

WOLLMUTH MAHER & DEUTSCH LLP  
500 Fifth Avenue  
New York, New York 10110  
Phone: (212) 382-3300  
Fax: (212) 382-0050  
James N. Lawlor  
Olivia J. Italiano  
NJ Attorney ID #034701992  
NJ Attorney ID #110872014

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Michael J. Blee P.J. Ch.

Attorneys for Plaintiff and Counterclaim Defendant  
Manufacturers and Traders Trust Company,  
as Indenture Trustee

MANUFACTURERS AND TRADERS TRUST  
COMPANY, AS INDENTURE TRUSTEE,

Plaintiff,

v.

MARINA BAY TOWERS URBAN RENEWAL  
II, L.P., et al.,

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CAPE MAY COUNTY,  
CHANCERY DIVISION

DOCKET NO.: F-049229-14

Civil Action

**ORDER APPROVING FINAL  
RESTRUCTURING PLAN PURSUANT  
TO N.J.S.A. 40:37A-116**

**THIS MATTER** having been brought before the Court by way of Complaint in Foreclosure against defendant Marina Bay Towers Urban Renewal II, L.P. (“**MBT II**” or “**Borrower**”), the owner of those certain Marina Bay Towers leasehold improvements constituting the affordable senior housing condominium unit and proportionate share of common elements in North Wildwood, New Jersey commonly known as Condominium Unit “B” or the **RESIDENTIAL UNIT** as set forth in that certain Master Deed of Marina Bay Towers Condominium Association, Inc. dated October 5, 1999, and recorded in the Clerk’s Office of the County of Cape May on November 5, 1999, in Deed Book 2831 Page 299 and as further supplemented and memorialized pursuant to Court Order filed June 6, 2016 as consisting of, among other things, the “Applicable Condominium Common Areas, Common Elements, Site Infrastructure, Easements and Rights-Of-Way Schedule

for The Marina Bay Towers Condominium" and recorded in the Clerk's Office of the County of Cape May on the title of the subject property on July 12, 2016, in Book D3685 Pages 762-773 ("Project" or "Phase I Leasehold Estate"), filed by plaintiff, Manufacturers and Traders Trust Company ("Trustee" or "Plaintiff"), as successor trustee under that certain Indenture dated as of August 1, 2005 (as amended and supplemented from time to time, the "Indenture"), between the Essex County Improvement Authority, as issuer ("ECIA"), and JPMorgan Chase Bank, National Association, pursuant to which, among other things, the ECIA issued certain Essex County Improvement Authority Multifamily Revenue Bonds (Marina Bay Project), Series 2005 A in the original aggregated principal amount of \$2,800,000 ("Series A Bonds"), and Essex County Improvement Authority Multifamily Revenue Bonds (Marina Bay Project), Series 2005 B in the original aggregated principal amount of \$4,600,000 ("Series B Bonds") (and the Series A Bonds together with the Series A Bonds, in the original aggregated principal amount of \$7,400,000 the "ECIA Bonds"), as provided by the County Improvement Authorities Law, N.J.S.A. 40:37A-44, et seq. ("CIAL") and the Federal tax-exempt housing mortgage bond program codified as 26 U.S.C. § 142 ("I.R.C. § 142") duly authorized pursuant to ECIA Bond Resolution No. 05-132 adopted May 24, 2005 ("ECIA Resolution") and the Resolution of the Cape May County Board of Chosen Freeholders No. 372-05 adopted May 10, 2005 ("County Resolution"); and to secure the loan of the proceeds received from the sale of the ECIA Bonds to PAC Capital, LLC, the sole and Majority Owner (as such term is defined in the Indenture) thereof ("PAC Capital"), as a first priority lien on the Project, the Trustee and ECIA entered into a related Loan Agreement dated August 1, 2005 ("Loan Agreement") by and between ECIA, the Trustee, and Borrower and its successors and assigns, Promissory Notes Series A and Series B of the same date ("ECIA Notes"); a Mortgage and Security Agreement of the same date ("ECIA Mortgage"), by and among Borrower, defendant Marina Bay Towers Condominium Association, Inc. ("Association") and the

Trustee, securing, *inter alia*, MBT II's obligations under the Loan Agreement and ECIA Notes, which mortgage was duly recorded in the Clerk's Office of the County of Cape May on October 21, 2005, in Mortgage Book 4235, Page 24, and other related loan and security documents of the same date (Indenture, ECIA Bonds, the ECIA Loan Agreement, ECIA Notes, the ECIA Mortgage, and related documents, collectively, the "**ECIA Loan Documents**"); and upon the application for approval of a restructuring plan to modify the number of affordable units and to allow for the addition of market rate units upon Block 152 Lot 1 of the Municipal Tax Map the City of North Wildwood ("**Block 152 Site**") to assist in financing the further redevelopment and rehabilitation of the Project ("**Restructuring Plan**"), this Court entered an Order on May 22, 2018, provisionally approving the Restructuring Plan for the Marina Bay Project ("**Restructuring Order**"); and this Court further ordered the appointment of a special master by an associated Order of the Honorable Julio L. Mendez, A.J.S.C., filed on the same date and further amended by Order dated July 2, 2018 ("**Special Master Order**") with general duties of evaluating and making recommendations to the Court with respect to the review of an updated and modified Restructuring Plan; and defendants New Jersey Department of Community Affairs ("**DCA**") and the New Jersey Housing and Mortgage Finance Agency ("**HMFA**") having appealed the Restructuring Order to the Appellate Division; and the Plaintiff having filed a First Amended Complaint in Foreclosure dated August 16, 2018 ("**First Amended Complaint**"); and the Appellate Division having entered an Order dated October 22, 2019, affirmed the Restructuring Order in substantial part and remanded in part for supplemental proceedings prior to entry of final judgment within 45 days ("**Appellate Order**"); and the Court having entered an Order dated November 6, 2019, scheduling a hearing for December 6, 2019, and a subsequent Second Amended Case Management Order dated March 31, 2020 and directing the parties to make supplemental submissions; and the Trustee having submitted on March 17, 2020 to the Court and the parties and filed on March 27, 2020, pursuant

to Section 116 of the County Improvement Authorities Law and I.R.C. § 142(d), a revised, final restructuring plan providing for, *inter alia*, the partial foreclosure of the Trustee's mortgage securing the ECIA Bonds, the assumption and restructuring of the remaining outstanding balance of the ECIA Bond mortgage loan by Successor Borrower MBT III (see below), and the financing of redevelopment and rehabilitation costs with the proceeds of a loan facility proposed to be made by ground lessor, Beach Creek Marina, Inc., to be repaid from a combination of an assignment (i) of rents from the Project, and (ii) proceeds from market rate units, and fully approved development rights thereto, proposed to be redeveloped and newly constructed in both the Phase I Leasehold Estate and the proposed new "Phase II" condominium building proposed to be developed on the same Block 152 site as more particularly described herein ("**Final Restructuring Plan**" or "**Plan**"), together with, *inter alia*, an agreement between the City of North Wildwood and the Successor Borrower (see below) to restrict occupancy in the Project post-foreclosure pursuant to the terms and conditions contained in that certain form of "Deed Restriction For Rehabilitated Rental Property" to be executed and entered into upon the entry of a Final Judgment In Foreclosure by and between the City of North Wildwood, Cape May County, New Jersey, a municipal corporation ("**City**"), and MBT II annexed hereto and made part hereof as **Exhibit "F"** to the Final Restructuring Plan ("**Rehab Deed Restriction**") in connection with the Project's rehabilitation, renovation, redevelopment and post-foreclosure provision of (i) a minimum of thirty-three (33) dwelling units restricted pursuant to the terms and conditions of the Rehab Deed Restriction for rent to persons 55 years of age or older pursuant to 42 U.S.C. § 3607(b)(2)(B) or (C) whose gross incomes do not exceed fifty percent (50%) of Area Median Income ("**AMI**") published annually by the United States Department of Urban Development ("**HUD**") for Cape May County, New Jersey, (ii) potentially up to seventy-two (72) additional dwelling units restricted pursuant to the terms and conditions of the Rehab Deed Restriction for rent to persons

55 years of age or older pursuant to 42 U.S.C. § 3607(b)(2)(B) or (C) whose gross incomes do not exceed eighty percent of (80%) of the applicable AMI, and (iii) up to sixty (60) dwelling units (or one-hundred thirty-two (132) dwelling units within the Project if the foregoing referenced 72 dwelling units are not restricted) pursuant to the terms and conditions of the Rehab Deed Restriction for rent or sale to persons with no restriction as to age or income to assist in financing the further redevelopment and rehabilitation of the Project as part of a two-phase inclusionary development within the meaning of N.J.S.A. 52:27D-304(f) all as more particularly described and detailed in the Final Restructuring Plan (see *infra*), and as finally modified and incorporated herein (see below) together with other exhibits annexed thereto and the Special Master having filed his report of findings and recommendations on April 24, 2020 (“**Report**”), and the Court having considered the foregoing, as well as the Supplemental Certification of Paul A. Cocoziello dated November 19, 2019 (“**Supplemental Cert.**”), all supporting and opposition papers filed by the parties, and the issues briefed by the parties on remand; and the Court having held oral argument by video on May 14, 2020, and received and considered the supplemental briefs submitted to the Court by the parties on May 21, 2020; and for good cause having been shown,

**IT IS**, on this 15 day of June, 2020,

**ORDERED** that:

**Approval and Implementation of the Final Restructuring Plan**

1. The Final Restructuring Plan proposed by the Plaintiff, a copy of which is annexed hereto as **Exhibit A** and amended herein by paragraph 2 of this Order, is approved by this Court and, upon entry of this Order, shall be binding equally upon all Defendants.
2. The Final Restructuring Plan shall reflect the changes on **Exhibit B** hereto.
3. The Final Restructuring Plan also recognizes as a necessity and relies upon the prior formation of Marina Bay Towers Urban Renewal III, L.P. (“**Successor Borrower**” or “**MBT III**”)

as the assignee and successor in interest to MBT II as future owner and operator of the Project pursuant to the terms and conditions of the Final Restructuring Plan.

4. In furtherance of the Final Restructuring Plan and in connection with a separate settlement agreement of other pending litigation between the City and certain ownership interests in the Project, identified below, the City has introduced and adopted the following municipal resolutions and ordinances:

- a. Resolution No. 96-20, Authorizing the Mayor and City of North Wildwood to execute and enter into that certain Settlement Agreement, which was executed April 6, 2020;
- b. Ordinance No. 1803 Adopting An Amended Redevelopment Plan For the Redevelopment Plan Previously Adopted Pursuant To Ordinance No. 1231;
- c. Ordinance No. 1804 Authorizing The Mayor Of The City Of North Wildwood To Execute A First Amendment To Financial Agreement Between The City of North Wildwood, New Jersey And Marina Bay Towers Urban Renewal, L.P. F/K/A St. Anne's Urban Renewal, L.P. Pursuant To The Long Term Tax Exemption Law N.J.S.A. 40A:20- 1 Et. Seq. Assigned to Marina Bay Towers Urban Renewal II, L.P. On August 16, 2005;
- d. Ordinance No. 1805 Adopting a new North Wildwood Marina Zoning District in a two-city block area of the BB Zone encouraging the rehabilitation of the Marina Bay Towers Project and restoration of the maximum number of affordable housing units determined by the Court in connection with the Final Restructuring Plan for the Marina Bay Towers affordable senior citizen housing provided by the Block 152 Lot 1 site and the public purpose and benefit found by the Chancery Division in *Manufacturers And Traders Trust Co. v. Marina Bay Towers Urban Renewal II, L.P. Et Al.* (Docket No. CPM-

F-049229-14) in restoring and maximizing the number of affordable housing units for senior citizens, as well as the resolution of long-standing litigation with various ownership interests which resolution is designed to more feasibly, cost effectively and efficiently facilitate such public purpose and benefit;

e. Ordinance No. 1807, Vacating Portions of 5<sup>th</sup> Avenue And Portions Of New York Avenue Adjacent To Block 152, Lot 1 As Shown On The Tax map Of The City Of North Wildwood; and

f. The City will cooperate with the ownership interests efforts in obtaining all applicable federal, state, county and local governmental approvals (“**Governmental Approvals**”) including adopting further resolutions or ordinance relating thereto.

5. Upon adoption, final passage and publication of Ordinance 1804, the First Amendment to Financial Agreement, and upon its full execution and delivery, shall be promptly delivered by the City Clerk to the Tax Assessor and shall also be transmitted to the Chief Financial Officer and County Counsel of Cape May County for informational purposes as required by N.J.S.A. 40A:20-12A.

6. The deadlines set forth in paragraph 9 in the Restructuring Order for the implementation of the Final Restructuring Plan are adjusted and shall now run from the date of the Sheriff’s sale and delivery of the deed by the Sheriff for recordation as follows:

a. The site plan application for the Project must be filed no later than one hundred fifty (150) days after entry of an order issued after the receipt by this Court of the Report.

b. The condominium documents required by the Final Restructuring Plan for the Project must be submitted for regulatory approval no later than ninety (90) days after

final approval of the site plan application by the appropriate body and/or board(s) of the City.

c. An application for the Project under the Coastal Area Facility Review Act (“CAFRA”) must be filed no later than one hundred twenty (120) days from the date all necessary Governmental Approvals, except CAFRA have been obtained.

d. Construction of the Project must commence within six (6) months after all Governmental Approvals and permits are obtained and received.

e. Substantial completion of the Project must occur within thirty-six (36) months of the closing on the financing provided to the successor qualified housing sponsor and must be evidenced by a certificate of substantial completion issued by the qualified housing sponsor’s architect.

7. All regulations, rules, restrictions, agreements and the like establishing and governing restrictions on affordability and rents affecting or recorded against the title of the Project and on Block 152, all lots inclusive, on the Municipal Tax Map of the City of North Wildwood are hereby abrogated, effective as the date permitted by applicable law, including but not limited to, the following:

a. HMFA Deed of Easement and Restrictive Covenant for Extended low-Income Occupancy to New Jersey Housing and Mortgage Finance Agency, its successors and assigns, acting as the housing credit Agency for the State of New Jersey dated December 20, 2002, and recorded in the Clerk’s Office of the County of Cape May on December 23, 2002, at Book 2997, Page 331, an Amendment to Deed of Easement and Restrictive Covenant for Extended low-Income Occupancy dated December 30, 2005, and recorded in the Clerk’s Office of the County of Cape May on February 23, 2006, at Book X439, Page 345 shall be expunged and of no further force and effect.

b. DCA Deed of Easement and Restrictive Covenant for Extended Low and Moderate Income Occupancy to Housing Affordability Service, Division of Housing, New Jersey Department of Community Affairs dated November 27, 2006, and recorded in the Clerk's Office of the County of Cape May on December 4, 2006, at Deed Book 3264, Page 224, and A Declaration of Covenants, Conditions and Restrictions dated August 23, 2005, and recorded in the Clerk's Office of the County of Cape May on December 4, 2006, Deed Book 3264, Page 236 shall be expunged and of no further force and effect.

c. Any restrictive covenant in the Neighborhood Preservation Balanced Housing Program Mortgage by Marina Bay Towers Urban Renewal L.P. to the Neighborhood Preservation Balanced Housing Program through the City of North Wildwood on October 16, 1998, and recorded in the Clerk's Office of the County of Cape May on December 1, 1999, in Mortgage Book 2838, Page 738 in the principal amount of \$1,478,400.00 ("Balanced Housing Mortgage") shall be expunged and of no further force and effect.

d. Any restriction, limitation, restrictive covenant or similar provision made operative as to Block 152, all lots inclusive, on the Municipal Tax Map of the City of North Wildwood, by current or prior agreement, rule, and/or regulation, including, but not limited to, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. ("UHAC"), of and/or enacted by Defendants DCA and HMFA shall be expunged and of no further force and effect.

8. This Order authorizes the implementation and effectuation of the Final Restructuring Plan which includes, *inter alia*, the contemplated disposition of ten (10) or more condominium units as part of a public offering and, thus, constitutes a "Planned Real Estate Development" within the meaning of N.J.A.C. 5:26-1 et seq. As such, this Order constitutes a

“court order” for purposes of N.J.A.C. 5:26-2.2(a)3 and N.J.A.C. 5:26-2.3, and upon entry hereof this Order shall be conclusive and binding on all Defendants named in this action and upon any individual, entity, public body, department or institution for purposes of satisfying N.J.A.C. 5:26-2.2(a)3 and N.J.A.C. 5:26-2.3 of the Planned Real Estate Development Full Disclosure Act and further authorizes the amendment and restatement of the master deed of Block 152, all lots inclusive, consistent with Final Restructuring Plan and this Order, including, without limitation, the creation and establishment, by the condominium redevelopers, developers or sponsors, of one or more separate condominium regimes and associations within existing structures, expansion areas of existing structures, future structures, and designated areas to constitute one or more housing facilities or communities, and one or more homeowners or resident associations within the meaning of 24 § CFR 100.304(b) or other applicable Federal rule or guidance published by the United States Department of Housing and Urban Development as may be deemed by the redevelopers, developers or sponsors appropriate to promote the feasibility and sustainability of the Final Restructuring Plan as a Planned Real Estate Development.

9. Upon entry of this Order, the Trustee, PAC Capital, ECIA, MBT II, and/or each's designee are authorized to do all further things and take all actions necessary and appropriate to give effect to the Final Restructuring Plan and this Order, including the issuance, execution, delivery and filing of (a) a supplemental indenture or indentures as provided for by the Indenture and the ECIA Resolution required by the Final Restructuring Plan, including, without limitation, provisions to (i) consolidate the existing Series A Bonds and Series B Bonds into one series of parity bonds, (ii) change the interest rate, (iii) modify the amortization schedule, and (iv) assign or pledge additional or modified collateral or rents for the benefit or enhancement of the ECIA Bonds and the property interests securing same and for satisfaction of any obligations of the Successor Borrower affecting such security; (b) documents making any and all necessary modifications and

amendments of the ECIA Loan Documents to implement the modifications, whether or not substantial or technical or ministerial, changes, extensions, deferrals, and the like required by the Final Restructuring Plan, including to accomplish the assignment of all rights and obligations thereunder to the Successor Borrower; (c) documents, instruments and forms necessary for tax purposes, including but not limited to reconfirmation of the applicability of I.R.C. § 142 and 26 CFR § 1.103-8 to the restructured ECIA Bonds, IRS Form 8038 and the like; (d) documents, pleadings, filings and other actions necessary to obtain appropriate relief to address the extent the rehabilitation and renovation of the Project, in conformity with the Final Restructuring Plan, and in partial or total satisfaction of the City's "fair share" obligations under current and prior round Mt. Laurel doctrine requirements; and (e) such further documentation and action as may be reasonably required.

10. All Defendants, including, but not limited to, ECIA, the City, HMFA, DCA, and the tenant defendants, shall cooperate with the implementation of the Final Restructuring Plan and are authorized and directed to execute, deliver, file, or record such legislation, contracts, instruments, resolutions, supplemental indentures, forms, releases, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Final Restructuring Plan, including, but not limited to, the express requirements of this Order. Solely for purposes of clarification and not limitation the foregoing includes:

- (a) HMFA and its successor and assigns and State of New Jersey and its successor and assigns are expressly directed to execute, deliver, file, or record such legislation, contracts, instruments, resolutions, supplemental indentures, forms, releases, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of Paragraph 6(a)

of this Order.

(b) Housing Affordability Service, Division of Housing, Department of Community Affairs and its successor and assigns and State of New Jersey and its successor and assigns are expressly directed to execute, deliver, file, or record such legislation, contracts, instruments, resolutions, supplemental indentures, forms, releases, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of Paragraph 6(b) of this Order.

(c) The Neighborhood Preservation Balanced Housing Program, Department of Community Affairs and its successor and assigns, State of New Jersey and its successor and assigns, and City and its successor and assigns, and its successor and assigns are expressly directed to execute, deliver, file, or record such legislation, contracts, instruments, resolutions, supplemental indentures, forms, releases, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of Paragraph 6(c) of this Order.

(d) DCA and its successor and assigns, HMFA and its successor and assigns, State of New Jersey and its successor and assigns, and City and its successor and assigns are expressly directed to execute, deliver, file, or record such legislation, contracts, instruments, resolutions, supplemental indentures, forms, releases, and other agreements or documents, and to take such actions as may be necessary or appropriate to effectuate and further evidence the terms and conditions of Paragraph 6(d) of this Order.

11. Under the Final Restructuring Plan, current qualified tenants in good standing under their current leases shall each receive a new lease and apartment unit based on the Housing and Urban Development 50% AMI guidelines annually published and applicable to the Cape May County region and subject to the provisions of the Rehab Deed Restriction and Final Restructuring

Plan, as amended, with yearly lease renewal options for as long as such tenants remain qualified and in good standing.

### **Mortgage Lien Priority**

12. In accordance with the Appellate Order, the priority of the mortgage liens on the mortgaged premises, the legal description of which is set forth on **Schedule A** hereto (“**Mortgaged Premises**”), is as follows: (a) The ECIA Mortgage lien, recorded in the Clerk’s Office of the County of Cape May on October 21, 2005, in Mortgage Book 4235, Page 24, shall be and is a first priority lien, (b) the mortgage lien of Consult Urban Renewal Development Corporation by Marina Bay Towers Urban Renewal L.P. on December 1, 2002, and recorded April 19, 2004, in Mortgage Book 3815, Page 456 in the principal amount of \$1,567,163 (“**CURDC Mortgage**”) shall be and is a second priority lien, and (c) the Balanced Housing Mortgage lien recorded in the Clerk’s Office of the County of Cape May on December 1, 1999, in Mortgage Book 2838, Page 738 shall be and is a third priority lien.

### **The Project Will Remain a Qualified Residential Rental Project**

13. In accordance with the Appellate Order, this Court determines that the Project will remain a qualified residential rental project as pursuant to I.R.C. § 142(d)(1) under the Final Restructuring Plan:

a. I.R.C. § 142(d)(1) provides that the term “qualified residential rental project” means any project for residential rental property if, at all times during the “qualified project period,” such project meets the requirements under I.R.C. § 142(d)(1)(A) or (B) (“**Set-Aside Requirements**”), whichever is elected by the issuer at the time of the issuance of the issue with respect to such project.

b. MBT II elected treatment pursuant to I.R.C. § 142 (d)(1)(A) (“20/50 Set Aside”), which requires that 20 percent (20%) or more of the residential units in the Project

be occupied by individuals whose income is 50 percent (50%) or less of the area median, gross income (“AMGI”) until the end of the qualified project period, which will be the later of (i) fifteen (15) years from the passing of the 10-day right of redemption and the issuance by the Sheriff of a sheriff’s deed, or (ii) the date upon which no tax-exempt private activity bonds are outstanding, and the Successor Borrower will continue to comply with such provisions.

c. The Final Restructuring Plan and the accompanying Rehab Deed Restriction provide that not less than 20% of the total units will meet the 20/50 Set Aside, making the Project a qualified residential rental project.

d. While a qualified residential rental project must continue to have a minimum number of tenants whose income meets the 20/50 Set Aside, at present the Project would need 29 such tenants, the annual certification of tenant incomes required by Section 142 only requires a new certification from such a project’s owner when there has been at least one new tenant taking possession of a rental unit during the tax reporting year.

e. The project presently meets the 20/50 Set Aside as (i) the last certification by the HMFA in November 2017 required pursuant to I.R.C. § 42 with respect to the Project’s status as a low-income tax credit project admitted by the Court as evidence at trial (PX-133) demonstrated that based on the HMFA’s financial audit, there were sufficient tenant income certifications demonstrating that all individuals occupying the Project had incomes at or below 50% AMGI; and (ii) there have been no new tenants in the Project after the audit set forth in PX-133.

14. Having determined that the Project will continue to be a qualified residential rental project under the Final Restructuring Plan, the Court concludes that the ECIA Loan can be satisfied even if the Project remains a qualified residential rental project for the following reasons:

a. The Special Master has reviewed the Final Restructuring Plan, the supporting financial documentation, including, among other things, its 15-Year Income and Operating Pro Forma which demonstrates repayment of the principal and interest on the restructuring ECIA Bond indebtedness in accordance with the direction on remand of the Appellate Division, and currently developed planning, marketing data and construction documentation and recommended it be approved.

b. Under the Plan, the net proceeds from what is known as the Sandy Insurance Litigation are fully utilized in either retiring existing obligations on the ECIA Bonds or being used to fund the Plan directly.

c. Under the Plan, the ECIA Bonds will remain secured by a first lien on the Project, requiring that they be paid ahead of all other secured lenders and all other creditors, and the Project, as a Project under the CIAL, is not subject to priming or subordinate security liens except as provided herein.

d. Defendant Beach Creek Marina, Inc. and its assigns (“**Beach Creek**” or “**Ground Lessor**”), an entity related to PAC by common ownership and the ground lessor holding title to Block 152, all lots inclusive, on the Municipal Tax Map of the City of North Wildwood, is agreeable to amending the ground lease to accommodate the Plan’s implementation and to providing leasehold financing of up to \$9,500,000 not secured by a mortgage on the property interests securing the ECIA Bonds anticipated to be advanced to the Successor Borrower for the redevelopment and rehabilitation of the Project conditioned upon obtaining all applicable Governmental Approvals with respect to both the existing development on Block 152 and the potential new multi-dwelling unit and mixed-use development that is the subject of the Settlement Agreement and Mount Laurel litigation known as Anglesea Properties, LLC v. City of North Wildwood, Docket No. CPM-L-359-

15 (“Anglesea Matter” or “Phase II”), all of which will allow the ECIA Bond obligations, as restructured, to remain secured by a first mortgage lien on the Project and the leasehold financing provided by Ground Lessor to be repaid from a combination of the proceeds of rents and/or sales of the dwelling units, or vested rights appurtenant thereto, proposed pursuant to the Final Restructuring Plan to be redeveloped and newly constructed upon the Block 152 Site. Without Beach Creek’s willingness to engage a lender, which will be a regulated financial institution along with its specific and/or customary third-party or internal construction and/or engineering monitoring requirements (or, should the lender not be a regulated financial institution, such lender as may be authorized by the Court after a formal request by the Sponsor made on notice), and to provide its land as clean, unencumbered collateral for the needed unsecured landlord financing, the Plan’s financing component would not be viable and the ECIA Loan could not be repaid.

e. As set forth in the sources and uses in Exhibit E to the Plan and in accordance with the terms and conditions thereof, PAC Capital has agreed to provide additional contingent financing in the form of a “B” Note of up to \$1.5 million, if necessary, as well as causing to be provided additional funds to support the debt structure of the Project.

f. PAC Capital has further agreed to restructuring the ECIA Bonds as provided in the Final Restructuring Plan such that the interest rate and amortization terms will be more favorable to the new owner, thereby increasing the likelihood of repayment.

**Successor Owner of the Project Is a Qualified Housing Sponsor**

15. In accordance with the Appellate Order, this Court determines that the proposed new owner of the Project, MBT III, is a qualified housing sponsor for the following reasons:

a. On May 18, 2015, the DCA's Bureau of Homeowner Protection approved MBT III's Certificate of Limited Partnership.

b. On the same date, the DCA's Division of Codes and Standards certified that MBT III was formed as an "Urban Renewal Entity" pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40:20-1, et seq. ("LTTL").

c. The Certificate of Limited Partnership states that it "has been organized to serve a public purpose, its operations shall be directed toward (1) the redevelopment of redevelopment area, the facilitation of the relocation of the residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (2) the acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under [the LTTL]; and (3) the Partnership shall be subject to regulation by the municipality in which its project is situated, and to a limitation or prohibition, as appropriate on profits or dividends for so long as it remains the owner of a project subject to [the LTTL]," which provisions are substantially similar to those for MBT II.

d. N.J.S.A. 40:37A-107(j) of the CIAL, defines a "qualified housing sponsor" as "an urban renewal corporation or association . . . or any renewal nonprofit corporation or association . . . which has one of its purposes the construction, rehabilitation or operation of housing projects."

e. As indicated in 1991 Senate County & Municipal Government Committee Statement in support of enactment of the LTTL, while the statutory predicates defining an urban renewal entity in Section 107(j) have been repealed, they were replaced with the single definition of "urban renewal entity" contained in the LTTL, N.J.S.A. 40A:20-3(g), which provides "a nonprofit entity which enters into a financial agreement with a

municipality to undertake a project pursuant to a redevelopment plan for the redevelopment of all or any part of a redevelopment area, or a project necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or any part of one or more redevelopment areas, or a low and moderate income housing project.”

f. This Order requires the Financial Agreement with the City to be assigned, as amended by the First Amendment, to the successor owner of the Project, which will be MBT III and its successors and assigns that satisfies the applicable statutory definition of “qualified housing sponsor,” as provided for in the First Amendment.

g. Because (i) the DCA has certified MBT III as an urban renewal entity; (ii) MBT III is an assignee and successor in interest to MBT II (as such terms are used and approved in the ECIA Loan Documents) and has been established for the same purposes as MBT II; and (iii) MBT III will be a party to the Financial Agreement, MBT III satisfies the definition of qualified housing sponsor pursuant to Section 107(j) and is a valid successor in interest as designated by the ECIA Loan Documents.

Nothing in this Paragraph 13 shall limit or restrict the sale of condominium units to purchasers that are not “qualified housing sponsors” consistent with the Final Restructuring Plan and as provided for in the First Amendment.

#### **Proposed Deed Restriction and the Final Restructuring Plan Are Now Consistent**

16. The Final Restructuring Plan includes a conforming Rehab Deed Restriction as Exhibit F that reflects that the Project will remain a “qualified residential rental project” pursuant to I.R.C. § 142.

17. Except by the express written consent and agreement of Beach Creek, this Order shall have no effect on Beach Creek’s superior right, title and interest as ground lessor and fee

owner of Block 152, all lots inclusive; and shall not be construed as imposing any obligation on Beach Creek to modify, amend or renew any and all terms of its ground lease.

18. The Court shall retain jurisdiction to implement and enforce this Order. In the event that any party or the Special Master believes that this Order or the Final Restructuring Plan is being violated, prior to making any formal application to the Court, such person shall request a telephonic management conference to discuss the issue and receive direction from the Court as to how to proceed.

19. In the event of any inconsistencies between this Order and the Final Restructuring Plan, the provisions of the Order shall govern.

20. Any final judgment in foreclosure shall incorporate this Order.



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Hon. Michael J. Blee, J.S.C.

Opposed: \_\_\_\_\_

Unopposed: \_\_\_\_\_

**SCHEDULE A**

**[Property Metes and Bounds Description]**



December 5, 2019

## **DESCRIPTION OF AGGREGATE AREA OF EASEMENT, LEASE & COMMON ELEMENTS FOR MARINA BAY TOWERS HOUSING**

ALL THAT CERTAIN portion of Block 152 in the City of North Wildwood, Cape May County, New Jersey being the aggregate area of easements, lease areas and common elements of Marina Bay Towers Housing as shown on Exhibit 1 of a plan entitled, "Marina Bay Towers, Exhibit of Property Use and Common Element Delineation, Block 152, City of North Wildwood, New Jersey," as prepared by Partner Engineering and Science, Inc., dated 4/21/2015, being bound and described as follows:

BEGINNING at a point on the northwesterly sideline of New York Avenue (70 feet wide) where same is intersected by the northeasterly sideline of Seventh Avenue (70 feet wide), and running; thence

1. Along said northeasterly sideline of Seventh Avenue, North 45° 00' 00" West, a distance of 264.98 feet to a point in same; Thence through said Block 152 the following 12 courses:
2. North 45° 00' 00" East, a distance of 20.97 feet to an angle point in same; Thence
3. North 47° 20' 49" West, a distance of 108.43 feet to an angle point in same; Thence
4. North 61° 18' 48" West, a distance of 41.34 feet to an angle point in same; Thence
5. North 84° 20' 30" East, a distance of 112.01 feet to an angle point in same; Thence
6. North 84° 22' 58" East, a distance of 86.10 feet to an angle point in same; Thence
7. South 42° 41' 01" East, a distance of 38.35 feet to an angle point in same; Thence
8. South 68° 29' 59" East, a distance of 2.30 feet to an angle point in same; Thence
9. North 56° 15' 09" East, a distance of 74.37 feet to an angle point in same; Thence

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10. North  $26^{\circ} 39' 28''$  West, a distance of 6.22 feet to an angle point in same; Thence
11. North  $63^{\circ} 20' 32''$  East, a distance of 10.00 feet to an angle point in same; Thence
12. South  $26^{\circ} 39' 28''$  East, a distance of 4.98 feet to an angle point in same; Thence
13. North  $56^{\circ} 15' 09''$  East, a distance of 45.76 feet to an angle point in same; Thence
14. North  $44^{\circ} 30' 56''$  East, a distance of 184.84 feet to a point in the southwesterly sideline of Fifth Avenue (70 feet wide); Thence
15. Along said southwesterly sideline of Fifth Avenue, South  $45^{\circ} 00' 00''$  East, a distance of 38.08 feet to a point in same; Thence through said Block 152 the following 3 courses:
16. South  $45^{\circ} 00' 00''$  West, a distance of 23.00 feet to an angle point in same; Thence
17. South  $45^{\circ} 00' 00''$  East, a distance of 137.00 feet to an angle point in same; Thence
18. North  $45^{\circ} 00' 00''$  East, a distance of 23.00 feet to a point in said southwesterly sideline of Fifth Avenue; Thence
19. Along said southwesterly sideline of Fifth Avenue, South  $45^{\circ} 00' 00''$  East, a distance of 24.55 feet to a point of cusp in same; Thence through said Block 152 the following 9 courses:
20. Along a non-tangent curve to the right having a radius of 6.80 feet, an arc length of 12.47, having a chord bearing of South  $42^{\circ} 35' 05''$  West, 10.79 feet to an angle point in same; Thence
21. South  $45^{\circ} 00' 00''$  West, a distance of 101.72 feet to an angle point in same; Thence
22. South  $45^{\circ} 00' 00''$  East, a distance of 10.98 feet to an angle point in same; Thence
23. North  $44^{\circ} 39' 07''$  East, a distance of 88.76 feet to an angle point in same; Thence

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24. South  $45^{\circ} 20' 53''$  East, a distance of 10.00 feet to an angle point in same;  
Thence
25. South  $44^{\circ} 39' 07''$  West, a distance of 95.23 feet to an angle point in same;  
Thence
26. North  $72^{\circ} 03' 36''$  West, a distance of 5.08 feet to an angle point in same; Thence
27. South  $45^{\circ} 00' 00''$  West, a distance of 40.81 feet to a point of cusp in same;  
Thence
28. Along a non-tangent curve to the right having a radius of 6.80 feet, an arc length of 7.29, having a chord bearing of South  $24^{\circ} 23' 19''$  East, 6.94 feet to a point in said northwesterly sideline of New York Avenue; Thence
29. Along said northwesterly sideline of New York Avenue, South  $45^{\circ} 00' 00''$  West, a distance of 8.50 feet to a point of cusp in same; Thence through said Block 152 the following 7 courses:
30. Along a non-tangent curve to the right having a radius of 6.80 feet, an arc length of 7.29, having a chord bearing of North  $65^{\circ} 36' 41''$  West, 6.94 feet to an angle point in same; Thence
31. South  $45^{\circ} 00' 00''$  West, a distance of 37.09 feet to an angle point in same;  
Thence
32. North  $45^{\circ} 00' 00''$  West, a distance of 16.50 feet to an angle point in same;  
Thence
33. South  $45^{\circ} 00' 00''$  West, a distance of 1.78 feet to an angle point in same;  
Thence
34. South  $48^{\circ} 36' 50''$  East, a distance of 8.76 feet to an angle point in same; Thence
35. South  $14^{\circ} 58' 17''$  East, a distance of 2.54 feet to an angle point in same; Thence
36. South  $45^{\circ} 00' 00''$  East, a distance of 12.06 feet to a point in said northwesterly sideline of New York Avenue; Thence
37. Along said northwesterly sideline of New York Avenue, South  $45^{\circ} 00' 00''$  West, a distance of 255.00 feet to the aforesaid point of BEGINNING.

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LESS AND EXCEPTING the following eight areas:

**EXCEPTION AREA 1:**

BEGINNING at a point located North 87° 57' 19" East, 13.89 feet from the terminus of the second course in the above described Aggregate Area of Easement, Lease & Common Elements and running; thence through said Block 152 the following 8 courses:

1. North 37° 49' 35" East, a distance of 18.03 feet to an angle point in same;  
Thence
2. North 23° 40' 11" East, a distance of 20.61 feet to an angle point in same;  
Thence
3. North 29° 10' 06" East, a distance of 0.98 feet to an angle point in same; Thence
4. North 39° 56' 57" East, a distance of 45.09 feet to an angle point in same;  
Thence
5. North 72° 18' 08" East, a distance of 30.49 feet to an angle point in same;  
Thence
6. South 45° 00' 00" West, a distance of 35.60 feet to a point of cusp in same;  
Thence
7. Along a non-tangent curve to the left having a radius of 6.80 feet, an arc length of 23.92, having a chord bearing of South 45° 00' 00" West, 13.36 feet to an angle point in same; Thence
8. South 45° 00' 00" West, a distance of 61.08 feet to the aforesaid point of BEGINNING.

Exception Area 1 Containing 783 square feet or 0.0180 acres more or less.

**EXCEPTION AREA 2:**

BEGINNING at a point located South 26° 39' 28" East, 10.23 feet from the terminus of the ninth course in the above described Aggregate Area of Easement, Lease & Common Elements and running; thence through said Block 152 the following 6 courses:

1. South 26° 39' 28" East, a distance of 11.73 feet to an angle point in same;  
Thence

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2. South 43° 07' 09" West, a distance of 13.77 feet to an angle point in same;  
Thence
3. South 45° 00' 00" West, a distance of 5.90 feet to an angle point in same;  
Thence
4. South 55° 07' 59" West, a distance of 47.72 feet to an angle point in same;  
Thence
5. North 45° 00' 00" West, a distance of 16.99 feet to an angle point in same;  
Thence
6. North 56° 06' 22" East, a distance of 71.67 feet to the aforesaid point of  
**BEGINNING.**

Exception Area 2 Containing 1,077 square feet or 0.0247 acres more or less.

**EXCEPTION AREA 3:**

BEGINNING at a point located South 26° 39' 28" East, 21.96 feet from the terminus of the ninth course in the above described Aggregate Area of Easement, Lease & Common Elements and running; thence through said Block 152 the following 9 courses:

1. South 62° 10' 00" East, a distance of 33.46 feet to an angle point in same;  
Thence
2. South 37° 52' 00" West, a distance of 7.73 feet to an angle point in same;  
Thence
3. South 52° 08' 00" East, a distance of 9.56 feet to an angle point in same; Thence
4. South 45° 40' 37" West, a distance of 70.03 feet to an angle point in same;  
Thence
5. North 45° 00' 00" West, a distance of 14.04 feet to an angle point in same;  
Thence
6. North 38° 29' 56" West, a distance of 34.85 feet to an angle point in same;  
Thence
7. North 55° 07' 59" East, a distance of 42.81 feet to an angle point in same;  
Thence

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8. North 45° 00' 00" East, a distance of 6.95 feet to an angle point in same; Thence
9. North 43° 07' 09" East, a distance of 13.61 feet the aforesaid point of BEGINNING.

Exception Area 3 Containing 3,081 square feet or 0.0707 acres more or less.

**EXCEPTION AREA 4:**

BEGINNING at a point located South 52° 08' 00" East, 10.09 feet from the terminus of the third course in the above described Exception Area 3 and running; thence through said Block 152 the following 4 courses:

1. South 52° 08' 00" East, a distance of 10.22 feet to an angle point in same; Thence
2. South 45° 00' 00" West, a distance of 19.41 feet to an angle point in same; Thence
3. North 45° 00' 00" West, a distance of 10.36 feet to an angle point in same; Thence
4. North 45° 40' 37" East, a distance of 18.14 feet to the aforesaid point of BEGINNING.

Exception Area 4 Containing 192 square feet or 0.0044 acres more or less.

**EXCEPTION AREA 5:**

BEGINNING at a point located South 26° 39' 28" East, 10.20 feet from the terminus of the twelfth course in the above described Aggregate Area of Easement, Lease & Common Elements and running; thence through said Block 152 the following 22 courses:

1. North 56° 06' 22" East, a distance of 48.05 feet to an angle point in same; Thence
2. North 44° 30' 56" East, a distance of 138.78 feet to an angle point in same; Thence
3. South 45° 00' 00" East, a distance of 68.68 feet to an angle point in same; Thence

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4. South  $45^{\circ} 00' 00''$  West, a distance of 0.16 feet to a point of cusp in same;  
Thence
5. Along a non-tangent curve to the left having a radius of 6.80 feet, an arc length of 22.99, having a chord bearing of South  $45^{\circ} 00' 00''$  West, 13.50 to an angle point in same; Thence
6. South  $45^{\circ} 00' 00''$  West, a distance of 40.34 feet to a point of curvature in same;  
Thence
7. Along a curve to the left having a radius of 6.00 feet, an arc length of 9.42 feet,  
the chord of which bears South  $00^{\circ} 00' 00''$  West, 8.49 feet to a point of tangency  
in same; Thence
8. South  $45^{\circ} 00' 00''$  East, a distance of 83.24 feet to a point of cusp in same;  
Thence
9. Along a non-tangent curve to the left having a radius of 6.80 feet, an arc length of 13.56, having a chord bearing of South  $02^{\circ} 12' 30''$  West, 11.42 to an angle point;  
Thence
10. South  $45^{\circ} 00' 00''$  West, a distance of 15.30 feet to an angle point in same;  
Thence
11. North  $72^{\circ} 03' 36''$  West, a distance of 10.99 feet to an angle point in same;  
Thence
12. South  $43^{\circ} 09' 38''$  West, a distance of 19.33 feet to an angle point in same;  
Thence
13. North  $45^{\circ} 00' 00''$  West, a distance of 76.94 feet to an angle point in same;  
Thence
14. North  $13^{\circ} 44' 21''$  East, a distance of 23.19 feet to an angle point in same;  
Thence
15. North  $76^{\circ} 15' 39''$  West, a distance of 10.00 feet to an angle point in same;  
Thence
16. South  $13^{\circ} 44' 21''$  West, a distance of 17.11 feet to an angle point in same;  
Thence
17. North  $45^{\circ} 00' 00''$  West, a distance of 4.19 feet to an angle point in same; Thence

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18. South 45° 00' 00" West, a distance of 60.00 feet to an angle point in same;  
Thence
19. North 45° 00' 00" West, a distance of 14.00 feet to an angle point in same;  
Thence
20. South 45° 00' 00" West, a distance of 9.13 feet to an angle point in same;  
Thence
21. North 62° 10' 00" West, a distance of 45.67 feet to an angle point in same;  
Thence
22. North 26° 39' 28" West, a distance of 14.88 feet to the aforesaid point of  
BEGINNING.

Exception Area 5 Containing 16,267 square feet or 0.3734 acres more or less.

EXCEPTION AREA 6:

BEGINNING at a point located South 48° 00' 24" East, 24.03 feet from the terminus of the eighteenth course in the above described Exception Area 5 and running; thence through said Block 152 the following 9 courses:

1. North 45° 00' 00" East, a distance of 11.48 feet to a point of cusp in same;  
Thence
2. Along a non-tangent curve to the right having a radius of 6.80 feet, an arc length of 13.01, having a chord bearing of North 45° 00' 00" East, 11.11 feet to an angle point in same; Thence
3. North 45° 00' 00" East, a distance of 3.52 feet to an angle point in same; Thence
4. South 13° 44' 21" West, a distance of 3.13 feet to an angle point in same;  
Thence
5. South 13° 46' 33" West, a distance of 9.57 feet to an angle point in same;  
Thence
6. North 45° 00' 02" West, a distance of 4.08 feet to an angle point in same; Thence
7. South 45° 03' 57" West, a distance of 4.87 feet to an angle point in same;  
Thence

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8. South 45° 00' 00" West, a distance of 10.47 feet to an angle point in same;  
Thence
9. North 43° 08' 00" West, a distance of 2.50 feet to the aforesaid point of  
BEGINNING.

Exception Area 6 Containing 96 square feet or 0.0022 acres more or less.

**EXCEPTION AREA 7:**

BEGINNING at a point located North 49° 11' 39" East, 49.03 feet from the terminus of the thirtieth course in the above described Aggregate Area of Easement, Lease & Common Elements and running; thence through said Block 152 the following 6 courses:

1. South 43° 09' 38" West, a distance of 8.71 feet to an angle point in same;  
Thence
2. South 48° 11' 25" West, a distance of 4.91 feet to a point of cusp in same;  
Thence
3. Along a non-tangent curve to the left having a radius of 6.80 feet, an arc length of 18.39, having a chord bearing of North 71° 19' 36" West, 13.28 feet to an angle point; Thence
4. North 45° 00' 00" West, a distance of 39.41 feet to an angle point in same;  
Thence
5. North 13° 44' 21" East, a distance of 22.81 feet to an angle point in same;  
Thence
6. South 45° 00' 00" East, a distance of 63.14 feet to the aforesaid point of  
BEGINNING.

Exception Area 7 Containing 1,030 square feet or 0.0236 acres more or less.

**EXCEPTION AREA 8:**

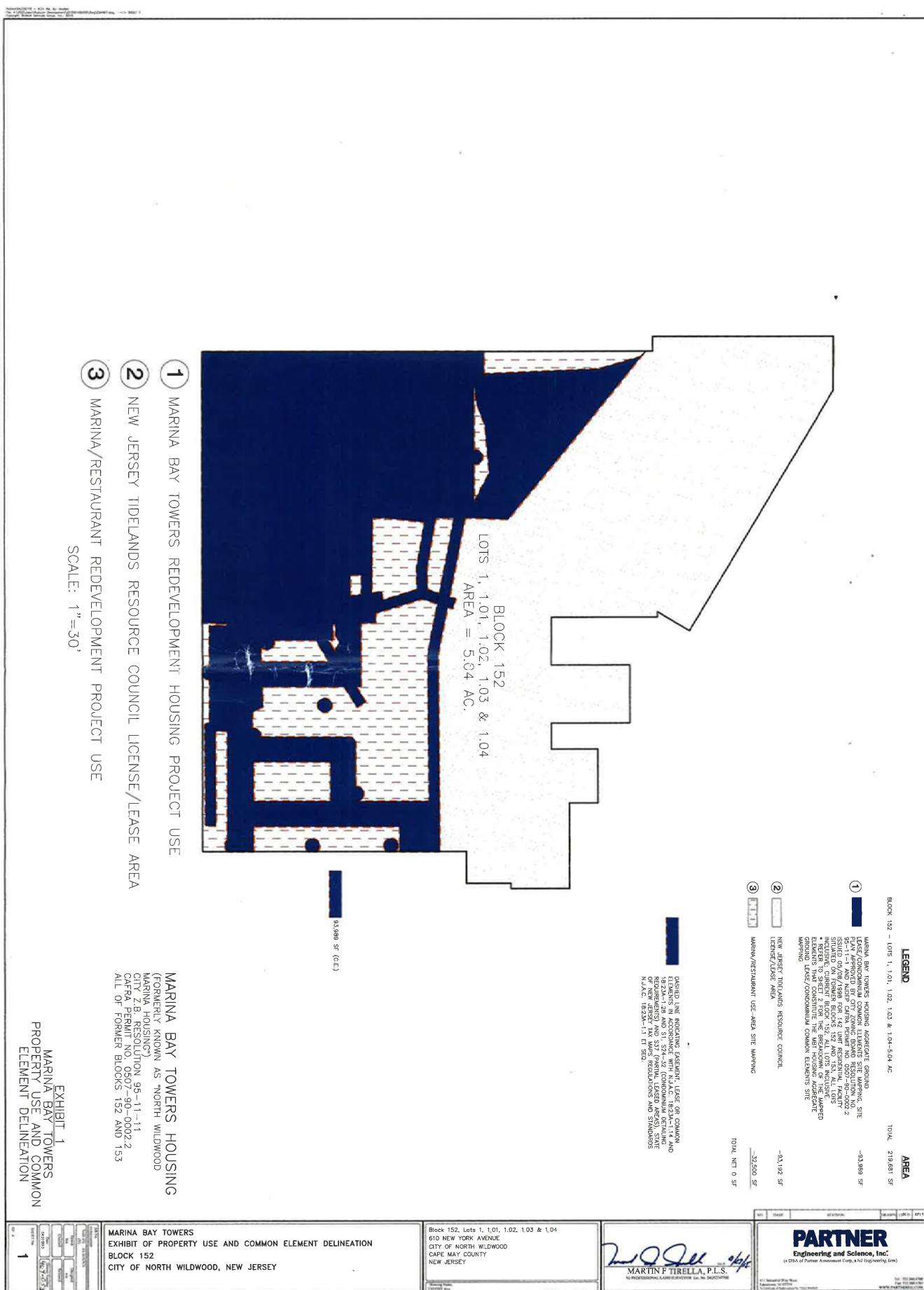
BEGINNING at a point located South 45° 00' 00" West, 24.00 feet from the terminus of the seventeenth course in the above described Aggregate Area of Easement, Lease & Common Elements and running; thence through said Block 152 the following 4 courses:

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1. South 45° 00' 00" West, a distance of 36.00 feet to an angle point in same;  
Thence
2. North 45° 00' 00" West, a distance of 72.00 feet to an angle point in same;  
Thence
3. North 45° 00' 00" East, a distance of 36.00 feet to an angle point in same;  
Thence
4. South 45° 00' 00" East, a distance of 72.00 feet to the aforesaid point of  
**BEGINNING.**

Exception Area 8 Containing 2,592 square feet or 0.0595 acres more or less.

Aggregate Area of Easement, Lease & Common Elements Containing 93,989 square feet or 2.1577 acres more or less, as per above-referenced Exhibit 1. Subject to easements and restrictions of record.



# EXHIBIT A

Unredacted - March 12, 2020**UPDATED AND AMENDED FINAL RESTRUCTURING PLAN****Section 1****Final Restructuring Plan Overview**

Manufacturers and Traders Trust Company, as Indenture Trustee (“**Trustee**”) for Federally tax-exempt mortgage bonds issued by the Essex County Improvement Authority (“**ECIA**”) in 2005, and its bondholder, PAC Capital LLC (“**PAC**” and with Trustee, “**Plan Proponent**”), with the consent and cooperation of Beach Creek Marina, Inc. (“**Beach Creek**”), the owner of the fee simple title to Block 152 Lot 1, proposes a Updated and Amended Final Restructuring Plan (“**Plan**”) to renovate and rehabilitate the Marina Bay Towers Project (“**Project**”).

The Plan as originally approved by the Court in May 2018 authorized the restructuring of the 142-unit, all Low-Income Housing Tax Credit Project so that there would be 91 units all restricted to households at the annual HUD-published 80% Area Median Income rents (80% AMI or “Moderate-Income Units”) rehabilitated and restricted pursuant to a new deed restriction while the existing low-income senior citizen tenants in good standing would be able to continue their tenancy post-foreclosure at the annual HUD-published 50% Area Median Income (“50% AMI or “Low Income Units”) rents and the balance of the units would be converted to market rate condominium units. After the appointment and involvement of the Special Master, the October 2019 Appellate Division decision denying the State’s interlocutory appeal, and several mediation sessions with the City of North Wildwood (“**City**”) beginning in September 2019, the Plan as now finally updated and modified will result in **up to 105** dwelling units restricted for Low- and Moderate-income persons 55 years of age or older, with 33 of the Project’s rental units restricted to 50% AMI for the entire term of the new deed restriction, the existing tenants continuing their tenancy in the Project at the applicable 50% AMI rents, up to 72 units restricted for Moderate-Income 55 and older seniors and the remaining units non-income and non-age-restricted in what is referred to herein as the “**Phase I Project**” or “**Phase I.**” Unlike the Plan’s earlier versions, the City has agreed pursuant to a Settlement (as defined below) to take the steps to ensure that the necessary land use entitlements provided in the forms of related Ordinances annexed hereto (see below) are vested, subject to municipal planning and legislative requirements, to implement the modified Plan. The Settlement anticipates a “**Phase II Project**” or “**Phase II**” on the northern portion of the same Block 152 site to be recommended by the City, which, if approved, will make the financing of 105 restricted units planned to be located in the Phase I Project achievable without any new government subsidies.

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The Plan relies on well-established “inclusionary development financing and zoning techniques” in a two-phase, mixed-use/mixed-income master development plan situated upon the 3-acre Block 152 site owned by Beach Creek.<sup>1</sup>

The affordable housing component to the mixed-use Plan has been designed so that the Project will continue to be financially viable and operate under the Federal Tax-Exempt Mortgage Bond Program (26 U.S.C. § 142(d)) pursuant to the previously elected statutory set-aside (i.e., 20% of the rental units restricted at 50% AMI rents as annually indexed by HUD for the Cape May County region for the entire 15-year term required under the Federal Program (“**Qualified Project Period**,” § 142(d)(2)(A)) and pursuant to the new Deed Restriction (see below) designed to comply with the applicable Federal requirements (see below)). The Plan continues the Low-Income set-aside election made as part of the ECIA-issued mortgage bonds. The Plan further provides for the renovation and expansion of the existing commercial uses on the site (i.e., recreational watercraft boat basin and related services, marina restaurant/club, and other commercial uses) and upgrades to the site infrastructure and amenities that complement the housing use.

The Plan also provides for the potential of a newly developed Phase II Project comprised of a second multifamily high-rise structure on the northern portion of the Block 152 site. Pursuant to the Settlement, the City is expected to approve the necessary land use rights for Phase II, which allows Beach Creek to provide the critical financing for the Plan so that 105 affordable rental units, and not just 33, can be rehabilitated and preserved.

The Mayor has agreed to recommend municipal legislation to its governing body that would provide the land use, bulk and dimensional allowances pursuant to the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) and the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.); amendments to the Financial Agreement pursuant to the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.) and ¶6 of the Restructuring Order; a partial street vacation pursuant to N.J.S.A. 40:67-1b. That legislation is comprised of (1) an Ordinance Amending the Block 152 Redevelopment Plan governing the Project, (2) an Ordinance Adopting a First Amendment to the Financial Agreement, (3) an Ordinance adopting a new North Wildwood Marina Zoning District Ordinance, and (4) an Ordinance Partially Vacated Portions of Fifth and New York Avenues. Copies of the aforesaid proposed Ordinances are annexed hereto and made part hereof as **Exhibit “A”, Exhibit “B”, Exhibit “C” and Exhibit “D”**, respectively. The first reading of the Ordinances is anticipated to be scheduled for the City Council meeting on Tuesday, March 17, 2020. It is anticipated that the public meeting for consideration of the second, final reading and adoption of the Ordinances would occur at the City Council meeting next following the Planning

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<sup>1</sup> See N.J.S.A. 52:27D-304(f). The New Jersey Fair Housing Act (“NJFHA”) defines “Inclusionary Development” as “a residential housing development in which a substantial percentage of the housing units are provided for a reasonable income range of low and moderate income households.” N.J.S.A. 52:27A-304f. Generally, the proposed Final Restructuring Plan, which relies on inclusionary development techniques for its implementation, is consistent with that policy.

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Board's consideration of, and any recommendations, to the Ordinances. *See below* Phase I and Phase II Gantt Chart timetables annexed hereto as Exhibits "I" and "J", respectively.

### **Phase I**

A renovated and redeveloped multifamily housing component (the existing Project condominium building and marina/restaurant renovations) consisting of a maximum of 165 dwelling units will constitute the "**Phase I Project**" as follows:

- 33 rental units age-restricted (pursuant to 42 U.S.C. § 3607(b)(2)(B) or (C)) to persons earning no more than 50% AMI
- Up to 72 rental units age-restricted (pursuant to 42 U.S.C. § 3607(b)(2)(B) or (C)) for persons earning no more than the applicable 80% AMI (50% and 80% AMI units, hereinafter collectively, "**Restricted Units**")
- Up to 60 units without restrictions for rent, income or age ("**Market Rate Units**").
- The Plan anticipates that the site infrastructure, marina and restaurant/club improvements would also be regulated for land use purposes by the Amended Block 152 Redevelopment Plan ("**Amended Redevelopment Plan**") annexed hereto as **Exhibit "A"**, which the City has agreed to in order to allow the Plan Proponent to expedite approvals for those components in connection with the rehabilitation of the existing housing independent of any Phase II approvals. The land use and bulk standards of the Amended Redevelopment Plan apply to existing improvements in the area designated as the "**Phase I Redevelopment Overlay Zone**" which is illustrated in **Figure 1** below.

Marina Bay Towers Urban Renewal III, L.P. ("**MBT III**"), an "urban renewal entity" pursuant to N.J.S.A. 40A:20-1 et seq. (the Long Term Tax Exemption Law, "**LTTL**") and a "qualified housing sponsor" pursuant to N.J.S.A. 40:37A-44 et seq. (the County Improvement Authorities Law, "**CIAL**"), will own and operate the Project, which will be subject to an amended Financial Agreement for real property tax exemption which provides for a 7% Annual Service Charge payable to the City with respect to the Restricted Units and 10% annually for the Market Rate Units ("**First Amendment to the Financial Agreement**"). *See Exhibit "B"* annexed hereto. MBT III's Certificate of Limited Partnership is annexed hereto as **Exhibit "N"**. Neither the Phase II Project nor restaurant or marina improvements, nor any portions thereof, will be subject to the First Amendment to the Financial Agreement's tax exemption, which shall be limited to the rehabilitated Project.

< SEE FIGURE NO. 1 – PROPOSED LAND USE REGULATORY DELINEATION BLOCK 152 >

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## **Phase II**

A new multi-dwelling unit tower constructed above common elements and surface and multi-level parking is proposed for the “**Phase II Project**” in a high-rise building of approximately 200 feet in height on the northeast portion of the Block 152 site which is designated as the “**Phase II Development Area**” and is depicted in **Figure 2** below.<sup>2</sup> No dwelling units in the Phase II Project will be restricted for income or age.<sup>3</sup> The municipal land use, bulk and dimensional standards for implementation of the Phase II Project are provided by the form of proposed new zoning regulations for the consolidated Block 152 area, **Exhibit “C”**, the “North Wildwood Marina District Zoning Ordinance,” which has been designed based on the current Bayside-Business Zoning, is conceived and designed in a manner that the Plan Proponent believed is substantially consistent with the City’s Municipal Master Plan and will proceed through municipal legislative process pursuant to N.J.S.A. 40:55D-26 (“NWM District Ordinance”). The Plan assumes that the proposed NWM District Ordinance will become effective substantially in the form annexed to this Final Restructuring Plan update.

<SEE FIGURE NO. 1 – PROPOSED LAND USE REGULATORY DELINEATION BLOCK 152>

The Plan, as now updated and assuming adoption of the municipal legislation noted above, anticipates that by May-June of 2020 all land use entitlements will be vested, and site plan review will immediately thereafter proceed.

Both the Phase I and II Projects will undergo review by the New Jersey Department of Environmental Protection (“NJDEP”) pursuant to the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq. (“CAFRA”), since N.J.S.A. 13:19-5 requires coastal residential development having 25 or more dwelling units or a commercial development having 50 or more parking spaces located 150 feet of the mean high water line of any tidal waters to be permitted under CAFRA. Accordingly, a CAFRA permit review will be required and conducted by NJDEP pursuant to the Land Use Program regulation pursuant to N.J.A.C. 7:7-1.1 et seq.

**The deed restricting of all 105 units is expressly contingent upon obtaining all applicable local approvals on or before May 29, 2020, and all county, State and Federal approvals for both Phase I and Phase II thereafter. Pursuant to the now final, modified Plan, if all such governmental approvals are not issued, the Phase I Plan provides that no more than 33 Low-**

<sup>2</sup> To qualify under the NJHFA as an inclusionary development, at least 15% of the total number of units must be income and rent restricted. Built out to the size anticipated by the Settlement, roughly 144 units, the total number of dwelling units results in well in excess of the 15% minimum and would significantly exceed the State’s current policy and regulation regarding presumptive minimum inclusionary development restricted unit set-aside thresholds.

<sup>3</sup> Built out to the size anticipated by the Settlement, roughly 144 units, the total number of dwelling units between Phase I and Phase II, collectively, results in well in excess of the 15% of the units being income-restricted.

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**Income senior rental units in the Project will be subject to the new deed restriction after foreclosure and the remaining up to 132 units will be unrestricted units for sale or rent.**

## Section 2

### **Elements Supporting Feasibility of the Final/Updated Plan**

#### **I. Project Physical and Legal Feasibility**

##### A. Site Control

Beach Creek has agreed to an Amended Ground Lease and Amended Master Deed for the Project that accommodate the Plan.

##### B. Entitlements - Land Use Approvals

- i. Amended Redevelopment Plan, Exhibit “A”.
- ii. NWM District Ordinance, Exhibit “C”.
- iii. Preliminary and Final Site Plan Approval are anticipated to be filed on or before June 2020. Draft site plan documents, which are being completed by the engineering firm Bowman Consulting Group, Ltd. for the two-phase Plan, are in their advanced stages of completion.

##### C. First Amendment to Financial Agreement, Exhibit “B”.

#### **II. Project Financial Feasibility as Inclusionary Development**

- A. Financing Program. Sources and Uses; 15-Year Income and Operating Expense Projection. Annexed hereto as **Exhibit “E”** is a copy of the updated Sources and Uses and 15-Year Income and Operating Expense Pro Forma for the Phase I Project.
- B. Floor Plans. Phase I Floor Plans showing number and location of affordable units is annexed hereto as **Exhibit “F”**. Preliminary Phase II Floor Plans for a typical floor plate of the Phase II Project high-rise are annexed hereto as **Exhibit “G”**.
- C. Market and Feasibility Study. Novogradac & Co. Phase I Market and Feasibility Study dated December 20, 2019 annexed hereto as **Exhibit “H”**.
- D. Project Scheduling. A detailed project Gantt Chart describing the tasks and the schedule to complete the multifamily housing component of the Phase I Project is

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annexed hereto as **Exhibit “I”**, and projected timetable for completion of the Phase II Project is annexed hereto as **Exhibit “J”**.

**E. Subsidy Component.** Description of Any Applicable Internal and Governmental Subsidies -

- i. PILOT Agreement. *See Exhibit “B”*, First Amendment to the Financial Agreement.
- ii. Land Use Entitlements. *See Exhibit “A”*, Amended Redevelopment Plan and Exhibit “C”, NWM District Ordinance, respectively.
- iii. Municipal Land Contribution. *See Exhibit “D”*, Partial Street Vacation Ordinance.
- vi. Private Activity Mortgage Bond Subsidy. See the Plan hereof which specifically provides for the continuation of a restructured IRC Section 142(d) “Qualified Residential Rental Project”. *See Exhibit “K”* IRS Form 8609 issued by NJHMFA on December 30, 2005 (Trial Exhibit P-46) allocating 4% low-income housing tax credits to the Project pursuant to the authorities provided by IRC Section 42(h) for a rehabilitation project that is Federally subsidized with the proceeds of tax-exempt mortgage bonds issued from the State’s volume cap pursuant to IRC Section 142(d). The elective set-aside established for the Project pursuant to IRC Sections 42(g)(1)(A) and 142(d)(1)(A) (20% of Federally subsidized units cannot be rented to persons earning more than 50% AMI) will also be continued pursuant to this Plan (see below).

**III. Financial Feasibility of Restructured Project as an IRC Section 142(d) Project pursuant to the Opinion of the Appellate Division issued October 22, 2019 (“Opinion”)**

- i. Continuation of Federal Restricted Unit Set-Aside pursuant to IRC Section 142(d)(1)(A). 33 units of the Project securing the ECIA Bond Mortgage will be restricted to 50% AMI incomes and rents. Assuming the maximum build-out of 165 dwelling units in the (Phase I) Project, 33 dwelling units represent 20% of the total bond collateral operated as a “Qualified Residential Rental Project” pursuant to IRC Section 142(d).<sup>4</sup>

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<sup>4</sup> Pursuant to IRC Section 142(d) there are three permitted statutory set-asides in order for multifamily housing rental facility to satisfy the statutory criteria of a “Qualified Residential Rental Project”:

1. IRC Section 142(d)(1)(A). 20% of the units restricted at 50% AMI incomes/rents during the “qualified project period,” the balance can be up to market rate;
2. IRC Section 142(d)(1)(B). 40% of the units restricted at 60% AMI incomes/rents during the “qualified project period,” the balance can be up to market rate; and

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- ii. New “Qualified Project Period” pursuant to IRC Section 142(d) and 26 CFR 1.103(b)(6). The bondholder or its designee is electing to enter into a restrictive covenant agreement with the City, at a minimum the 33 units (representing 20% of the maximum number of Phase I Project rental units) for a period of 15 years from the date the Final Judgment of Foreclosure is entered in this matter. Assuming the foregoing were to occur on or before May 31, 2020, the term of the new deed restriction would expire as of June 1, 2035. *See* a copy of the form of a Deed Restriction updated to reflect the Final Restructuring Plan annexed hereto as **Exhibit “L”**.
- iii. Principal, Interest and Costs are feasibly demonstrated to be paid under the Plan as required by the Opinion. Sections 116 and 124 of the County Improvement Authorities Law, N.J.S.A. 40:37A-44 *et seq.* (the “**CIAL**”) mandate that in any foreclosure and as a remedy therefor all unpaid installments of interest and principal, and all costs and expenses in connection with any action or proceeding by or on behalf of improvement authority bondholders must be fully met and discharged. By virtue of the bondholder’s willingness to modify the repayment term and interest rate in connection with the ECIA Bonds, the Sources and Uses and 15-Year Income and Operating Pro Forma together with the use of certain Sandy insurance proceeds assigned pursuant to the ECIA Bond Mortgage documents to the Bondholder demonstrate that all unpaid installments of interest and principal, and all costs and expenses in connection with any action or proceeding by or on behalf of improvement authority bondholders must be fully met and discharged. *See* Exhibit “E”.

#### IV. Tenant Relocation

The Plan anticipates that existing tenants will have to move from their current units if they are on certain floors, and that some tenants may have to be relocated temporarily in order for their units to be renovated, regardless if they are going to remain in those units. The Special Master requested that the Plan Proponent provide parties with the anticipated tenant relocation process, a copy of which is annexed hereto as **Exhibit “M”**.

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- 3. IRC Section 142(d)(4)(B) “Deep Rent Skewed Project”. 15% of the units at 40% AMI incomes/rents during the “qualified project period,” the balance can be up to market rate.

The Project elected the 20% at 50% AMI set-aside, and the Plan will continue that election. In its October 2019 Opinion, the Appellate Division concluded that “UHAC [Uniform Affordability Controls, N.J.A.C. 5:80-26.1 *et seq.*] does not apply to this project.” *See Opinion* at page 49. Under still operative COAH policies, Federally tax-exempt mortgage bond funded inclusionary projects under IRC Section 142(d) that received an allocation of 4% low-income housing tax credits pursuant to IRC Section 42(h) are excepted from the low- and moderate income distribution and affordability averaging rules that arise under UHAC. *See Appendix E – Criteria for post-1986 credits, N.J.A.C.* 5:97-*et seq.*

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## V. Financing

The Plan **does not** materially change the financing proposed in the earlier version (*see Exhibit E*, the Sources and Uses; 15-Year Income and Operating Expense Projection) except to the extent it builds in an additional \$1.5 million into the capital structure to protect against possible cost increases due to changes in unforeseen scope of work and/or costs.

The Project structure subject to foreclosure has accrued, unpaid debt liabilities totaling \$17,312,350 consisting of \$15,156,644 as of October 31, 2019 payable to the leasehold mortgage bondholder, \$1,652,339 as of December 31, 2019 payable of to Consult Urban Renewal Development Corporation (“**CURDC**”), and \$503,367 to Rubicon Development LLC (“**Rubicon Development**”). In order for the Plan to proceed the creditors have agreed to a restructuring in order to feasibly support an estimated new debt liability of \$10,745,022 to capitalize redevelopment costs *and* continue to operate as a “Qualified Residential Rental Project” pursuant to 26 U.S.C. § 142(d) consistent with the Appellate Division’s Opinion of October 22, 2019 in this matter. Without the cooperation of the creditors and Beach Creek, there would not be any ability to finance and rehabilitate the Project and restore any affordable units. The Plan Proponent, CURDC and Rubicon Development are willing to cooperate with the Final Restructuring Plan pursuant to the Phase I Sources and Uses Development and Operating Budget which demonstrates underwriting feasibility. In addition, provided the Plan becomes effective and is implemented pursuant to the Phase I Sources and Uses Development and Operating Budget, Beach Creek, as ground lessor, is willing to cooperate with the capital plan by (i) forgiving past unpaid ground rent, (ii) amending the existing ground lease accommodate it, and (iii) providing the projected \$10,745,022 of leasehold financing to MBT III to capitalize the Plan’s costs (“**Landlord Loan**”).

During the trial in this matter, it was established that there is an absence of any offers of new subsidy money or credits from the State or Federal government, and no party to the Foreclosure Matter “offer[ed any] alternative means of refinancing the property” and preserving some number of low- and moderate-income dwelling units other than the conventionally financed inclusionary development Plan advanced by the Plan Proponent. *See Memorandum of Decision of Judge Sandson filed on May 22, 2018 (“Memorandum”), pages 5-6.* During the tenure of the Special Master, neither the DCA, HMFA nor ECIA has offered additional capital sources. The sole party to the Foreclosure Matter (in addition to the Plan Proponent, CURDC and Rubicon Development) that has come forward and is willing to assist in the effort to participate in the capital plan and attendant credit risks of preserving affordable housing units is the landowner, Beach Creek, and recently the City through the agreement to pursue adoption of the Ordinances requested by the Plan Proponent in consideration for the Settlement.

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Accordingly, Beach Creek is willing to provide the Landlord Loan to MBT III to fund the Plan so that 105 affordable units may be rehabilitated and preserved provided it has land use entitlement assurances from the City that the Settlement contemplates. In the unlikely event the City fails to provide the needed approvals, the Plan Proponent is agreeable fund the Plan, but the number of affordable Low-Income Units in Phase I will be the minimum required by Section 142 – 33 units at 50% AMI.

The Plan Proponent had originally incorporated a twenty percent (20%) hard cost contingency in its Source and Uses Development budget. The Special Master has indicated that he would prefer the Plan have greater financial flexibility should the Phase I Project require an unanticipated increase in the scope or cost of work. Rather than upsetting the carefully established capital structure that avoids incurring liabilities that would invariably drain cash, PAC has agreed to provide that flexibility thorough an accrual of up to \$162,281 of annual P&I payments from MBT III and allow prioritization of a commensurate amount of escalated per annum ground rent to be paid as part of MBT III's recurring must-pay operating expenses. In turn, Beach Creek would agree to provide an additional Landlord Note "B" Loan of up to \$1.5 million to MBT III to pay for such design/scope overrun costs. As a result, the Sources budget has been revised (as shown in documentation provided to the Special Master) to provide the previously budgeted hard cost contingency of \$1,469,000 (already a 20% contingency) plus a design/scope contingency of \$1.5 million and first year ground rent contingency reserve of \$50,000 for **a total aggregate development contingency reserve allowance of \$3,019,000**. Under this approach, 'new' money is up to approximately \$12.2 million (compared to \$10,745,022) for the rehabilitation and renovation of the Phase I Project's housing component. The Plan Proponent's financial consulting expert, Anthony Cuccia, has provided an underwriting analysis that demonstrates the feasibility of the additional \$1.5 million Note "B" design/scope contingency loan contemplated.

Under the Plan, the net proceeds from what is known as the Sandy Insurance Litigation are fully utilized to either retire portions of the existing obligations and advances funded by the holder of the ECIA Bonds or to fund the Plan directly. Absent the funds being used in the manner provided by the Plan, there will not be sufficient funds to fully repair and rehabilitate the Project and provide the maximum number of affordable units. The insurance proceeds are being used to retire earlier advances and a small portion of the accrued and unpaid bond interest. The majority of accrued interest will be treated as accrued, unpaid interest which PAC is agreeable to defer and allow to be repaid along with the unsecured Landlord Loan from Phase I or II market rate unit development sales. The unpaid, accrued \$6.9 million in principle balance still owed on ECIA bond debt has been restructured to be paid over an extended term of approximately 30 years and a reduced interest rate of 4% simple interest.

The structure is both tax neutral and supports the proposed borrowing to repair the Project. The Plan Proponent has provided detailed breakdowns of the sources and uses of all funds supported

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by an independent Certified Public Account's report detailing the actual expense outlays that have been made for years by PAC to carry the Project during the decade plus when it operated at a substantial net loss and had extraordinary expenses in the millions. PAC and its financial advisors are aware of no other financial structure that is reasonably available to permit full funding of the costs of needed repairs, let alone any cost overruns. Finally, again, no other party is offering any other capital resource or direct financial subsidy to fund any part of, or any restricted dwelling unit contained in the Plan.

## VI. Settlement

The Plan Proponent, Beach Creek, MBT II and the City have reached a settlement that will support the restoration of the Restricted Units (as defined in the First Amendment to the Financial Agreement, **Exhibit "B"**) in a restored and expanded Project (the "*Settlement*"). Because the Settlement itself has at its core the implementation of a plan to restore and renovate a substantial number of affordable housing units damaged by SuperStorm Sandy without using any new government subsidies, the Settlement is in the public interest, maximizing the number of affordable units to be restored as well as satisfying the requirements of Section 142 owed to PAC. The parties reached the Settlement after multiple days of mediation with Retired Appellate Division Judge Robert A. Fall. The agreement resolves not just the City's potential objections to the Final Restructuring Plan, but two pending appeals involving the City, PAC and MBT II, as well as eliminating the need for Plaintiff Anglesea Properties LLC (a party related to Beach Creek and PAC) to further prosecute the so-called builder's remedy proceeding currently before the Mt. Laurel Court for Cape May County.

The critical features of the Settlement include the following:

- Achieve the maximum number of possible Restricted Units (105) but not less, in any event, than the minimum 20% set-aside pursuant to IRC Section 142(d)(1)(A).<sup>5</sup>
- Subject to City Council approval and adoption, an Amended Redevelopment Plan, which vests (i) the Project's new owner with the legal right to file for site plan and proceed with rehabilitation of the building to remediate SuperStorm Sandy damage and add additional units and (ii) Beach Creek with the right to file for site plan approval to renovate the remaining improvement, including the marina, restaurant and service buildings.

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<sup>5</sup> In its October 2019 Opinion, the Appellate Division noted in its rulings that absent the ability to propose a Plan that satisfies one of the set-asides pursuant to 26 U.S.C. 142(d), Section 116 of the CIAL provides the authority to either amend the scope and number of restricted units or, if a restructuring plan does not result in the bondholder's being fully paid, order the property sold free of all restrictions/limitations. *Opinion* at Page 59. Accordingly, the Appellate Division imposed that, before reaching a full removal of restrictions and property disposition through foreclosure, "the Special Master should also be tasked to recommend to the court whether the project can remain a 'qualified residential rental project' under 26 U.S.C. § 142(d)(1), thus complying with the specified limitations imposed by the CIAL. N.J.S.A. 40:37A-116." *Opinion* at Page 74. The Plan, now by virtue of settlement with the City, ensures that, even if all government approvals contemplated by the Plan are not issued, after foreclosure the elective minimum 20% set-aside pursuant to IRC Section 142(d)(1)(A) will have to be satisfied pursuant to the terms of the new deed restriction.

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- Subject to City Council approval, the First Amendment to the Financial Agreement that establishes the PILOT payments for all rental units in the building.
- An agreement that the Amended Redevelopment Plan will not govern the land use rights for the area if Block 152 designated for the Phase II project.
- Subject to the required planning and legislative process by the City's Planning Board and Council, the City has agreed to replace existing zoning for all of Block 152 with the zone created by the NWM District Ordinance.
- The NWM District Ordinance, if approved, will permit the Phase II project to have vested land use rights.
- The combination of the Amended Redevelopment Plan and NWM District Ordinance provides PAC and Beach Creek with rights and interests that will be used to secure financing for the Phase I Project while ensuring repayment of any unsecured borrowing by the New Owner of the building to be provided by Beach Creek in the form of Note "B."
- Anglesea Properties LLC's dismissal of the existing builder's remedy case for the Phase II project before the Mt. Laurel Court if the City delivers all the land use rights.
- Resolution and dismissal of all other disputes between the City and PAC and MBT II upon all deliverables being received from the City.

As the City has agreed to take these actions in furtherance of the Settlement and facilitating the rehabilitation of the Project, as indicated by the Settlement, there is a far greater chance that all 105 of the Restricted Units will be restored.

While without agreeing, the City has determined not to contest and will not contest the findings and rulings in the Memorandum, the City has not evaluated and expresses no opinion with respect to any aspect of the Plan concerning the scope of damages, the necessary repairs, the costs for such repairs, the financing gap and need for subsidies through the land use entitlements provided in the Settlement, the proceeds currently available to Plan Proponent or the proposed financing of the Plan Proponent to undertake any repairs, the bond and other debt calculations provided herein, the sources and uses of funding, the physical or financial feasibility of the Plan or any other aspects of Plan set forth in Section 2 herein or as otherwise have been provided previously to the Court or Special Master. The City defers to the Court and the Special Master with respect to these Plan details, aspects and parameters and its participation is limited to providing the land use entitlements that the Plan Proponents have represented are necessary in order for it to proceed to implement the Plan.



# EXHIBIT B

**EXHIBIT B****Revised Rent Increase Structure**

Current tenants shall be subject to 7% per annum increases in rent beginning the earlier of (i) the first of the month following the date they move into their permanent rehabilitated unit under the Plan and (ii) September 1, 2021; provided, however, that such increases shall not result in any rental charge exceeding the amount permitted based on the Housing and Urban Development 50% AMI guidelines annually published and applicable to the Cape May County region.

Notwithstanding the expiration of the Rehab Deed Restriction by its terms, any tenant that is in good standing on the date of the entry of the Order that also remains as a tenant and is in good standing on the above-referenced expiration date shall be entitled to receive a new offer of lease.

**Special Master Monitoring Duties**

Monitoring whether timelines, as proposed in the May 22, 2018 Order of the Chancery Court, as may be modified by the Court, are being followed.

Ensuring that the Project is maintained in habitable condition and that the remaining tenants are able to continue to reside at the Project during the rehabilitation of the Project.

Conducting periodic reviews of the income and expenditures to ensure that the available financing is being properly spent on necessary repairs and renovations set forth in the Final Restructuring Plan.

Reporting on a semi-annual basis to the Court regarding the progress of the rehabilitation of the Project, until substantive completion thereof. As part of that reporting, the Plan sponsor's professionals responsible for the Phase I Project's construction documentation will review the prior expert analyses compiled by FTI Consulting in 2012 and 2013 (the "FTI Report") as part of their assessment to assure that the abatement or elimination of damages to building systems from Superstorm Sandy identified in the FTI Report will be addressed in the construction and rehabilitation design documentation. The professionals will issue a certification on or before the construction loan closing and prior to commencement of construction that, to the best of their knowledge and belief, the scope of work set forth in the construction documentation when performed, will abate or eliminate Sandy damages to building systems identified in the FTI Report. The same professionals will reissue an updated certification at the conclusion of construction. The Plan's Sponsor will provide notice and copies of the certifications from its professionals to the Special Master.

Receiving copies on public filings or actions, if any, necessitated by the implementation of the Final Restructuring Plan until substantive completion of the rehabilitation work.

As construction documentation and bid specifications are completed and provided to a lender to Beach Creek, which shall be a regulated financial institution, and such lender's third-party construction oversight consultant, receiving copies of such construction documentation, along with

other building conditions. The lender, however, will be the primary decision maker as it relates to project underwriting, construction documentation, progress payments, and project closeout.

Receiving copies of the executed restructured ground lease, condominium regime documents and master deed(s) for the Phase I Project, as well as any public filings required for approval of the foregoing, and any marketing materials to be made available to the public.

Receiving notice of any events triggering changes in the Final Restructuring Plan, such as the exercise of the sale of units to satisfy loan obligations.

In the event the term of the Plan that provides for the sale of the Market Rate Units is triggered, receiving copies of the Sponsor's financial projections, market analyses and studies and marketing materials for such sales.

#### **Sequence of Phase I Project Financing**

Beach Creek will not close on any additional financing for the other commercial (non-housing) components of the Phase I Project until Beach Creek has closed on the financing required for the rehabilitation of the Phase I Project.