
AMENDED & RESTATED REDEVELOPMENT AGREEMENT

by and between

THE CITY OF BAYONNE, NEW JERSEY

and

KAPLAN-PROMENADE AT BAYONNE, LLC

Dated: June 19, 2014

Table of Contents

ARTICLE I DEFINITIONS AND INTERPRETATIONS	3
Section 1.1. Definitions	3
ARTICLE II DESIGNATION OF KAPLAN AS REDEVELOPER; TERM OF AGREEMENT	9
Section 2.1. Kaplan as Redeveloper	9
Section 2.2. Initial Term	9
Section 2.3. Extensions	9
Section 2.4. Termination of Agreement	9
Section 2.5. Continuance of Redevelopment Plan	9
ARTICLE III IMPLEMENTATION OF PROJECT	16
Section 3.1. The Project	11
Section 3.2. Implementation of Project	11
Section 3.3. Project Schedule	11
Section 3.4. Infrastructure Improvements	11
Section 3.5. Certificates of Completion	11
Section 3.6. Public Improvements/Facilities	12
Section 3.7. Shuttle to Public Transportation	12
ARTICLE IV ASSEMBLAGE OF PROPERTY	19
Section 4.1. Kaplan's Acquisition Responsibility	13
Section 4.2. Condemnation Procedures	13
Section 4.3. Condemnation Costs	13
Section 4.4. Condemnation Funds	14
Section 4.5. Title and Insurance	14
Section 4.6. Relocation	14
Section 4.7. Appraisals and Other Reports	15
Section 4.8. Environmental Conditions	15
ARTICLE V TAXES AND PILOTS, PROPERTY OWNER ASSOCIATIONS AND AFFORDABLE HOUSING REQUIREMENTS	23
Section 5.1. Taxes/PILOT Programs	16
Section 5.1. Property Owner Association	16
Section 5.3. Affordable Housing Requirements	Error! Bookmark not defined.
ARTICLE VI REPRESENTATIONS AND WARRANTIES	17
Section 6.1. Kaplan's Representations and Warranties	17
Section 6.1.1. Organization	17
Section 6.1.2. Authority	17
Section 6.1.3. Authorization; No Violation	17
Section 6.1.4. Enforceability	17
Section 6.1.5. Ownership Structure	17
Section 6.1.6. No Conflicts	17
Section 6.1.7. Appointment of Receiver	17
Section 6.1.8. Adjudication of Bankruptcy	18
Section 6.1.9. No Indictment	18
Section 6.1.10. No Litigation	18
Section 6.1.11. Accuracy of Submissions	18
Section 6.1.12. No Violation of Laws	18
Section 6.1.13. Absence of Criminal Background	18

Section 6.1.14. Certificate of Formation; Certificate of Good Standing	18
Section 6.2. City's Representations and Warranties	18
Section 6.2.1. Organization.....	19
Section 6.2.2. Authority.....	19
Section 6.2.3. No Conflict	19
Section 6.2.4. Enforceability.....	19
Section 6.2.5. Valid and Binding Obligations	19
Section 6.2.6. Litigation.....	19
Section 6.2.7. No Violation of Laws	19
Section 6.3. Legal Opinions.....	19
Section 6.4. Mutual Representations	20
ARTICLE VII KAPLAN AND CITY COVENANTS; DECLARATION OF	
COVENANTS AND RESTRICTIONS	21
Section 7.1. Kaplan Covenants	21
Section 7.1.1. Compliance	21
[Section 7.1.2. Payments.....	21
Section 7.1.3. Guarantee of Completion.....	21
Section 7.1.4. Notice of Material Change.....	21
Section 7.1.5. Non-Discrimination	22
Section 7.1.6. Ineligible Persons.....	22
Section 7.1.7. Transfer of Redevelopment Area.....	22
Section 7.1.8. Cessation of Conditions Underlying Area in Need of Redevelopment	
Designation	22
Section 7.2. Declaration of Covenants and Restrictions.....	22
Section 7.3. Effect and Duration of Kaplan Covenants	22
Section 7.4. Enforcement by the City	23
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES	30
Section 8.1. Events of Default	24
Section 8.1.1. Non-Performance.....	24
Section 8.1.2. Non-Performance of Financial Obligations	24
Section 8.1.3. Bankruptcy.....	24
Section 8.2. Force Majeure	24
Section 8.2.1. Force Majeure Events	25
Section 8.2.2. Government Action.....	25
Section 8.2.3. Failure of Approval.....	25
Section 8.3. Procedure	25
Section 8.4. Remedies.....	26
Section 8.5. Specific Performance.....	26
Section 8.6. Failure or Delay	26
Section 8.7. Remedies Cumulative.....	27
Section 8.8. Continuance of Obligation.....	27
Section 8.9. Mitigation.....	27
Section 8.1.0. Survival of Termination.....	27
Section 8.1.1. No Consequential Damages.....	27
ARTICLE IX INDEMNIFICATION.....	Error! Bookmark not defined.
Section 9.1. Indemnification.....	28
Section 9.1.1. Indemnification	28
Section 9.1.2. Notification of Indemnification	28

Section 9.2. Survival of Indemnity	28
ARTICLE X CONTROL OF KAPLAN; TRANSFERS OF INTERESTS;	30
QUALIFIED ENTITY	30
Section 10.1. Control of Kaplan; Transfers of Ownership Interests in Kaplan	30
Section 10.1.1. Controlling Interest	30
Section 10.1.2. Transfer of Interest.....	30
Section 10.1.3. Death or Incapacitation	30
Section 10.2. Qualified Entity.....	31
Section 10.2.1. Financial Capacity	31
Section 10.2.2. Ability to Comply	31
Section 10.2.3. Expertise	31
Section 10.2.4. Insolvency	31
Section 10.2.5. Criminal Investigation	31
Section 10.2.6. Default	31
Section 10.2.7. Securities Violations	31
Section 10.2.8. Ethics Violations.....	32
Section 10.3. Kaplan Certification.....	32
Section 10.4. Kaplan as Qualified Entity.....	32
ARTICLE XI REPRESENTATIVES	33
Section 11.1. Kaplan Project Executive and Project Manager	33
Section 11.2. City Representative.....	33
Section 11.3. Change of Representative	33
Section 12.1. Notice.....	34
Section 12.2. Notice Amendments	35
Section 12.3. Transfer of Funds.....	35
ARTICLE XIII MORTGAGE FINANCING; RIGHTS OF MORTGAGE.....	43
Section 13.1. Mortgage Financing	36
Section 13.2. Notice of Default to Kaplan and Right to Cure	36
Section 13.3. Guarantee of Construction or Completion.....	36
Section 13.4. Foreclosure.....	37
Section 13.5. City's Option to Pay Mortgage Debt or Purchase Land.....	37
ARTICLE XIV MISCELLANEOUS	39
Section 14.1. Procurement of Public Funds.....	39
Section 14.2. Provisions Not Merged	39
Section 14.3. Non-Liability of Official, Employees and Agents of the City.....	39
Section 14.4. Non-Liability of Officials and Employees of Kaplan.....	39
Section 14.5. No Brokerage Commissions	39
Section 14.6. Successors and Assigns	39
Section 14.6. Enforcement by the City	39
Section 14.8. Enforcement by Kaplan	40
Section 14.9. Drafting Ambiguities; Interpretation	40
Section 14.10. Time Period for Notices.....	40
Section 14.11. Waivers and Amendments in Writing	40
Section 14.12. Conflict of Interest.....	40
Section 14.15. Approvals by the City and Kaplan.....	40
Section 14.16. No Third Party Beneficiaries	41
Section 14.17. Amendment Waiver.....	41
Section 14.18. Waiver.....	41

Section 14.19. Consents.....	41
Section 14.20. Captions	41
Section 14.22. Severability	41
Section 14.23. Relationship of Parties	41
Section 14.24. Prior Agreements Superseded.....	42
Section 14.25. Release of Liability.....	42
Section 14.26. Exhibits	42
Section 14.27. Counting of Days; Saturday Sunday or Holiday	42
Section 14.28. Cooperation.....	42
Section 14.29. Hiring of Contractors and Subcontractors	42
Section 14.30. Local Purchase of Supplies, Materials and Equipment	42
Section 14.31. Disputes to be Arbitrated	42
Section 14.31.1. Arbitration Procedures.	43

AMENDED & RESTATED REDEVELOPMENT AGREEMENT

This **AMENDED & RESTATED REDEVELOPMENT AGREEMENT** ("Agreement") is made and entered into the 19th day of June, 2014 ("Effective Date"), by and between the **CITY OF BAYONNE**, in the County of Hudson, New Jersey, (the "City"), having its offices at 630 Avenue C, Bayonne, New Jersey 07002 and **KAPLAN-PROMENADE AT BAYONNE, LLC** (formerly known as Kaplan at Bergen Pointe, LLC), a New Jersey limited liability company, with an address c/o Kaplan Companies, 433 River Road, Highland Park, New Jersey 08904 ("Kaplan" and, together with the City, are each a "Party" and, together, the "Parties").

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

WHEREAS, in accordance with the criteria set forth in the Redevelopment Law, the City (a) by resolution number 03-03-20-070 identified and designated the Texaco site consisting of the property commonly known as Block 332, Lot 3; Block 360, Lot 2; Block 373, Lots 1, 2 and 13-15; Block 390, Lots 1 and 67; Block 391, Lots 1 and 2 and Block 511, Lots 5 and 6 on the tax maps of the City (the "**Redevelopment Area**") as an area in need of redevelopment and (b) by ordinance number 0-04-12, dated March 24, 2004 adopted a Redevelopment Plan for the Redevelopment Area entitled the "**Redevelopment Plan Texaco Redevelopment Area**," as the same may be further amended and supplemented from time to time; and

WHEREAS, K-Land Corp., a New Jersey corporation ("**K-Land**"), an Affiliate (as defined herein) of Kaplan, is the contract purchaser of substantially all of the Redevelopment Area, and Kaplan is a developer with resources and a team of experts in planning, redevelopment, law, engineering, environmental issues, architecture, design, finance, and real estate development required for the proposed redevelopment of the Redevelopment Area; and

WHEREAS, the City recognizes that the involvement of Kaplan in this effort will ensure that the City's residents will benefit from the expertise of the private sector in facilitating the successful redevelopment of the Redevelopment Area; and

WHEREAS, the Redevelopment Law authorizes the City to arrange or contract for the planning, construction, or undertaking of any development project or redevelopment work in an area designated as an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-8; and

WHEREAS, the Bayonne Local Redevelopment Agency ("**BLRA**") was established by ordinance number 0-98-26, adopted on June 10, 1998 by the City as an instrumentality and agency of the City pursuant to the provisions of the Redevelopment Law, with responsibility for implementing redevelopment plans and carrying out redevelopment projects within the City; and

WHEREAS, at its January 25, 2007 meeting, the BLRA adopted a resolution entitled "**Resolution of the Bayonne Local Redevelopment Authority Designating K-Land Corp. as**

Redeveloper of the Texaco Redevelopment Area and Authorizing the Execution of a Redevelopment Agreement with Kaplan at Bergen Pointe, LLC, an Affiliate of K-Land Corp.," which designated K-Land as the redeveloper of the Redevelopment Area and authorized the execution of a redevelopment agreement with Kaplan, as an Affiliate of K-Land as permitted by the Redevelopment Law; and

WHEREAS, the BLRA entered a redevelopment agreement with Kaplan dated January 25, 2007 ("**Original Redevelopment Agreement**") with respect to the Project (as defined herein); and

WHEREAS, the BLRA was dissolved by ordinance number 0-13-22 adopted by the City Council on August 14, 2013 and the City was designated as the successor to the BLRA and the "redevelopment entity" for the Redevelopment Area; and

WHEREAS, on June 18, 2014, the City Council adopted a resolution which affirmed the designation of Kaplan as the redeveloper of the Redevelopment Area and approved this Agreement, which shall amend and restate the Original Redevelopment Agreement; and

WHEREAS, the City is now the "redevelopment entity" for the Redevelopment Area.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereby, mutually covenant, promise and agree as follows:

ARTICLE I DEFINITIONS AND INTERPRETATIONS

Section 1.1. Definitions. The Parties agree that the following terms shall have the meanings specified below and shall be applicable equally to the singular and plural forms of such terms:

"Affiliate" means with respect to any Person, any other Person directly or indirectly Controlling or Controlled by, or under common Control with, such Person.

"Agreement" shall have the meaning as set forth in the preambles hereof.

"Applicable Law" means any and all Federal, State, County, and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, and similarly binding authority, applicable to the (a) Redevelopment Area, (b) Project, (c) performance by the Parties of their respective obligations, and (d) exercise by the Parties of their respective rights in connection with this Agreement.

"Approval" means any one or more approvals, authorizations, permits, licenses, or certificates required and issued or granted by any Governmental Body having jurisdiction, whether Federal, State, County or local, to the extent necessary to implement any Project, Phase, or portion thereof.

"Arbitration Rules" shall have the meaning set forth in Section 14.31.1.

"Business Day" means any day other than a Saturday, a Sunday, or a day on which banks generally and public offices are not open under the laws of the State.

"Certificate of Completion" shall have the meaning set forth in Section 3.5.

"Certificate of Occupancy" means the final certificate as defined in Chapter 23 of Title 5 of the New Jersey Administrative Code.

"City" shall have the meaning as set forth in the preambles hereof.

"City Indemnified Parties" means the City and any Affiliate thereof and their officers, agents, employees, contractors, and consultants.

"City Representative" means such individual designated in writing as such pursuant to Section 11.2.

"Commence," "Commencement" or "Commencement of Construction" means the undertaking by a Project Developer of any physical construction upon a Parcel. For this purpose, physical construction shall not include demolition or grading, but it does include sanitary sewer and storm water Infrastructure Improvements.

"Commencement Dates" shall mean the dates set forth on the Project Schedule indicating the Commencement of Construction of each Phase and other development milestones.

"Complete," "Completed" or "Completion" means with respect to the Project and/or a Phase thereof, that all redevelopment within the Parcel(s) associated with a particular portion of the Project and/or Phase has been constructed and installed in accordance with the terms of the Redevelopment Plan and in compliance with all Approvals and Applicable Laws. Completion shall be deemed to have occurred notwithstanding that certain "punch list" items remain to be completed in order for a Certificate of Occupancy to be issued, as long as the City has prepared and delivered to the Project Developer for such portion of the Project and/or Phase a "punch list" of items requiring completion or correction by the Project Developer in order for the Project Developer to fully comply with the terms of this Agreement, the Redevelopment Plan, and all Approvals and Applicable Laws, provided that (a) such "punch list" items have been reasonably agreed to by the Project Developer and (b) such "punch list" items are capable of being completed within 180 days of the date of completion.

"Compliance Plan" means collectively the "Promenade at Bayonne Compliance Plan Submission" dated November 20, 2007 as revised by the "The Promenade at Bayonne Supplement to Compliance Plan Submission dated November 07, 2008" on file with the City Clerk, as well as the "Phasing Plan for The Promenade at Bayonne" dated January 15, 2014 also on file with the City Clerk.

"Condemnation Costs" shall have the meaning set forth in Section 4.3.

"Condemnation Funds" shall have the meaning set forth in Section 4.4.

"Control," "Controlling," "Controlled by," and "under common Control with" means with respect to any Person, 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.

"County" means the County of Hudson, New Jersey.

"Creditors' Rights Limitations" shall include any and all bankruptcy, insolvency, or other laws or legal or equitable principles affecting the enforcement of creditors' rights generally.

"Declaration" shall have the meaning set forth in Section 7.2.

"Design Plans" shall have the meaning set forth in Section 3.1.

"Effective Date" shall have the meaning as set forth in the preambles hereof.

"Eminent Domain Act" means N.J.S.A. 20:3-1 et seq., as the same may be amended or supplemented from time to time.

"Environmental Laws" means the Comprehensive Environmental Response, Compensation

and Liability Act, the Superfund Amendment and Reauthorization Act, the Resource Conservation Recovery Act, the Federal Water Pollution Control Act the Clean Water Act and the Clean Air Act, the New Jersey Spill Compensation Act, the Industrial Site Recovery Act ("ISRA"), including any administrative or judicial interpretation or any of the foregoing and any and all other Applicable Law, regulations, ordinances, rules, judgments, orders, decrees, codes, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements or other governmental restrictions regulating, relating to or imposing liability (including strict liability) or standards of conduct regarding the environment or to emissions, discharges, releases or the presence of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals or other industrial, toxic or Hazardous Substances or wastes in the environment, including, without limitation, ambient air, surface water, ground water or land, or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint chemicals or other industrial, toxic or Hazardous Substances or wastes, or the cleanup or other remediation thereof.

"Event of Default" shall have the meaning set forth in Section 8.1.

"Exhibit(s)" means any exhibit attached hereto which shall be deemed to be a part of this Agreement as set forth in full in the text hereof.

"Financial Agreement" shall have the meaning set forth in Section 5.1.

"First Extension" shall have the meaning set forth in Section 2.3.

"Five-Year Exemption and Abatement Law" means N.J.S.A. 40A:21-1 et seq., as the same may be amended or supplemented from time to time.

"Force Majeure" shall have the meaning set forth in Section 8.2.

"Foreclosure" shall have the meaning set forth in Section 13.4.

"Governmental Body" means any Federal, State, County, or local agency, department, commission, authority, court, or tribunal, and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government.

"Hazardous Substance" means any solid, liquid, gaseous, or thermal substance, pollutants, contaminants, oils, petroleum or petroleum products, asbestos, lead paint, chemicals, or other industrial, toxic, or hazardous substances or wastes, and any material or product defined as a "hazardous substance" or "hazardous material" in any Environmental Laws.

"Holder" shall have the meaning set forth in Section 13.1.

"Holder Failure" shall have the meaning set forth in Section 13.5.

"Infrastructure Improvements" includes both the Off-Site Infrastructure Improvements

and the On-Site Infrastructure Improvements, as the case may be, and means the construction elements required to support the building and operation of the Project and/or Phase thereof, including, but not limited to: (a) gas, electric, and water utilities, (b) storm water and sanitary sewer, (c) fire hydrants, (d) cable, fiber optic, and other telecommunications and data transfer systems improvements, (e) roadways, together with street lighting, traffic striping, signage, and signalization, (f) transportation systems such as light rail, bus ways, and ferry terminals, (g) bulkhead and waterfront structures, (h) active and passive recreational facilities such as parks, walkways (including the Hudson River Waterfront Walkway), and open space, (i) the provision of fill to raise the topography above the 100 year flood plain elevation, and (j) the mitigation, creation, or enhancement to wetlands or other natural areas.

"Initial Term" shall have the meaning set forth in Section 2.2

"Long Term Tax Exemption Law" means N.J.S.A. 40A:20-1 et seq., as the same may be amended or supplemented from time to time.

"LSRP" shall have the meaning set forth in Section 4.8.

"MLUL" means the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., as the same may be amended or supplemented from time to time.

"NJDEP" means the State Department of Environmental Protection.

"Off-Site Infrastructure Improvements" means those Infrastructure Improvements not located in the Redevelopment Area.

"On-Site Infrastructure improvements" means those Infrastructure Improvements located in the Redevelopment Area.

"Original Redevelopment Agreement" shall have the meaning as set forth in the preambles hereof.

"Parcel" means a subdivided tax lot or one or more contiguous subdivided tax lots within the Redevelopment Area.

"Party" or "Parties" shall have the meaning as set forth in the preambles hereof.

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

"Phase" means a particular portion of the Project, as designated from time to time on the Project Schedule, and may consist of one or more Parcels.

"PILOT" shall have the meaning set forth in Section 5.1.

"Planning Board" means the City Planning Board.

"Plans" shall have the meaning set forth in Section 3.1

"Project" shall mean the redevelopment of the entire Redevelopment Area in accordance with the provisions of this Agreement, the Redevelopment Plan, and Applicable Law.

"Project Developer" means, either: (a) Kaplan, (b) any partnership, corporation, limited liability company, or other legal entity to which Kaplan and/or an Affiliate of Kaplan is the sole beneficial owner, (c) any partnership, corporation, limited liability company, or other legal entity to which Kaplan and/or an Affiliate of Kaplan together with one or more Qualified Entity(ies) are collectively the sole beneficial owners, or (d) any Qualified Entity which is an assignee of Kaplan and/or an Affiliate of Kaplan.

"Project Executive" shall have the meaning set forth in Section 11.1.

"Project Managers" shall have the meaning set forth in Section 11.1.

"Project Schedule" means the Project Schedule attached hereto as Exhibit A, as amended from time to time.

"Qualified Entity" shall mean (i) Kaplan (at the time of execution of this Agreement, and thereafter so long as it remains in compliance with the terms of this Agreement) (ii) any single purpose business entity wholly owned by any combination of Michael Kaplan and/or Jason Kaplan, provided that the management Control requirements set forth in Section 10.1 remain satisfied (with the express requirement that any owner of an equity interest other than Kaplan, Michael Kaplan and/or Jason Kaplan shall be subject to qualification by the City pursuant to Section 10.2), or (iii) such other Person that the City in its reasonable discretion determines complies with the provisions of Section 10.2.

"Relocation Laws" means, collectively, the Relocation Assistance Law of 1967, N.J.S.A. 52:31 B-1 et seq., and the Relocation Assistance Act of 1971, N.J.S.A. 20:4-1 et seq., as the same may be amended or supplemented from time to time.

"RAO" shall have the meaning set forth in Section 4.8.

"State" means the State of New Jersey.

"WRAP" shall have the meaning set forth in Section 4.6.

(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 of this Agreement.

(b) All references to Articles, Sections or Exhibits shall, unless otherwise

indicated, refer to the Articles, Sections, or Exhibits in this Agreement

(c) Words imparting 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.

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

(e) Unless otherwise indicated, any "fees and expenses" shall be required to be customary and reasonable.

(f) The use of the phrases "consult with," "in consultation with," "in collaboration with," "provide an opportunity to comment," and/or "working collaboratively" and similar phrases used anywhere in this Agreement with respect to the Parties shall, in each instance, be construed as imposing a reciprocal duty of good faith and best efforts upon each Party with respect to resolution of each and every issue, obligation and/or action that is the subject of such consultation or collaboration.

(g) The phrase "sole discretion" shall, in each instance, be construed as permitting the applicable Party the right to exercise its judgment without limitation and make a determination for no reason or any reason whatsoever, notwithstanding, however, that such Party cannot be arbitrary and capricious in such exercise of judgment.

(h) Notwithstanding anything in this Agreement to the contrary, each of the time-frames set forth in this Agreement may be extended at the request of Kaplan or any Project Developer(s), as the case may be, at the reasonable discretion of the City.

ARTICLE II
DESIGNATION OF KAPLAN AS REDEVELOPER;
TERM OF AGREEMENT

Section 2.1. Kaplan as Redeveloper. The City hereby affirms and agrees that Kaplan is designated and appointed as the exclusive redeveloper of the Redevelopment Area. In connection with such designation and appointment, Kaplan has the exclusive right to perform any and all development and redevelopment activities, residential, commercial, and otherwise, on and about the Redevelopment Area, under the framework and in accordance with the terms of this Agreement, the Redevelopment Plan and Applicable Law. The City agrees that, while this Agreement remains in effect, it will not negotiate or consider proposals from any other Person for the Redevelopment Area except as otherwise permitted pursuant to the terms of this Agreement.

Section 2.2. Initial Term. This Agreement shall commence upon the Effective Date and, subject to any extensions as provided in Section 2.3 below, shall expire on the 20th anniversary of the Effective Date (the "Initial Term") as to any portion of the Project and/or Phase thereof in the Redevelopment Area upon which construction has not commenced as of such date. Except as set forth herein, in the event that all work in connection with any Parcel has been Completed and a Certificate of Completion has been issued for such Parcel, the term of this Agreement shall be deemed to have expired with respect to that portion of the Project, notwithstanding that this Agreement remains in effect with respect to the remainder of the Redevelopment Area.

Section 2.3. Extensions. Kaplan may provide the City with (a) a written request for a 5 year extension (the "First Extension") of the Initial Term, at least 180 days prior to the expiration of such Initial Term and (b) a written request for an additional 5 year extension of First Extension, at least 180 days prior to the expiration of such First Extension for a total of up to 30 years. Together with such requests, Kaplan shall provide such documentation as the City may reasonably request for the City to determine, in its reasonable judgment that Kaplan satisfies the requirements of Section 7.1. The City shall grant such extension within 90 days of receipt of Kaplan's written request, provided that at the time the City is prepared to grant Kaplan's written request (i) this Agreement has not been terminated in accordance with its terms, (ii) no Event of Default has occurred (if an extension is granted during a period in which Kaplan has the right to remedy or cure such event before it becomes an Event of Default, such extension shall be revocable if such remedy or cure is not effectuated within the allotted time), and (iii) the City has determined, in its reasonable judgment, that Kaplan satisfies the requirements of Section 7.1.

Section 2.4. Termination of Agreement. (a) This Agreement shall terminate upon the occurrence of (i) an Event of Default by Kaplan and/or (ii) an Event of Default by a Project Developer. Upon such termination, Kaplan's designation as "redeveloper" for purposes of the Redevelopment Law shall terminate without any further action by the City.

(b) This Agreement may also terminate, at the reasonable discretion of Kaplan, upon the occurrence of an Event of Default by the City.

Section 2.5. Continuance of Redevelopment Plan. During the term of this Agreement as

same may be extended, the City may not amend or modify the Redevelopment Plan without Kaplan's prior consent. Kaplan shall not unreasonably withhold or delay its consent to any proposed amendment or modification which does not change the Schedule of Bulk Requirements (Table 2) set forth in the Redevelopment Plan or otherwise materially and adversely affect Kaplan's responsibilities, obligations, or rights under the Redevelopment Plan.

ARTICLE III IMPLEMENTATION OF PROJECT

Section 3.1. The Project. Kaplan has submitted, and the City has approved, the Compliance Plan.

Section 3.2. Implementation of Project. Kaplan shall, at its sole cost and expense, implement the Project consistent with the Redevelopment Plan and Compliance Plan and in accordance with the terms and conditions of this Agreement. The Project shall only contain those uses permitted in the Redevelopment Plan. All activities performed under this Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first class residential and commercial development.

Section 3.3. Project Schedule. The Project shall be commenced in Phases, as detailed in the Project Schedule, as same may be amended from time to time by the Parties. The Project Schedule shall control the progress of the Project. Kaplan shall adhere to the timeframes and deadlines set forth in the Project Schedule, subject only to relief resulting from the occurrence of a Force Majeure or an Event of Default by the City. The tolling of any deadline shown on the Project Schedule, because of a Force Majeure or an Event of Default by the City, shall extend the deadlines for all subsequent events by an equal amount of time. If Kaplan fails to meet a timeframe or deadline set forth on the Project Schedule, as modified in this paragraph, or determines that it will fail to meet such a timeframe or deadline, Kaplan shall promptly provide notice to the City stating: (a) the reason for the failure to meet such timeframe or deadline, (b) Kaplan's proposed method for correcting such failure, (c) Kaplan's schedule for meeting such timeframe or deadline, and (d) the method or methods by which Kaplan proposes to achieve subsequent tasks by the relevant timeframes or deadline. Kaplan shall notify the City at least 10 days before it Commences construction of each Phase of the Project.

Section 3.4. Infrastructure Improvements. Kaplan shall design and construct the Infrastructure Improvements required by the Planning Board or by any other Governmental Body as a condition to any Approval in a good and workmanlike manner and in accordance with all Applicable Laws. Kaplan acknowledges that the Infrastructure Improvements may include, but are 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. Kaplan agrees that, notwithstanding N.J.S.A. 40A:12-10, it is its sole responsibility to undertake, and pay for, the appropriate measures to negotiate with, acquire, relocate, or otherwise address the existence of these utilities and improvements and easements therefor to complete the Project as provided by this Agreement. Nothing contained herein shall be construed as a waiver by Kaplan of any rights which it may have under Applicable Law to request and obtain from the applicable utility authorities fair share contributions and/or credits against connections fees as a result of Kaplan bearing the cost of any such Infrastructure Improvements.

Section 3.5. Certificates of Completion. The Completion of each Phase of the Project shall be evidenced by a certificate ("Certificate of Completion") in recordable form, issued by the City. Each Certificate of Completion for a particular Phase of the Project shall state that the City accepts the terms of a written certification of a duly authorized officer of Kaplan stating that (a)

the Phase has been Completed and all labor, services, materials, and supplies used in connection therewith have been paid for (or, if disputed, bonded for), and (b) Kaplan has materially performed all of its duties and obligations under this Agreement as to the applicable Phase of the Project.

The Certificate of Completion for each Phase shall constitute a conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to Kaplan's obligation to construct the applicable Phase of the Project. Upon issuance of the Certificate of Completion for each Phase, the conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment shall be deemed to no longer exist and the land and improvements within the Phase (or unit thereof as the case may be) shall no longer be subject to eminent domain as a result of those determinations.

The City shall not unreasonably withhold or delay the delivery of the Certificate of Completion. If the City determines that Kaplan is not entitled to a Certificate of Completion, the City shall, at the written request of Kaplan, within thirty (30) days of receipt thereof, provide Kaplan with a written statement of the reasons the City refused or failed to furnish a Certificate of Completion. Upon resolution of the open issues to the reasonable satisfaction of the City, Kaplan shall be entitled to receive the Certificate of Completion.

To facilitate and expedite the provision of such Certificates of Completion, the Parties shall establish forms and appropriate escrow mechanism for the executed Certificates of Completion.

Notwithstanding the foregoing, to facilitate the sale and/or rental of residential units and/or apartments and the rental of commercial space in the Project, a Certificate of Completion shall be deemed to have been issued by the City for (i) a particular residential unit in a particular Phase provided said unit has received a Certificate of Occupancy from the City and the Certificate of Completion is needed to allow the sale of the unit, (ii) a particular residential or commercial rental building in a particular Phase provided said building has received a Certificate of Occupancy from the City and the Certificate of Completion is needed to allow the building to be permanently financed, and (iii) a particular public facility upon the City's confirmation of Completion in accordance with all Applicable Law.

Section 3.6. Public Improvements/Facilities. All public improvements and facilities associated with each Phase of construction shall be undertaken in accordance with Exhibit C.

Section 3.7. Shuttle to Public Transportation. The Parties acknowledge that making shuttle service to the proposed Eighth Street light rail station available to future residents of the Redevelopment Area is an important element of the Redevelopment Plan (in addition to, and not in lieu of, the Redevelopment Plan provisions with respect to possible ferry service to and from the Redevelopment Area). The Parties covenant and agree to work together to explore and examine the feasibility of making such shuttle service available at the appropriate time.

ARTICLE IV ASSEMBLAGE OF PROPERTY

Section 4.1. Kaplan's Acquisition Responsibility. Kaplan represents that K-Land Corp, an Affiliate of Kaplan, is the contract purchaser of the portion of the Redevelopment Area known as the Chevron/Texaco Property and that the rights and obligations under the contract of purchase for the Chevron/Texaco Property will be assigned to Kaplan. Kaplan, at its sole cost and expense, shall use best efforts through good faith negotiations to execute purchase agreements with the owners of the other properties in the Redevelopment Area and shall provide the City with written proof of the existence of said purchase agreements. The closings on the properties in a Phase shall occur no later than the dates set forth in the Project Schedule for the Commencement or Construction for that Phase.

Section 4.2. Condemnation Procedures. The City shall exercise its power of condemnation with respect to any properties (including easements and the like) within the Redevelopment Area for which Kaplan has not executed a purchase agreement and which Kaplan requests that the City acquire by condemnation. Kaplan shall request that the City commence condemnation proceedings for any such properties at least 6 months before the date then set forth on the Project Schedule for the Commencement of Construction with respect to the applicable Phase. Condemnation proceedings shall be commenced by the City in accordance with the Redevelopment Law and the Eminent Domain Act, for those properties not under purchase agreement when requested by Kaplan; provided, however, the City shall not exercise the power of condemnation if (a) Kaplan is not in compliance with the Project Schedule, (b) an Event of Default by Kaplan exists at that time, or (c) Kaplan has not provided the Condemnation Funds. When Kaplan makes such a request, Kaplan shall provide to the City as soon as possible thereafter and at Kaplan's sole expense all necessary title search data for the purpose of commencement of condemnation proceedings.

Section 4.3. Condemnation Costs. Kaplan shall pay all costs and fees of any kind incurred by the City in acquiring any properties within the Redevelopment Area ("**Condemnation Costs**"), including, but not limited to, (a) the price paid or to be paid to the property owners which shall be the just compensation value determined by the condemnation process either in bona fide negotiations with the property owner or as a result of the proceedings before the condemnation commissioners or the court, (b) its reasonable out-of-pocket costs and fees incurred in complying with Section 8(c) of the Redevelopment law and the Eminent Domain Act, including, but not limited to, professional services, attorneys fees, expert fees inspections, appraisals, environmental investigations, court deposits (required by N.J.S.A. 20:3-18), and court costs and fees associated with bona fide negotiations, commissioner's hearings, court proceedings and challenges to the condemnation. The City shall provide Kaplan with monthly written invoices of all Condemnation Costs. The City shall coordinate with Kaplan regarding the condemnation proceedings, and with respect to the valuation of the property and the preservation of applicable cost recovery rights for environmental remediation, including without limitation, soil, groundwater, asbestos, and lead paint remediation and removal in accordance with Applicable Law. If Kaplan requests assistance from the City in obtaining access to any such properties, the City shall provide such assistance as is available to the City under the

Redevelopment Law and/or the Eminent Domain Act. Any costs incurred by the City in providing such assistance and/or access, including the costs of court proceedings or judicial actions required to obtain such access, shall be considered Condemnation Costs.

Section 4.4. Condemnation Funds. As a condition precedent to the City commencing condemnation proceedings to acquire any such properties, Kaplan shall deposit with the City the amount of \$35,000.00 ("Condemnation Funds"). Said funds shall be deposited with the City within 10 days of the receipt by Kaplan of a written notice from the City. The Condemnation Funds shall be used by the City to pay the Condemnation Costs incurred by the City in the condemnation action. Within 10 days of the receipt by Kaplan of a written notice from the City that the Condemnation Funds balance has decreased to \$15,000.00, Kaplan shall replenish the Condemnation Funds to the amount of \$25,000.00. Should the Condemnation Costs exceed the amount in the Condemnation Funds, Kaplan agrees to pay the full amount of those costs within 7 Business Days of the receipt of written notice from the City that such costs are due. Should the City be required to deposit funds into court or make payment to the property owner for the acquisition of any such property, and there are not sufficient funds in the Condemnation Funds to cover those costs, Kaplan agrees to pay the full amount of those costs to the City within 7 Business Days of the receipt of written notice from the City that such costs are due, provided Kaplan has been given a copy of the approved appraisal of each Parcel for which the City requests payment, and supporting documentation with respect to the amount due. Kaplan shall take all necessary steps and make all necessary payments to or on behalf of the City in a timely fashion to meet this obligation of the Agreement. Kaplan shall provide condemnation deposits to the City by bank cashier's check or certified check of Kaplan, payable either to the City or to "Clerk, Superior Court of New Jersey," or by wire transfer to an account designated by the City.

Section 4.5. Title and Insurance. In the event that Kaplan is unsuccessful in acquiring any of the properties within the Redevelopment Area and Kaplan complies with Article IV of this Agreement, the City shall acquire fee simple absolute title to those properties that Kaplan is unable to acquire. The City shall acquire title that is good and marketable and insurable at regular rates and without special premium by a reputable title insurance company doing business in the State, subject only to such reasonable title exceptions as Kaplan may reasonably approve. The City shall promptly file and record in the Office of the County Clerk the deeds to the properties if acquired by purchase agreement during bona fide negotiations. In the event it is necessary for the City to file a condemnation complaint in Superior Court of New Jersey, the City shall file a declaration of taking in the Office of the County Clerk. The City will secure liability insurance in the amount of \$2,000,000 on any Parcels acquired by the City pursuant to this Agreement, naming the City and Kaplan as insured parties and insuring the City and Kaplan against the claims of third parties arising from injuries occurring on the Parcels while owned by the City. The premium for this insurance shall be considered Condemnation Costs.

Section 4.6. Relocation. Kaplan shall be responsible for providing relocation assistance to all residents and businesses displaced by the Project in compliance with the requirements of the Relocation Laws. The City shall prepare a Workable Relocation Assistance Plan ("WRAP") and submit said WRAP to the State Department of Community Affairs. The City will retain a relocation consultant to provide professional services in connection with providing relocation assistance to displaced residents and businesses. Kaplan and the City shall cooperate fully as

necessary to prepare the WRAP, and the City shall sign all applications and submissions that are required to be signed by the displacing agency. All costs relating to relocation, including preparation of the WRAP and the payment of relocation assistance, shall be paid by Kaplan and shall be considered Condemnation Costs.

Section 4.7. Appraisals and Other Reports. The City shall provide Kaplan with copies of all appraisals, surveys, title reports, environmental reports, or other investigative reports obtained by the City with respect to the properties the City acquires. Kaplan shall have the right to review the appraisals and reports and to consult with the City prior to the commencement of negotiations or condemnation proceedings and prior to the City's extending any settlement offer.

Section 4.8. Environmental Conditions. As between Kaplan and the City, Kaplan agrees and specifically assumes, at its sole expense, any and all responsibility for the investigation and remediation to residential standards of all environmental conditions on, under or migrating to or from all properties within the Redevelopment Area, including, but not limited to, any properties acquired by the City, as may be required by applicable Environmental Laws. Kaplan also agrees to obtain all environmental approvals for the cleanup of such properties to residential standards, including but not limited to Response Action Outcome ("RAO") letters with all required NJDEP forms from Licensed Site Remediation Professionals ("LSRPs") with respect to any such environmental conditions. The City understands and acknowledges that Kaplan has disclosed to the City the nature and magnitude of the current environmental conditions of the portion of the Redevelopment Area which Kaplan has a contract to purchase, as well as current estimates regarding the time needed to delineate and to thereafter remediate such conditions to the satisfaction of the NJDEP. Any environmental cleanup costs, including but not limited to, the costs of investigation and remediation and any fees, fines or oversight costs imposed by the NJDEP, not paid by the present owners of the relevant properties shall be the responsibility of Kaplan. The City shall not be responsible for any environmental cleanup costs, including the costs of investigation or remediation and any fees, fines, or oversight costs imposed by the NJDEP.

The City shall reasonably cooperate with Kaplan's efforts to obtain appropriate evidence of environmental compliance, but shall not be required to sign any applications or other submissions to the NJDEP, unless NJDEP requires the City to do so. Kaplan shall provide the City with copies of all submissions to and responses from LSRPs and/or the NJDEP in connection with any investigation or remediation within the Redevelopment Area within Kaplan's possession which Kaplan has the right to release to the City, regardless of whether such correspondence and filings involve Kaplan directly or any present owners of the relevant properties.

Kaplan shall secure and provide the City with appropriate indemnities from credit worthy entities (as approved by the City) protecting the City from any and all environmental liabilities of any kind whatsoever arising from or related to the Redevelopment Area or Project.

ARTICLE V
TAXES AND PILOTS, PROPERTY OWNER ASSOCIATIONS
AND AFFORDABLE HOUSING REQUIREMENTS

Section 5.1. Taxes/PILOT Programs. The Project shall incur full real estate taxes unless the City and the Project Developer negotiate and execute a financial agreement that provides for special assessments or a payment-in-lieu of taxes ("PILOT") pursuant to the Long Term Tax Exemption Law, Five-Year Exemption and Abatement Law, or the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq.

Section 5.2. Property Owner Association. Kaplan may in its reasonable discretion after consultation with the City, establish one or more property owner associations to ensure proper maintenance and operation of any non-public amenities, Infrastructure Improvements, or other improvements within the Redevelopment Area. The City shall have the right, but not the obligation, to-review and approve the constituent documents for any such associations.

Section 5.3. Affordable Housing Requirements. Kaplan shall be obligated, at its sole cost and expense, to fully comply with the requirements of both the Redevelopment Plan and the City's ordinance relating to affordable housing at the time of Planning Board approval for the applicable Phase of the Project. In the event of any conflict, the provisions of such ordinance shall govern.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

Section 6.1. Kaplan's Representations and Warranties. Kaplan hereby represents and warrants the following to the City for the purpose of inducing the City to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

Section 6.1.1. Organization. Kaplan is a limited liability company, duly formed, validly existing and in good standing under the laws of the State and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Agreement.

Section 6.1.2. Authority. Kaplan has the legal power, right, and authority to enter into this Agreement and the instruments and documents referenced herein to which Kaplan is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

Section 6.1.3. Authorization; No Violation. The execution, delivery and performance by Kaplan of this Agreement have been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of Kaplan or result in the breach of or constitute a default under any loan or credit agreement, or other material agreement to which Kaplan is a party or by which Kaplan may be bound or affected.

Section 6.1.4. Enforceability. This Agreement is duly executed by Kaplan, and is valid and legally binding upon Kaplan and enforceable in accordance with its terms. The execution and delivery hereof shall not constitute a default under or violate the terms of any indenture, agreement, or other instrument to which Kaplan is a party.

Section 6.1.5. Ownership Structure. The ownership and management structure of Kaplan is set forth in Exhibit B and is true as of the Effective Date. Kaplan shall, upon any change in the ownership and management structure set forth in Exhibit B, furnish the City with a complete statement subscribed and sworn to by the managing member of Kaplan, setting forth all of the ownership interests of Kaplan, or other owners of equity interests of Kaplan and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Kaplan, their names and the extent of such interest. Such statement will amend Exhibit B accordingly and any provision of this Agreement relating to such Exhibit B will apply to Exhibit B as amended. Throughout the term of this Agreement, either Michael Kaplan or Jason Kaplan shall retain management Control of Kaplan.

Section 6.1.6. No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments, or decrees to which Kaplan is a party or is otherwise subject.

Section 6.1.7. Appointment of Receiver. No receiver, liquidator, custodian or trustee of Kaplan shall have been appointed as of the Effective Date, and no petition to reorganize Kaplan

pursuant to the United States Bankruptcy Code or any similar statute that is applicable to Kaplan shall have been filed as of the Effective Date.

Section 6.1.8. Adjudication of Bankruptcy. No adjudication of bankruptcy of Kaplan or a filing for voluntary bankruptcy by Kaplan under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to Kaplan shall have been filed.

Section 6.1.9. No Indictment. No indictment has been returned against any owner of Kaplan.

Section 6.1.10. No Litigation. There is no action, proceeding, or investigation now pending nor any basis therefore, known or believed to exist which (a) questions the authority of Kaplan to enter into this Agreement or any action or act taken or to be taken by Kaplan pursuant to this Agreement; or (b) is likely to result in a material adverse change in Kaplan'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.

Section 6.1.11. Accuracy of Submissions. All information and statements included in any information submitted by Kaplan to the City and its agents, including but not limited to Gibbons, Del Deo, Dolan, Griffinger & Vecchione, P.C., are true and correct in all material respects. Kaplan acknowledges that the facts and representations contained in the information submitted by Kaplan are a material factor in the decision of the City to enter into this Agreement,

Section 6.1.12. No Violation of Laws. Kaplan has received no notice as of the Effective Date asserting any noncompliance in any material respect by Kaplan with applicable statutes, rules, and regulations of the United States, the State or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on Kaplan's ability to perform its obligations in connection with this Agreement. Kaplan is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.

Section 6.1.13. Absence of Criminal Background. Neither Kaplan, nor any owner of Kaplan (a) has been convicted in a criminal proceeding or is a named subject in a pending criminal proceeding (excluding traffic violations or other minor offenses), or (b) to the best of Kaplan's knowledge and belief is a target of or a potential witness in a criminal investigation.

Section 6.1.14. Certificate of Formation; Certificate of Good Standing. Kaplan's certificate of formation and certificate of good standing, duly certified by the Secretary of State, are in full force and effect.

Section 6.2. City's Representations and Warranties. The City hereby represents and warrants the following to Kaplan for the purpose of inducing Kaplan to enter into this Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof.

Section 6.2.1. Organization. The City is a public body corporate and politic and a political subdivision of the State. The City has all requisite power and authority to enter into this Agreement.

Section 6.2.2. Authority. The City has the legal power, right, and authority to enter into this Agreement and the instruments and documents referenced herein to which the City is a party, to consummate the transactions contemplated hereby, and to perform their obligations hereunder.

Section 6.2.3. No Conflict. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the City is a party or is otherwise subject.

Section 6.2.4. Enforceability. This Agreement is duly executed by the City and is valid and legally binding upon the City and enforceable in accordance with its terms, on the basis of Applicable 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 City is a party.

Section 6.2.5. Valid and Binding Obligations. The person executing this Agreement on behalf of the City has been duly authorized and empowered and this Agreement has been duly executed and delivered by the City and constitutes the valid and binding obligation of the City, except to the extent that the enforcement thereof may be limited by the Creditors' Rights Limitations.

Section 6.2.6. Litigation. No suit is pending against or affects the City which could have a material adverse effect upon the City's performance under this Agreement or the financial condition or business of the City. There are no outstanding judgments against the City that would have a material adverse affect upon the City or which would materially impair or limit the ability of the City to enter into or carry out the transactions contemplated by this Agreement.

Section 6.2.7. No Violation of Laws. The City has received no notice as of the date of this Agreement asserting any noncompliance by the City in any material respect with Applicable Laws regarding the transactions contemplated in and by this Agreement which would have a material adverse effect on the City's ability to perform its obligations in connection with this Agreement. The City is not in default with respect to any judgment, order, injunction, or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.

Section 6.3. Legal Opinions. Each Party (and where indicated below as to a specific Party, such Party) shall deliver to the other Party simultaneous with the execution of this Agreement a legal opinion by such Party's counsel that provides that: (a) such Party has all requisite power and authority to enter into this Agreement; (b) in the case of the City, the execution, delivery, and performance by the City of this Agreement are within the City's authority under Applicable Law and will not violate the statutes, rules, and regulations establishing the City and governing the City's activities; (c) in the case of Kaplan, the execution, delivery, and performance by Kaplan of this Agreement will not violate the certificate of

formation, operating agreement, or any other formation or operating document of Kaplan; and (d) the person executing this Agreement on behalf of such Party has been duly authorized and empowered and this Agreement has been duly executed and delivered by such Party and constitutes the valid and binding obligation of such Party except to the extent that the enforcement thereof may be limited by the Creditors' Rights Limitations.

Section 6.4. Mutual Representations. The City and Kaplan agree that the Project shall be governed by this Agreement, the Redevelopment Plan, and Applicable Law.

ARTICLE VII
KAPLAN AND CITY COVENANTS; DECLARATION OF COVENANTS AND RESTRICTIONS

Section 7.1. Kaplan Covenants. Kaplan covenants and agrees that (collectively, "Kaplan Covenants"):

Section 7.1.1. Compliance. Kaplan shall carry out the Project in accordance with the provisions of this Agreement, the Redevelopment Plan, and Applicable Laws.

Section 7.1.2. Payments. Kaplan represents that it will make timely payment or reimbursement to the City of the City Costs. Kaplan shall establish, or to the extent already established, replenish an escrow account (the "**Escrow Account**") with or to a balance of \$35,000 and will pay all prior outstanding the City Costs. If, when and as often as may occur that the Escrow Account is drawn down to \$15,000, then Kaplan, upon the City's written request, shall within 5 business days thereafter, provide to the City for deposit funds sufficient to replenish the escrow account to the amount of \$35,000 for use in accordance with these terms. Funds in the Escrow Account will be applied to the payment or reimbursement of the City Costs as provided in this Agreement. At least 10 days prior to making any disbursement from the Escrow Account, written notice of the proposed disbursement shall be mailed to Kaplan, setting forth (i) the amount of the disbursement; (ii) the name of the person, company or entity designated to receive payment; and (iii) a description, in reasonable detail, of the particular City Cost to be paid or reimbursed in accordance with this Agreement and a copy of any invoice issued in relation thereto. Any dispute concerning payment of the City 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 final Certificate of Completion, or upon termination of this Agreement, except in the event of a termination caused by a default of Kaplan, any money remaining in the Escrow Account shall be disbursed to Kaplan, except that the City may retain for not more than 60 days after the issuance of the final Certificate of Completion or the termination date, an amount sufficient to cover unpaid expenses.

Section 7.1.3. Guarantee of Completion. Kaplan shall not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Redevelopment Area. Notwithstanding the foregoing, the City acknowledges that the magnitude of the Project is such that build-out will take place over an extended period of time, with market conditions changing and evolving, and that Kaplan may exercise its reasonable business judgment as to how best to respond to such conditions; provided, however, that any substantial variations from the Overall Site Development Plan or Design Plans and/or the Project Schedule must be reviewed and approved by the City in accordance with the provisions of Sections 3.1, 3.2, and 3.3.

Section 7.1.4. Notice of Material Change. Kaplan shall immediately notify the City of any adverse material change in (i) its financial condition from the information provided to the City by Kaplan indicating Kaplan's financial capability to perform, (ii) its ability to meet the

obligations set forth in this Agreement to develop, finance, and construct the Project, in respect of the City's designating Kaplan as redeveloper or (ii) any of the requirements of Section 10.2.

Section 7.1.5. Non-Discrimination. Kaplan shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference, or sex in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Redevelopment Area nor shall Kaplan itself, or any Affiliate under or through Kaplan, establish, or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Redevelopment Area.

Section 7.1.6. Ineligible Persons. Kaplan shall refrain from knowingly employing, hiring, or otherwise involving in the Project any Person with a criminal conviction or that has previously been disbarred, suspended, or otherwise ruled unable to participate in the process of bidding for and being awarded public contracts.

Section 7.1.7. Transfer of Redevelopment Area. Except as permitted by the provisions of this Agreement, and except for sales of residential units and the rental of residential units and nonresidential space in the ordinary course of its business, neither Kaplan nor any Project Developer shall be permitted to sell, lease, or otherwise transfer the Redevelopment Area, Project, Phase, or any portion thereof, without the City's written consent.

Section 7.1.8. Cessation of Conditions Underlying Area in Need of Redevelopment Designation. Upon issuance of a Certificate of Completion, the conditions determined to exist at the time the applicable Parcels were determined to be in need of redevelopment shall be deemed to no longer exist and such Parcels and improvements thereon shall no longer be subject to eminent domain.

Section 7.2. Declaration of Covenants and Restrictions. At such time(s) as Kaplan acquires title to the Redevelopment Area, or any portion thereof, Kaplan shall execute and record one or more Declaration of Covenants and Restrictions approved by the City (each, a "Declaration"), imposing the Kaplan Covenants set forth in Sections 7.1.1, 7.1.5, and 7.1.6, and those other matters indicated in this Agreement as to be included in the Declaration, and the provisions hereof relating to transfers of interest.

Section 7.3. Effect and Duration of Kaplan Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in this Article 7 and those elsewhere in this Agreement specifically designated for inclusion in the Declaration shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, and any successor in interest to the Redevelopment Areas or any part thereof against Kaplan, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Redevelopment Area or any part thereof. It is further intended and agreed that the agreements and covenants in Section 7.1 shall remain in effect without limitation as to time. However, such agreements and covenants shall be binding on Kaplan itself, each successor in

interest to Kaplan, and each party in possession or occupancy, respectively, (a) only for such period as Kaplan or such successor or party shall be in possession or occupancy of the Redevelopment Area, the buildings and structures thereon or any part thereof and (b) that as each portion of the Project and/or Phase is Completed and a Certificate of Completion is issued for such portion and/or Phase, the Declaration as it relates to the Parcel(s) which comprise such portion and/or Phase shall be terminated.

Section 7.4. Enforcement by the City. In amplification, and not in restriction, of the provisions of this Article 7, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth herein. This Agreement and the covenants set forth herein (and the Declaration shall so state) shall run in favor of the City for the period set forth in Section 7.3 during which this Agreement shall be in force and effect without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein. Each Party shall have the right, in the event of any Event of Default, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled. Upon redevelopment of the Redevelopment Area and Completion of each Phase as evidenced by the issuance of a Certificate of Completion, the conditions that were found and determined to exist at the time the 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, a Phase, or applicable portion thereof.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default. Any one or more of the following events shall constitute an event of default ("Event of Default") hereunder, unless such event results from the occurrence of a Force Majeure event:

Section 8.1.1. Non-Performance. Failure of Kaplan or the City to observe and perform any covenant, condition, or obligation in this Agreement and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting Party of written notice from the non-defaulting Party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting Party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than 120 days after such written notice; provided further that the preceding right to cure shall not apply to any failure to observe and perform any covenant condition, or obligation in this Agreement relating to the payment of monetary obligations as specified in Section 8.1.2.

Section 8.1.2. Non-Performance of Financial Obligations. Failure of Kaplan to make any payment required by this Agreement within thirty (30) days after written notice from the City that same is past due.

Section 8.1.3. Bankruptcy. (a) Kaplan 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; (b) a custodian shall have been legally appointed with or without consent of Kaplan; (c) Kaplan (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; (d) Kaplan has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (e) Kaplan has take any action for the purpose of effecting any of the foregoing; (f) a petition in bankruptcy shall have been filed against Kaplan and shall not have been dismissed for a period of ninety (90) consecutive days; (g) an order for relief shall have been entered with respect to or for the benefit of Kaplan under the United State Bankruptcy Code; (h) an order, judgment, or decree shall have been entered, without the application, approval, or consent of Kaplan by any court of competent jurisdiction appointing a receiver, trustee, custodian, or liquidator of Kaplan 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 (i) Kaplan shall have suspended the transaction of its usual business.

Section 8.2. Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following acts, events or conditions or any combination thereof that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the Parties to this Agreement; provided, however, that such act, event or condition shall be beyond the reasonable Control of the Party relying thereon as justification for not performing an obligation or complying with any

condition required of such Party under the terms of this Agreement ("**Force Majeure**"):

Section 8.2.1. Force Majeure Events. An act or acts of God, acts of the public enemy, acts or omissions of other parties (including litigation by third parties), flood, fire, epidemics, quarantine restrictions, embargoes, earthquake, explosion, the elements, unusually severe weather, war, terrorism, blockade, security problems, insurrections, riots, mob violence or civil disturbance, acts of the Federal government, acts of other parties, inability to procure or a general shortage of labor, equipment or facilities, energy, freight, materials or supplies in the open market, failure of transportation, strikes, walkouts, boycotts, picketing, slow-downs, work stoppages, or other labor actions, or delays of subcontractors due to any of the foregoing such causes, and actions or inactions by any Federal, State, local governmental, or quasi-governmental authority with respect to governmental approvals or the development of the Project, affecting the rights or obligations of Kaplan or the City hereunder, court orders laws, rules, regulations, or orders of governmental or public agencies, bodies and authorities, or any other similar cause not within the Control of Kaplan.

Section 8.2.2. Government Action. The order, judgment, action, or inaction and/or determination of any Governmental Body (other than the City when acting in conformance with this Agreement) with jurisdiction over the City or the Redevelopment Area, excepting decisions interpreting Federal, State, and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project and/or Phase thereof or Kaplan's performance under this Agreement; provided, however, that such order, judgment, action, and/or determination shall not be the result of the willful, intentional, or negligent action or inaction of the Party to this Agreement relying thereon and that neither the contesting of any such order, judgment, 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.

Section 8.2.3. Failure of Approval. The suspension, termination, interruption, denial, failure at, or delay in renewal or issuance of any Approval, provided, however, that such suspension, termination, interruption, denial, 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, failure of, or delay in 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 an Approval resulting from Kaplan's failure to make an administratively complete submission for an Approval shall not be an event of Force Majeure.

Section 8.2.4. Lawsuits. Lawsuits or other legal actions taken by any Person challenging the transactions contemplated by this Agreement, or any other regulatory or administrative delay, except that any lawsuit or other legal action initiated by Kaplan, an Affiliate of Kaplan, a Project Developer or Proposed Developer and any Person with an equity interest therein, shall not be an event of Force Majeure.

Section 8.3. Procedure. The Parties acknowledge that the acts, events, or conditions set forth in Section 8.2.1 through 8.2.4 are intended to be the only acts, events, or conditions that

may (upon satisfaction of the conditions specified above) constitute Force Majeure. Notice by the Party claiming such extension shall be sent to the other Party within thirty (30) days of the commencement of the cause. During any Force Majeure that affects the Project and/or Phase thereof or performance under this Agreement, Kaplan shall continue to perform its obligations for the remainder of the term of construction of the Project and/or applicable Phase thereof or the remainder of the term of this Agreement to the extent such obligations are not materially, adversely impacted as a result of such Force Majeure event. The existence of an act of Force Majeure shall not prevent a Party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure, provided that the event that is the basis of the Event of Default is not a result of the Force Majeure. Notwithstanding anything contained herein to the contrary, in the event of a Force Majeure event described in Section. 8.2.1 through 8.2.4, the Party claiming such occurrence shall have an ongoing obligation to contest such lawsuit or other legal action, regulatory, or administrative delay, to the extent applicable, and shall perform all acts necessary to terminate such Force Majeure event.

Section 8.4. Remedies. If an Event of Default occurs, after giving effect to notice and cure rights, either Party may, in its sole discretion, exercise its rights to terminate this Agreement and/or take whatever action, at law or in equity, it may deem desirable, including the seeking of damages, or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy. Such default, including, but not limited to, proceedings to compel specific performance by the Party in default of its obligations, if the City is the Party exercising its right to terminate this Agreement, then the City may also terminate Kaplan's designation as the redeveloper of the Project and the following shall apply: (a) the City shall have the right to withdraw, to the extent possible, from purchase agreements and condemnation proceedings if any, theretofore undertaken; (b) Kaplan shall pay over to the City any then unfunded costs incurred by the City prior thereto; and (c) title to any uncompleted portion of the Project acquired by the City on behalf of Kaplan, either through bona fide negotiations or eminent domain, with respect to which no Certificate of Completion has been issued shall revert to the City or its designee pursuant to reverter clauses that shall be included in such conveyance documents without any further act on the City's part, but subject to Kaplan's right to receive from any replacement redeveloper the fair market value of any such portion of the Project, as then improved, net only of any costs incurred by the City in connection with such replacement process.

Section 8.5. Specific Performance. If an Event of Default occurs, or a Party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) Party shall have the right and remedy, without posting bond or other security, to have the provisions of this Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the City or Kaplan and that money damages may not provide an adequate remedy thereto.

Section 8.6. Failure or Delay. Except as otherwise expressly provided in this Agreement any failure or delay by either Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or rights or remedies, or deprive either Party of its right to institute and maintain any actions or proceedings which it may deem necessary to

protect, assert or, enforce any of its rights or remedies.

Section 8.7. Remedies Cumulative. No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

Section 8.8. Continuance of Obligation. The occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Agreement.

Section 8.9. Mitigation. The Parties shall act reasonably to mitigate any damages incurred as the result of an Event of Default.

Section 8.1.0. Survival of Termination. The provisions of this Article shall survive the termination of this Agreement as a result of an Event of Default by Kaplan.

Section 8.1.1. No Consequential Damages. Except in connection with indemnification obligations of the parties under this agreement, neither the City, Kaplan, nor any of their respective Affiliates, partners, shareholders, members or commissioners, directors, officers, managers, agents, employees, or representatives shall be liable in any action at law or in equity, arising from an event constituting breach in connection with this Agreement, in contract, tort, strict liability or otherwise, to the other party or to any other person, including Affiliates, partners, shareholders, members or commissioners, directors, officers, managers, agents, employees, or representatives of the other party, for loss of profits, revenues or expectancies, loss of use or loss of business opportunities or for any special, consequential, indirect or incidental damages, punitive, exemplary or multiplier damages; provided however, that subject to the foregoing, each Party (a) may pursue any equitable remedy available to it to compel the other Party and Affiliates, partners, shareholders, members or commissioners, directors, officers, managers, agents, employees or representatives to perform or cause to be performed any act which such Party is required to perform in connection with this Agreement and to enjoin such Party and persons from performing or causing to be performed any act which constitutes or would constitute an Event of Default by such Party or is inconsistent with the obligations of such Party under this Agreement, and (b) may pursue any remedy available to it at law or in equity to recover its actual, direct, out of pocket, damages resulting from a default by the other Party, and any payment obligation of such Party hereunder.

ARTICLE IX INDEMNIFICATION

Section 9.1. Indemnification.

Section 9.1.1. Indemnification. Kaplan covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend and hold the City Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, actions, or expenses (including attorneys' fees, disbursements, and court costs) of every kind, character and nature arising out of, resulting from or in any way connected with this Agreement, or the acquisition, condemnation, condition, use, possession, conduct, management, planning, design, construction, installation, financing, marketing, leasing or sale of the Redevelopment Area, 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 Redevelopment Area and that, with respect to any of the foregoing, are related to or resulting from any negligence or willful misconduct of Kaplan, its agents, servants, employees, or contractors.

Kaplan further covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend, and hold the City Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, actions, or expenses (including attorneys' fees, disbursements, and court costs) of every kind, character and nature arising out of, resulting from or in any way connected with any environmental conditions or violation of any Environmental Law within the Redevelopment Area, 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 Redevelopment Area, and that with respect to any of the foregoing, are related to or resulting from any negligence or willful misconduct of Kaplan, its agents, servants, employees of contractors, or resulting from any environmental condition caused or created by any current or previous owners of the properties within the Redevelopment Area.

Section 9.1.2. Notification of Indemnification. In any situation in which the City Indemnified Parties are entitled to receive and desire defense and/or indemnification pursuant to this Article 9, the City Indemnified Parties shall give prompt notice of such situation to Kaplan. Failure to give prompt notice to Kaplan shall not relieve Kaplan of any liability to indemnify the City Indemnified Parties unless such failure to give prompt notice materially impairs Kaplan's ability to defend. Upon receipt of such notice, Kaplan shall resist and defend any action or proceeding on behalf of the City Indemnified Parties to include the employment of counsel reasonably acceptable to the City Indemnified Parties, Kaplan's payment of all expenses and the City's right to negotiate and consent to settlement. All of the City Indemnified Parties shall have the right to employ separate counsel at the expense of Kaplan. Kaplan shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of Kaplan or if there is a final judgment against Kaplan in any such action, Kaplan shall indemnify and hold harmless the City Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the City Indemnified Parties are entitled to indemnification hereunder.

Section 9.2. Survival of Indemnity. The provisions of this Article 9 shall survive the

termination of this Agreement due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged as provided in this Agreement, provided, however, that such indemnity shall be binding on Kaplan itself, each successor in interest to the Redevelopment Area, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Kaplan or such successor or party shall have title to, or an interest in, or possession or occupancy of the Redevelopment Area or any part thereof which gives rise to the subject indemnification claim(s).

ARTICLE X
CONTROL OF KAPLAN; TRANSFERS OF INTERESTS;
QUALIFIED ENTITY

Section 10.1. Control of Kaplan; Transfers of Ownership Interests in Kaplan.

Section 10.1.1. Controlling Interest. Kaplan represents and agrees that, except as provided otherwise in this Section 10.1.1, at all times during the term of this Agreement, Michael Kaplan and/or Jason Kaplan shall individually or in the aggregate, Control a beneficial interest in Kaplan, such that Michael Kaplan and/or Jason Kaplan shall have the right, directly or indirectly, to exercise direct legal Control over the management and policies of Kaplan. Except as provided otherwise in this Section 10.1, nothing in this Agreement shall be deemed to restrict the ability of Kaplan or its members to transfer interests in Kaplan directly, or in trust, to family members, an entity owned by family members, or charities, provided that after such transfer(s), Michael Kaplan and/or Jason Kaplan retain voting Control of all interests transferred.

Section 10.1.2. Transfer of Interest. In the event that Michael Kaplan and/or Jason Kaplan either individually or collectively, seeks to transfer his or their interest in Kaplan to one or more other Persons, such that after such transfer(s) Michael Kaplan and/or Jason Kaplan either individually or in the aggregate, will no longer have Control of Kaplan, then before consummating such transfer(s) the City must first, in its reasonable discretion, consent to same in writing. In the event Michael Kaplan and/or Jason Kaplan seek to transfer an interest in Kaplan to any other Person other than as provided for in Section 10.1.1, such Person must (a) if engaged in the business of real estate development, be a Qualified Entity, and (b) if not engaged in the business of real estate development, be a Qualified Entity except to the extent required by Section 10.2.3. Such transfer of interest may only be consummated if, after such transfer takes effect, (a) Michael Kaplan and/or Jason Kaplan retain not less than a forty percent (40%) ownership interest in Kaplan as determined under the operating agreement of Kaplan, (b) Michael Kaplan and/or Jason Kaplan retain the right, directly or indirectly, to exercise direct legal Control of the management decisions and policies of Kaplan (*i.e.* Control at least fifty one percent (51%) of the voting rights of Kaplan), and (c) Michael Kaplan and/or Jason Kaplan retains full management Control over the day to day operations of Kaplan, all pursuant to the operating agreement of Kaplan. Notwithstanding anything contained herein to the contrary, in the event there is any amendment, termination, or supplement to the operating agreement of Kaplan, dated as of October 24, 2006, Kaplan shall deliver to the City such amended, supplemented, terminated or new operating agreement, and/or proof of termination within ten (10) days of such amendment, termination or supplement.

Section 10.1.3. Death or Incapacitation. Notwithstanding anything to the contrary herein, in the event of the death or incapacitation of Michael Kaplan and/or Jason Kaplan, such death or incapacitation shall not trigger any rights of the City under this Agreement as long as the key personnel of Kaplan actively involved in the performance by Kaplan of its obligations under this Agreement continue to be employed by Kaplan following such death or incapacitation and the provisions of Section 10.1.2 continue to be satisfied. Additionally, in the event of such death or incapacitation, one or both of the surviving principals may be substituted for such decedent or incapacitated person with the prior consent and in the reasonable discretion of the City.

Section 10.2. Qualified Entity. A "Qualified Entity" is a Person which has demonstrated, to the reasonable satisfaction of the City, that it satisfies the requirements of this Section 10.2; provided, however, that the City may waive any one or more of the following requirements at any time in its sole discretion.

Section 10.2.1. Financial Capacity. It has the financial capacity to Commence and Complete the development, construction, and operation of the Project and/or a particular Phase thereof, including, without limitation, the capacity and good credit to provide equity, obtain financing, to provide appropriate security (such as performance and completion bonds) and to otherwise satisfy its obligations with respect to the development of the Project and/or Phase.

Section 10.2.2. Ability to Comply. It is able to comply with and conform to all of the provisions of this Agreement, the Redevelopment Plan and Applicable Law.

Section 10.2.3. Expertise. It possesses or has the ability to bring to bear the requisite expertise in planning, redevelopment, law, engineering, environmental issues, architecture, design, finance and real estate development necessary to Complete the Project and/or Phase, including comparable development experience with redevelopment projects that are similar in size, scope and complexity to the Project.

Section 10.2.4. Insolvency. No petition under Federal bankruptcy laws or any state insolvency law has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such Person, or any partnership in which such Person was or is a general partner or any Person in which such Person was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of 10% (and, in the case of an involuntary proceeding, such proceeding has not been terminated within 60 days of its commencement) within the 10 full calendar years preceding the date of submission of such Person's application for consideration as a Qualified Entity.

Section 10.2.5. Criminal Investigation. Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not 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 knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such Person, is not a target of or a potential witness in a criminal investigation.

Section 10.2.6. Default. Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the City or other Governmental Body which has been terminated due to a default by such Person or which is currently the subject of a dispute in which the City or other Governmental Body alleges such default nor is such Person an adverse party in any currently pending litigation involving the City or other Governmental Body.

Section 10.2.7. Securities Violations. Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been found in any civil or criminal

action in or by a court or agency 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.

Section 10.2.8. Ethics Violations. Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not violated any city, state, or Federal ethics law and entering into the proposed transaction with Kaplan and/or the City will not cause any such violation or result in a conflict of interest.

Section 10.3. Kaplan Certification. On or before each anniversary of the Effective Date, Kaplan shall provide the City with a certificate (a) indicating that Kaplan continues to be in compliance with the requirements of Section 10.2 as of the date of such certificate and (b) affirming the Kaplan Covenants.

Section 10.4. Kaplan as Qualified Entity. Kaplan is hereby deemed a Qualified Entity.

ARTICLE XI REPRESENTATIVES

Section 11.1. Kaplan Project Executive and Project Manager. Kaplan hereby designates either Michael Kaplan or Jason Kaplan as the "Project Executive" with full authority to execute any and all instruments, documents or notices requiring Kaplan's signature and to act on behalf of Kaplan with respect to all matters arising out of this Agreement or subsequent Project development agreements. The City shall be entitled to rely and shall be fully protected in relying upon any instrument, document or notice signed or action taken by the Project Executive, unless and until it receives notice in writing from Kaplan of the termination of the Project Executive's authority. Notwithstanding the foregoing, Kaplan shall provide to the City from time to time upon request, evidence, such as without limitation, clerk's or manager's certificates, members and stockholders resolutions attesting to the authority of the Project Executive generally or with respect to any particular signature or action. Kaplan may also designate an individual who shall act as the "Project Manager." The Project Manager shall act as liaison and contact person between Kaplan and the City and shall represent the interests of Kaplan in the Redevelopment Area, be responsible for overseeing all aspects of design, construction and development of the Project, and work closely with the City on behalf of Kaplan. In the absence of a designated Project Manager, the Project Executive shall perform the function of Project Manager. The Project Executive and/or the Project Manager shall respond to and make themselves available for consultation with the City with respect to all questions, requests or comments arising out of this Agreement. Kaplan may designate a different Project Executive and/or Project Manager for any Phase of the Project.

Section 11.2. City Representative. Upon execution of this Agreement, the City shall designate in writing to Kaplan the name of an individual who is the "City Representative," who shall act as liaison and contact person between Kaplan and the City in administering and implementing the terms of this Agreement. Kaplan shall submit all requests for consent or review of matters which require consent or review by the City and all materials to be submitted in connection therewith to the City Representative, who shall either consent or obtain the City's consent (as to matters requiring consent) or review or cause to be reviewed and respond to any matter requiring the City review and response. Kaplan and any person dealing with the City in connection with any consent or review required under this Agreement may rely and shall be fully protected in relying upon the authority of the City Representative to act for the City in connection with any such consent or review. Any other instrument or document relating to or in connection with this Agreement or any Project development agreement, including any amendment to this Agreement shall require the signature of the City Representative and/or Mayor of the City.

Section 11.3. Change of Representative. From time to time following the execution hereof, the City or Kaplan may change or replace its respective representative, upon five (5) Business Days' written notice, delivered to such Party in the manner and at the address indicated in Article 12.

ARTICLE XII
NOTICES AND DEMANDS; TRANSFER OF FUNDS

Section 12.1. Notice. A notice, demand, or other communication under this Agreement by any Party to the other shall be sufficiently given or delivered if dispatched by United States Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number), or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses or facsimile numbers:

If to the City, to:

City of Bayonne
630 Avenue C
Bayonne, NJ 07002
Attn: City Clerk

With a copy to:

City of Bayonne
630 Avenue C
Bayonne, NJ 07002
Attn: Business Administrator

With a copy to:

Office of the City Attorney
630 Avenue C
Bayonne, NJ 07002
Attn: Charles D'Amico, Esq.

And a copy to :

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

And if to Kaplan, to:

Kaplan-Promenade at Bayonne, LLC
c/o Kaplan Companies
433 River Road
Highland Park, NJ 08904
Attn: Michael Kaplan; Bret Kaplan

With a copy to:

Ronald S. Blumstein, Esq., General Counsel
c/o Kaplan Companies
433 River Road
Highland Park, NJ 08904

Section 12.2. Notice Amendments. Either Party may from time to time by written notice given to the other pursuant to the terms of this Article 12 change the address and/or facsimile numbers to which, and/or the persons to whom, notices shall be sent or designate additional or replacement persons to whom notices are sent.

Section 12.3. Transfer of Funds. All funds to be transmitted by Kaplan to the City or by the City to Kaplan under this Agreement shall be transmitted by wiring immediately available Federal funds in accordance with wire instructions provided by each Party to the other at or immediately following execution of this Agreement. Such wire instructions may be changed from time to time upon 5 Business Days prior written notice to the other Party, given in accordance with this Article 12.

ARTICLE XIII MORTGAGE FINANCING ; RIGHTS OF MORTGAGEE

Section 13.1. Mortgage Financing. A Project Developer shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon any portion of the Redevelopment 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 any portion of the Redevelopment Area, except as may be approved by the City (which approval shall not be unreasonably withheld or delayed) for the purpose of obtaining funds in connection with the acquisition of any portion of the Redevelopment Area and construction of Infrastructure Improvements and/or the Project, provided, however, that upon the issuance of a Certificate of Completion for a Phase, such prohibition shall no longer apply with respect to the corresponding Parcel of land and improvements. Project Developer shall notify the City in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to Infrastructure Improvements and/or the Project or any part thereof (the mortgagee thereunder or its Affiliate, a "Holder") and, in any event, Project Developer shall promptly notify the City of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Redevelopment Area, whether by voluntary act of Project Developer or otherwise, upon obtaining knowledge or notice of same. The provisions of this Agreement shall not be deemed to grant to the City the right to approve or review the terms of any such proposed financing, provided, however, that the terms of any such financing shall be within the range of prevailing market rates for similar projects and similar financing structures. In connection with any such proposed financing, Kaplan or any other Project Developer may also collaterally assign to the Holder the Project Developer's rights under this Agreement with respect to the mortgaged portion of the Redevelopment Area.

Section 13.2. Notice of Default to Kaplan and Right to Cure. Whenever the City shall deliver any notice or demand to a Project Developer with respect to any breach or default by such a Project Developer under this Agreement, the City shall at the same time deliver to each Holder a copy of such notice or demand; provided that Kaplan, has delivered to the City a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the City are concerned) have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession, such Holder shall seek to obtain possession of the Redevelopment Area (or portion to which its mortgage relates) with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) days after obtaining possession. In the case of a default which cannot with diligence be remedied or cured, or the remedy or cure of which cannot be commenced, within such ninety (90) day period, such Holder shall have such additional time as reasonably necessary to remedy or cure such default with diligence and continuity.

Section 13.3. Guarantee of Construction or Completion. A Holder shall in no manner be obligated by the provisions of this Agreement to construct or Complete the Project (or portion to

which its mortgage relates), or to guarantee such construction or Completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of the Project, or portion to which its mortgage relates (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having expressly assumed Kaplan's obligations to the City with respect to the Project (or portion to which its mortgage relates) by written agreement reasonably satisfactory to the City.

Section 13.4. Foreclosure. If a Holder forecloses its mortgage secured by the Redevelopment Area (or portion to which its mortgage relates), or takes title to the Redevelopment 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 either (i) sell the Redevelopment Area (or portion to which its mortgage relates), as applicable, to a responsible Person reasonably acceptable to the City, which Person shall assume the obligations of Kaplan under this Agreement in accordance with law, and/or (ii) itself assume the obligations of Kaplan under this Agreement in accordance with law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Agreement the City shall not seek to enforce against the Holder or purchaser of such Parcel any of the remedies available to the City pursuant to the terms of this Agreement available in connection with the events preceding the Foreclosure. The Holder, or the Person assuming the obligations of Kaplan 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 Agreement, but subject to reasonable extensions of the Project Schedules and shall submit evidence reasonably satisfactory to the City that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or Person assuming such obligations of Kaplan, properly completing the Project shall be entitled to a Certificate of Completion in accordance herewith. Nothing in this Agreement shall be construed or deemed to permit or to authorize any Holder, or such other Person assuming such obligations of Kaplan, to devote the Redevelopment 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 Agreement.

Section 13.5. City's Option to Pay Mortgage Debt or Purchase Land. In any case where, subsequent to an Event of Default by Kaplan under this Agreement and/or Foreclosure, the Holder

(i) has, but does not exercise, the option to construct or Complete the Project, Phase or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of sixty (60) days after the Holder has been notified or informed of the Event of Default; or

(ii) undertakes construction or Completion of the Project but does not Complete such work within a reasonable period, and such default shall not have been cured within sixty (60) days after written demand by City so to do ((i) and (ii) each a "Holder Failure"); then the City shall have the option of paying to the Holder the amount of the mortgage debt and obtaining an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the

Redevelopment Area (or part thereof) has vested in such Holder by way of foreclosure or action in lieu thereof, City shall be entitled, at its option, to a conveyance to it of the Redevelopment Area or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (a) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (b) all expenses with respect to the foreclosure, including reasonable attorney's fees and expenses; (c) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result at the subsequent management of the mortgaged property; (d) the costs incurred by such Holder in making any improvements to the Redevelopment Project and (e) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Every mortgage instrument made prior to Completion of the Project with respect to any phase of development of the Project by a Project Developer shall provide for the foregoing.

ARTICLE XIV MISCELLANEOUS

Section 14.1. Procurement of Public Funds. The City and Kaplan will cooperate and act together to identify, apply for, and take steps necessary to procure any funding deemed appropriate by the City and available from Federal, State, County, or local sources to be used to advance the redevelopment of the Redevelopment Area. Notwithstanding the foregoing, no obligation to procure the aforesaid funding is created herein, nor is the failure to obtain said funding a Force Majeure event.

Section 14.2. Provisions Not Merged. None of the provisions of this Agreement are intended to or shall be merged by reason of any prior agreement, lease or other contract before the City and Kaplan.

Section 14.3. Non-Liability of Official, Employees and Agents of the City. No member, official, employee or agent of the City or its Affiliates shall be personally liable to Kaplan, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to Kaplan or its successor, or on any obligation under the terms of this Agreement.

Section 14.4. Non-Liability of Officials and Employees of Kaplan. No member, officer, shareholder, director, partner or employee of Kaplan shall be personally liable to the City, or any successor in interest, in the event of any default or breach by Kaplan or for any amount which may become due to the City, or its successor, on any obligation under the terms of this Agreement.

Section 14.5. No Brokerage Commissions. The City and Kaplan each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Agreement as broker, agent or otherwise acted on behalf of either the City or Kaplan, and the City and Kaplan shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying Party.

Section 14.6. Successors and Assigns. This Agreement may not be assigned by Kaplan. This Agreement may be assigned by the City and upon such assignment shall be binding upon and inure to the benefit of the successors and assigns of the City.

Section 14.6. Enforcement by the City. It is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of this Agreement and covenants set forth herein both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit this Agreement and the covenants set forth herein have been provided. This Agreement and the covenants set forth herein shall run in favor of the City for the entire period during which this Agreement and covenants set forth herein shall be in force and effect. The City shall have the right, in the event of any breach of this Agreement or the covenants set forth herein, 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 breaches to which they and their successors

and assigns may be entitled.

Section 14.8. Enforcement by Kaplan. It is intended and agreed that Kaplan is a beneficiary of the agreements and covenants set forth in this Agreement. Such agreements and covenants shall run in favor of Kaplan for the entire period during which such agreements and covenants shall be in force and effect. Kaplan shall have the right, in the event of any breach of any such agreement or covenant to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which they or any other beneficiary(ies) of such agreement or covenant may be entitled.

Section 14.9. Drafting Ambiguities; Interpretation. In interpreting any provision of this Agreement, no weight shall be given to nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Agreement, each Party acknowledging that it and its counsel has had an opportunity to review this Agreement and has contributed to the form of same.

Section 14.10. Time Period for Notices. All notices to be given hereunder shall be given in writing in conformance with Article 12 and, unless a certain number of days is specified, within a reasonable time.

Section 14.11. Waivers and Amendments in Writing. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the City and Kaplan and all amendments hereto must be in writing and signed by the appropriate authorities of the City and Kaplan. The waiver by either Party of a default or of a breach of any provision of this Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach.

Section 14.12. Conflict of Interest. No member, official or employee of the City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

Section 14.13. Withholding of Approvals. All Approvals required to be given or made by either Party shall not be unreasonably withheld or delayed unless specifically stated otherwise.

Section 14.14. No Consideration for Agreement. Kaplan 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. Kaplan further warrants it has not paid or incurred any obligation to pay any officer or official of the City, any money or other consideration for or in connection with this Agreement.

Section 14.15. Approvals by the City and Kaplan. Wherever this Agreement requires the approval of the City or Kaplan, or any officers, agents, or employees of either the City or Kaplan, such approval or disapproval shall be given within the time set forth in this Agreement, or, if no time is given, within a reasonable time.

Section 14.16. No Third Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

Section 14.17. Amendment Waiver. Except as provided in the next sentence, no alteration, amendment, or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties with the same formality as this Agreement. In the event that any contractual provisions that are required by Applicable Laws have been omitted, then the City and Kaplan agree that this Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the Parties, the Parties agree to act in good faith to mitigate such changes in position.

Section 14.18. Waiver. The failure of the City or Kaplan to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election contained in this Agreement, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the City or Kaplan of any covenant agreement, term, provision, or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of Kaplan or the City.

Section 14.19. Consents. Unless otherwise specifically provided herein, no consent or approval by the City or Kaplan permitted or required under the terms of this Agreement shall be valid or be of any force whatsoever unless the same shall be in writing, and signed by an authorized representative of the Party by or on whose behalf such consent is given.

Section 14.20. Captions. The captions of the Articles, Sections, and Subsections and the Table of Contents, Schedule of Exhibits, and Index of Definitions of this Agreement are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of the articles, sections, exhibits, definitions, or other provisions hereof.

Section 14.21. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State, without giving effect to choice of laws principles.

Section 14.22. Severability. If any article, section, subsection, term, or provision of this Agreement or the application thereof to any Party or circumstance shall, to any extent, be invalid, or unenforceable, the remainder of the section, subsection, term or provision of this Agreement, or the application of 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, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive any Party of the enjoyment of its substantial benefits under this Agreement.

Section 14.23. Relationship of Parties. Nothing contained in this Agreement shall be

deemed or construed by the Parties or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Kaplan and the City, their relationship being solely as contracting Parties under this Agreement.

Section 14.24. Prior Agreements Superseded. Except as provided in Section 7.1.2 with respect to the Funding Agreement, this Agreement supersedes any prior understanding or written or oral agreements (express or implied) between the Parties. This Agreement, together with any other documents executed by the Parties contemporaneously herewith, contains the entire understanding between the Parties with respect hereto.

Section 14.25. Release of Liability. It is expressly and irrevocably agreed by each of the Parties that the execution of this Agreement constitutes a waiver of all right(s), claim(s), benefit(s), and/or cause(s) of action that either Party may have against any other Party or Person at law and/or in equity (specifically including, without limitation, pursuant to any prior agreements entered into between the Parties or any Affiliates of the Parties) resulting from any and all acts of the Parties in connection with the negotiation of a redevelopment agreement and this Agreement, except for fraud, material misrepresentations, or other bad acts.

Section 14.26. Exhibits. All Exhibits referred to herein shall be considered a part of this Agreement with the same force and effect as if such Exhibits had been included fully within the text of this Agreement.

Section 14.27. 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 in this Agreement 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.

Section 14.28. Cooperation. The Parties will cooperate with each other in all matters deemed necessary or of assistance in achieving the objectives of the Agreement and the Redevelopment Plan.

Section 14.29. Hiring of Contractors and Subcontractors. The Project Developer, its contractors, and subcontractors shall comply with all Applicable Laws relating to affirmative action programs. Additionally, the Project Developer, its contractor, and subcontractors shall, to the extent permitted by law, make a good faith effort to use qualified City and/or County based contractors for construction of the Project. The Project Developer shall encourage any tenants or occupants of the premises to do the same.

Section 14.30. Local Purchase of Supplies, Materials and Equipment. Whenever possible and/or and practicable, and to the extent permitted by law, the Project Developer, its contractors, and subcontractors shall make a good faith effort to purchase supplies, materials and equipment from businesses within the City and/or the County.

Section 14.31. Disputes to be Arbitrated. Kaplan and the City agree to abide by a process of binding arbitration as set forth below to (i) conclusively resolve any disagreement as to the

existence of an Event of Default, (ii) conclusively resolve whether the City shall adopt a resolution finding that the Overall Site Development Plan and the Design Plans are substantially consistent with the Redevelopment Plan and the City's comments have been incorporated to the greatest extent practicable (iii) conclusively resolve whether, and to what extent, deadlines and timeframes should be tolled and/or extended, or (iv) in the event of disagreement between Kaplan and the City, conclusively determine the reasonable purchase price for the acquisition by the City of any Parcel in the Redevelopment Area and Kaplan's remaining interest in such Parcels and/or the Project.

Resolution of all other disputes and remedies for any Event of Default shall be sought before a judge of competent jurisdiction, unless the Parties otherwise agree to submit to a process of binding arbitration as set forth below.

Section 14.31.1. Arbitration Procedures. Any arbitration commenced pursuant to the terms of Section 14.31 of this Redevelopment Agreement shall be conducted under and governed by the Arbitration Rules of the Real Estate Industry provided by the American Arbitration Association (the "Arbitration Rules") and the Federal Arbitration Act by a single qualified arbitrator mutually agreed upon by Kaplan and the City. The Arbitrator shall be a retired New Jersey Superior Court, New Jersey Federal District Court, or 3rd Circuit Court of Appeals Judge, and shall apply the Governing Law of this Redevelopment Agreement. A judgment on the award may be entered in any Court having jurisdiction.

All arbitration hearings shall begin within ninety (90) days of the demand for arbitration and all hearings shall be concluded within 120 days of the demand for arbitration. These time limits may not be extended unless a Party shows cause for the extension and then for no more than a period of sixty (60) days. The expedited procedures set forth at Rule 56 et seq. of the Arbitration Rules shall be applicable to claims of less than \$1,000,000. The Parties do not waive applicable Federal and State substantive law except as expressly provided herein.

Notwithstanding these preceding binding arbitration provisions, the Parties agree to preserve, without diminution, remedies that any Party may exercise before or after any such arbitration proceeding is brought, including the right to proceed in any court of proper jurisdiction or by self help to exercise or prosecute the following remedies as applicable: (i) all legal rights of self help, including peaceful occupation of real property and collection of rents, set off, and peaceful possession of personal property, (ii) obtaining provisional or ancillary remedies including injunctive relief, sequestration, garnishment attachment, appointment of a receiver, and filing of an involuntary bankruptcy proceeding; and (iii) when applicable, a judgment by confession of judgment.

Each Party agrees that it shall not have a remedy of punitive or exemplary damages against the other in any dispute which is subject to these binding arbitration provisions and hereby waives any right or claim to any punitive or exemplary damages it may have now or which may arise in the future in connection with any dispute which is subject to these binding arbitration provisions.

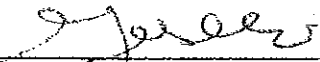
Except as specifically provided herein, the Parties acknowledge that by agreeing to

binding arbitration with respect to an issue, they have irrevocably waived any right they may have to a jury trial with regard to a dispute concerning that issue.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have executed this Amended & Restated Redevelopment Agreement to be effective as of the Effective Date.

CITY OF BAYONNE

By: 
Name: Stephen J. Gollo
Title: BO

KAPLAN-PROMENADE AT BAYONNE, LLC


By: 
Name: Michael Kaplan
Title: Member

EXHIBIT "A"

Project Schedule

TASK	COMPLETION DATE
Submission of application to Planning Board for preliminary and, if permitted by the Planning Board, final approval for the First Phase	Within 150 days of Effective Date
Commencement of Initial Site Preparation and Development Activities and commencement of construction of the First Phase (Parkedge – Blocks 5 and 9)	No later than 6 months after receipt of all necessary approvals and permits
Commencement of Construction of Second Phase	No later than 36 months following commencement of construction of First Phase
Commencement of Construction of Third Phase	No later than 24 months following commencement of construction of Second Phase
Commencement of Construction of Fourth Phase	No later than 24 months following commencement of construction of Third Phase
Commencement of Construction of Fifth Phase	No later than 24 months following commencement of construction of Fourth Phase
Commencement of Construction of Sixth Phase	No later than 24 months following commencement of construction of Fifth Phase
Substantial Completion of Construction of all Phases of Residential Construction	No later than 24 months following commencement of construction of the Sixth Phase

EXHIBIT "B"

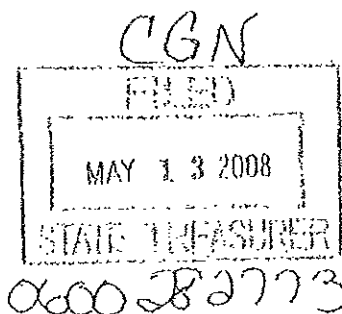
Ownership Structure

The following entities are owners of interests greater than 10% in the ownership of Redeveloper:

1. Kaplan Family, LLC (63%)
2. JMK Associates, LLC (37%)

Michael Kaplan is the managing member of Kaplan Family, LLC and the controlling member of JMK Associates, LLC.

CERTIFICATE OF AMENDMENT TO
CERTIFICATE OF FORMATION OF
KAPLAN AT BERGEN POINTE, LLC



THE UNDERSIGNED, for the purpose of amending the Certificate of Formation of KAPLAN AT BERGEN POINTE, LLC, which was filed on October 24, 2006, hereby amends the Certificate of Formation as follows:

1. The Certificate of Formation is being amended to change the name to:

KAPLAN-PROMENADE AT BAYONNE, LLC

In all other respects, the Certificate of Formation remains unchanged.

Dated: May 6, 2008

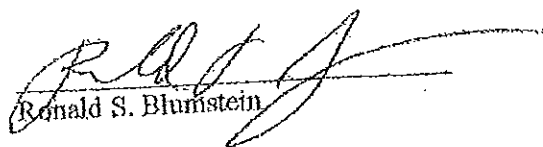
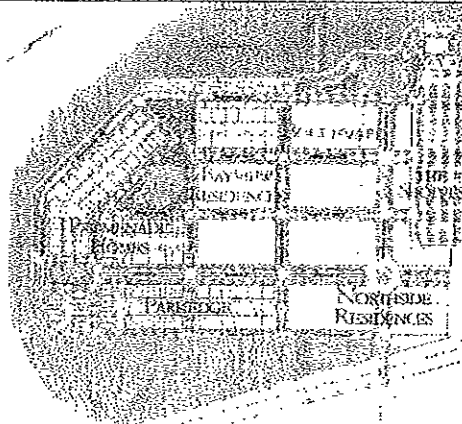
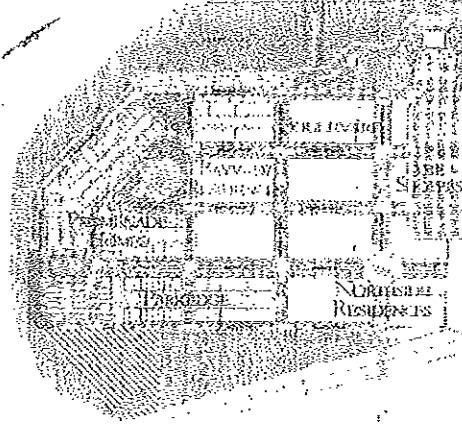
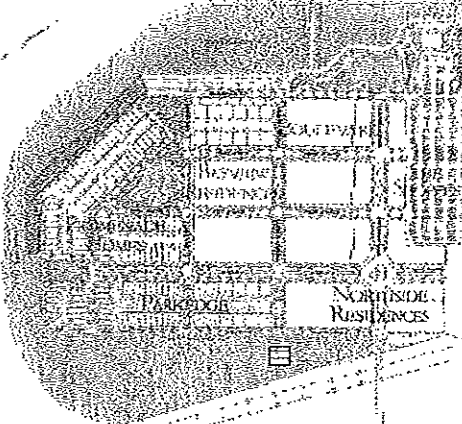
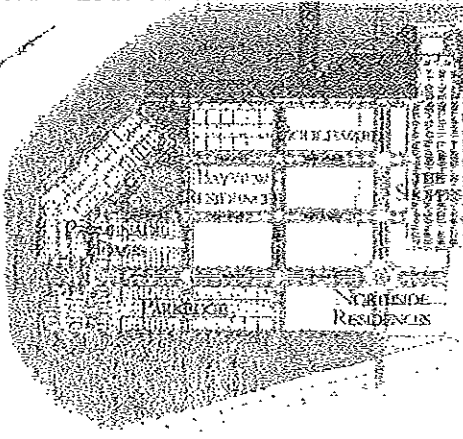
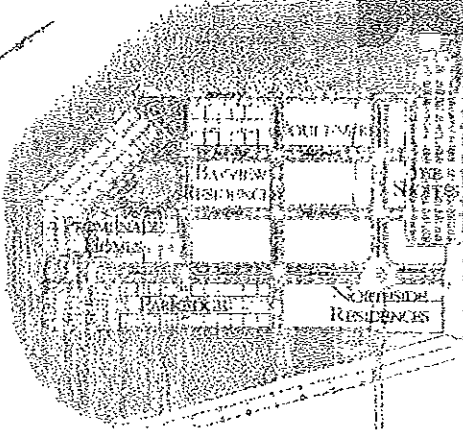

Ronald S. Blumstein

EXHIBIT "C"

Public Improvements

**PUBLIC RECREATIONAL
IMPROVEMENTS PHASING PLAN
PROMENADE AT BAYONNE**

PHASE	SCOPE	DATE	
Phase 1	<ul style="list-style-type: none"> • Site preparation of entire Phase 1 public recreational improvements area (shaded green), to include fill, grading, shoreline stabilization, if necessary, waterfront railing, grass, and 50% of tree plantings. • Pedestrian connection to Collins Park, if permitted by NYNJPA • Parking lot • Ball fields (excluding rink) • Waterfront walkway within Phase 1 	Completion and dedication prior to issuance of first Certificate of Occupancy for Phase 1 of Residential Development	
Phase 2	<ul style="list-style-type: none"> • Waterfront Promenade (hatched area) • Final Landscaping of Phase 1 Area (shaded green) • Rink • "Pocket Parks" adjoining Phase 2 residential development (the construction of any building adjacent to a proposed park shall trigger the requirement to construct that park in its entirety) • Waterfront walkway extension (shaded orange) or as mandated by NJDEP requirements 	Completion and dedication prior to issuance of first Certificate of Occupancy for Phase 2 of Residential Development	
Phase 3	<ul style="list-style-type: none"> • Multipurpose community park building within Phase 1 Area (hatched) • "Pocket Parks" adjoining Phase 3 residential development (the construction of any building adjacent to a proposed park shall trigger the requirement to construct that park in its entirety) • Waterfront walkway extension (shaded orange) or as mandated by NJDEP requirements 	Completion and dedication prior to issuance of first Certificate of Occupancy for Phase 3 of Residential Development	

Phase 4	<ul style="list-style-type: none"> • Complete Final Landscaping of Phase I Area (shaded green) • "Pocket Parks" adjoining Phase 4 residential development (the construction of any building adjacent to a proposed park shall trigger the requirement to construct that park in its entirety) • Waterfront walkway extension (shaded orange) or as mandated by NJDEP requirements 	Completion and dedication prior to issuance of first Certificate of Occupancy for Phase 4 of Residential Development	
Phase 5	<ul style="list-style-type: none"> • "Pocket Parks" adjoining Phase 5 residential development (the construction of any building adjacent to a proposed park shall trigger the requirement to construct that park in its entirety) • Waterfront walkway extension (shaded orange) or as mandated by NJDEP requirements • Pier (24 ft wide by and approximately 280 ft long to the US Army Bulkhead Line) <p>** Completion of all public recreational improvements not otherwise identified herein but included on the Compliance Plan**</p>	Completion and dedication prior to issuance of first Certificate of Occupancy for Phase 5 of Residential Development	

The Redevelopment Plan share govern to the extent the Exhibit differs from such Redevelopment Plan.