 13," dated June 2017 (the "**Redevelopment Study**,") which determined that the Study Area met the criteria for designation as an "area in need of redevelopment" under the Redevelopment Law, and adopted a resolution which endorsed the findings of the Redevelopment Study and recommended to the Borough Council, pursuant to *N.J.S.A.* 40A:12A-6, that the Study Area be designated as an "area in need of redevelopment" (the "**Redevelopment Area**"); and

WHEREAS, at its June 19, 2017 meeting, the Planning Board further recommended that the Borough consider whether Block 95, Lots 14 and 15 on the Borough tax maps be considered as an "area in need of redevelopment" pursuant to the Redevelopment Law; and

WHEREAS, on August 1, 2017, the Borough Council adopted Resolution 2017-140 in accordance with *N.J.S.A.*40A:12A-6 authorizing and directing the Planning Board to conduct an investigation to determine whether certain area of the Borough commonly known as Block 95, Lots 14 and 15 (together with Block 95, Lots 5 and 7-13, the "**Amended Study Area**") on the tax maps of the Borough satisfies the criteria to be designated as an "area in need of redevelopment" without the power of condemnation; and

WHEREAS, at its September 18, 2017 meeting, the Planning Board held a public hearing in accordance with *N.J.S.A.* 40A:12A-6 at which it reviewed the findings of a report prepared by Francis Reiner, LLA/PP, entitled "Preliminary Investigation for Determination of an Area in Need of Redevelopment for Block 95, Lots 5, 7, 8, 9, 10, 11, 12, 13, 14 & 15" dated August 2017 (the "**Amended Redevelopment Study**") which determined that the Amended Study Area met the criteria for designation as an "area in need of redevelopment" under the Redevelopment Law, and endorsed the findings of the Amended Redevelopment Study and recommended to the Borough Council, pursuant to *N.J.S.A.* 40A:12A-6, that the Amended Study Area be designated as an "area in need of redevelopment" (the "**Amended Redevelopment Area**"), without the power of condemnation; and

WHEREAS, on October 17, 2017, the Borough Council adopted Resolution 2017-178 which designed the Amended Study Area as an "area in need of redevelopment" pursuant to the Redevelopment Law; and

WHEREAS, on November 6, 2019, the Borough Council introduced Ordinance 2019-35, which was duly referred to the Planning Board, and subsequently adopted at a meeting on December 16, 2019, in accordance with the Redevelopment Law, implementing a redevelopment plan entitled the "Block 95 Redevelopment Plan" prepared by DMR Architects, and finalized by Leon S. Avakian, Inc., and dated October 11, 2019 as revised through December 2019 (the "**Redevelopment Plan**") for the Amended Redevelopment Area; and

WHEREAS, Redeveloper has made application to be designated as the redeveloper for the Property, for which Redeveloper is the owner or contract purchaser, and Redeveloper has provided information consisting of documentation evidencing financial responsibility and capability with respect to the Project (as defined herein), estimated total development costs, and estimated time schedule for commencement and completion of construction; and

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

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

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

WHEREAS, the Redevelopment Agreement also provides that the Property, the Redevelopment Agreement, and Redeveloper's interest therein shall not be transferable, subject to certain conditions, prior to the issuance of a Certificate of Completion and further provides

certain remedies to the Borough for violations of the covenants and defaults under the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement requires that such covenants be memorialized in a Declaration of Covenants and Restrictions and said declaration be recorded in the office of the Monmouth County Register,

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

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

Section 2. Redeveloper covenants and agrees that:

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

(B) Until a Certificate of Completion has been issued for the Property in accordance with the Redevelopment Plan, Redeveloper shall not sell, lease or otherwise transfer all or any portion of the Property without the written consent of the Borough, provided however that nothing contained in the Redevelopment Agreement shall prevent Redeveloper from entering into contracts or leases that are conditioned upon obtaining a Certificate of Occupancy or Certificate of Completion as applicable.

(C) Redeveloper shall, in connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property are restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status, and Redeveloper, its successors and assigns, shall comply with all Applicable Laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sexual orientation, sex or familial status.

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

(E) Redeveloper shall cause the Project to be developed, financed, constructed, operated and maintained at its sole cost and expense.

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

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

(H) Redeveloper will promptly pay all outstanding Borough Costs, and any and all taxes, service charges or similar obligations when owed to the Borough with respect to any property situated in the Borough.

(I) Redeveloper shall, during construction of the Project, take commercially reasonable steps to minimize or mitigate impacts on the surrounding neighborhood (such as, for example, noise and dust controls), and keep debris and/or waste materials containerized and/or stored and disposed of, all within normal industry standards.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 of this Declaration shall run with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement and this Declaration, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any person in possession or occupancy of the Project Parcels or any part thereof. The covenants and restrictions herein shall be binding on Redeveloper itself, each successor in interest to Redeveloper and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall be in possession or occupancy of the Property, the Project or any part thereof.

Section 4. In amplification, and not in restriction, of the provisions of Section 2 of this Declaration, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the covenants and restrictions set forth in the Redevelopment Agreement and this Declaration,. Such covenants and restrictions shall run in favor the Borough for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein. The Borough shall have the right, in the event of any material breach of any such covenant or restriction, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of covenant or restrictions.

Section 5. Upon redevelopment of the Property and completion of the Project, the covenants contained herein shall terminate and this Declaration will be discharged of record upon Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 2.3 thereof for the Project.

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

BOROUGH OF BELMAR

By:_____
_____, Business Administrator

Attest:

By:_____

SACHEM POND, LLC

By:_____
Authorized Representative

By:_____

Sworn to before me this
31st day of March, 2020
Denise M. Wegryniak

DENISE M. WEGRYNIAK
A Notary Public of New Jersey
My Commission Expires August 20, 2024

EXHIBIT G

Affirmative Action Provisions
REQUIRED EVIDENCE
AFFIRMATIVE ACTION REGULATIONS
P.L. 1975, C. 127 (N.J.A.C. 17:27)

If awarded a contract, all procurement and service contractors will be required to comply with the requirements of P.L. 1975, C. 127 (N.J.A.C. 17:27). Within the seven (7) days after receipt of the notification of intent to award the contract or receipt of the contract, whichever is sooner, the contractor should present one of the following to the Purchasing Agent:

1. A photocopy of a valid letter from the U.S. Department of Labor that the contractor has an existing federally-approved or sanctioned Affirmative Action Plan (good for one year from the date of the letter).

OR

2. A photocopy of approved Certificate of Employee Information Report.

OR

3. An Affirmative Action Employee Information Report (Form AA302)

OR

4. All successful construction contractors must submit within three days of the signing of the contract an Initial Project Manning Report (AA201) for any contract award that meets or exceeds the Public Agency bidding threshold (available upon request).

NO FIRM MAY BE ISSUED A CONTRACT UNLESS IT COMPLIES WITH THE AFFIRMATIVE ACTION REGULATIONS OF P.L. 1975, C. 127.

The following questions must be answered by all bidders:

1. Do you have a federally-approved or sanctioned Affirmative Action Program?

YES _____ NO _____

If yes, please submit a copy of such approval.

2. Do you have a Certificate of Employee Information Report Approval?

YES _____ NO _____

If yes, please submit a copy of such certificate.

The undersigned contractor certifies that he is aware of the commitment to comply with the requirements of P.L. 1975, C. 127 and agrees to furnish the required documentation pursuant to the law.

COMPANY: _____ _____

SIGNATURE: _____

TITLE:_____

Note: A contractor's bid must be rejected as non-responsive if a contractor fails to comply with requirements of P.L. 1975, C. 127, within the time frame.

P.L. 1975, c. 127 - Affirmative Action
(x) CHECK THE APPROPRIATE BOX

( ) Fifty (50) or more employees in the entire firm or corporation.

( ) Less than Fifty (50) employees in the entire firm or corporation.

FOR FIRMS OF FIFTY (50) OR MORE EMPLOYEES:
An Employee Information Report (Form AA302) must be completed and returned to the Borough of Belmar within seven (7) days after receipt of notification of intent to award contract or receipt of contract, whichever is sooner. An Affirmative Action Plan approved by the Federal Government or the New Jersey Affirmative Action Officer is an acceptable alternate. In the space provided below indicate whether your firm has met any of the requirements listed above. Indicate the number of New Jersey Affirmative Action Certificate of Approvals in the space provided.

FOR FIRMS OF LESS THAN FIFTY (50) EMPLOYEES:
You are required to complete and return with bid an affidavit of Affirmative Action (enclosed). If during the term of contract, the firm's workforce increases to Fifty (50) or more employees, the Public Agency shall be notified. At this time, an Employee Information Report (Form AA302) must be completed and returned to the Borough of Belmar.

INDICATE IN THE APPLICABLE BOXES BELOW WHETHER YOU HAVE MET ANY CRITERIA FOR COMPLIANCE WITH THE NEW JERSEY AFFIRMATIVE ACTION REGULATIONS.

FIRMS OF FIFTY (50) OR MORE EMPLOYEES

_____ Federal Certificate of Approval has been received. (Proof of this will be required at the time of award)

_____ A New Jersey Affirmative Action Certificate of Approval has been received. The number is _____ (Proof of this will be required at the time of award)

I CERTIFY THAT THE ABOVE INFORMATION IS CORRECT TO THE BEST OF MY KNOWLEDGE.

FIRM NAME_____

SIGNATURE_____

TITLE_____

DATE_____

AFFIRMATIVE ACTION AFFIDAVIT

(To be completed by firms with less than 50 employees)

STATE OF NEW JERSEY)
)ss.
COUNTY OF MONMOUTH)

I, _____, of the (City, Town, City, Borough) of _____, in the County of _____, State of _____, of full age, being duly sworn according to law on my oath depose and say that:

1. I am (President, Partner, Owner) of _____ LLC, a bidder making a proposal upon the above-named project.

2. _____ LLC does not have fifty (50) employees or more, inclusive of all officers and employees of every type.

3. I am familiar with the affirmative action requirements of P.L. 1975, C. 127 and the rules and regulations issued by the Treasurer, State of New Jersey, pursuant thereto.

4. _____ LLC has complied with all affirmative action requirements of the State of New Jersey, including those required by P.L. 1975, C. 127 and the rules and regulations issued by the Treasurer, State of New Jersey, pursuant thereto.

5. I am aware that if _____ LLC does not comply with P.L. 1975, C. 127 and the rules and regulations pursuant thereto, that no monies will be paid by the State of New Jersey, County of Monmouth, Borough of Belmar, until an affirmative action plan is approved. I am also aware that the contract may be terminated and _____ LLC may be debarred from all public contracts for a period of up to five (5) years.

6. In the event my workforce increases to fifty (50) employees, I must contact the State Affirmative Action Office and complete the Employee Information Report.

Subscribed and Sworn to me
before me the _____ day
of _____ 20 ___

_____
Signature of Authorized Representative

_____ _____

EXHIBIT H

Insurance Requirements

Specific Coverage.

A. Insurance to be Carried by Redeveloper During Period of Construction of the Project

Coverage	Limits
1. Workers Compensation	Statutory
2. Employer's Liability	Statutory or $ 1,000,000 by accident $ 1,000,000 by disease, each employee, $ 1,000,000 by disease, all employees, which-ever is greater
3. Commercial General CSL per Liability, including acc/agg premises, operations, product liability completed operations, independent contractors, Broad Form Property, Contractual Liability and Personal Injury coverage.	$ 1,000,000 per occ/$2,000,000/ agg
4. Comprehensive Automobile Liability, including owned, hired and non-owned	$ 1,000,000 CSL per
5. Excess Liability, which shall identify as under-lying insurance, the required employer's and general liability, auto, contractual and owner's protective liability	$ 40,000,000 CSL per
6. (a) "All Risks" Builders Risk Value of all materials and equipment to be supplied and installed, or rebuilt.	(a) Full Replacement
(b) Delay in Start up Delay in Start up (time element coverage) and Extra Expense Coverage	(b) $25,000,000; $25,000. deductible

7. Hazardous Materials
   Contractors/subcontractors handling hazardous materials as part of demolition or construction must have separate coverage if not part of general liability.

8. The Redeveloper shall be responsible for all deductibles.