

CITY OF NORTH WILDWOOD

Cape May County, New Jersey

RESOLUTION

AUTHORIZING THE MAYOR AND THE CITY CLERK TO EXECUTE A SETTLEMENT AGREEMENT IN CONNECTION WITH VARIOUS LITIGATION MATTERS CONCERNING MARINA BAY TOWERS AND RELATED LITIGATION WITH OWNERSHIP INTERESTS IN AND AROUND THE MARINA BAY TOWERS PROJECT AND OTHER PROPERTY WITHIN BLOCK 152

WHEREAS, on August 30, 2002, the City and Marina Bay Towers Urban Renewal, L.P. ("*Marina Bay I*"), executed a Financial Agreement Between The City of North 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. (the "*Financial Agreement*") in connection with the senior citizen low- and moderate-income rental housing units contained in Marina Bay Project (as such term is defined in the Financial Agreement) (hereinafter "*Marina Bay Project*" or "*Project*"); and

WHEREAS, on August 16, 2005, the City and Marina Bay I executed and entered into that certain Assignment, Consent to Assignment, and Acknowledgment of Continuing Liability agreeing to and acknowledging, *inter alia*, the assignment of the Financial Agreement from Marina Bay I to Marina Bay Towers Urban Renewal II, L.P. ("*Marina Bay II*"); and

WHEREAS, there have been disputes between the City and Marina Bay II with respect to the Financial Agreement and annual service charges and sewer service charges, which were the subject of a municipal lien sale and foreclosure matter captioned as *Royal Tax Lien v. Marina Bay Towers Urban Renewal II, LP, et al.*, docketed as CPM-F-010203-11 (the "*Tax Lien Foreclosure Matter*"), as well as a Law Division action captioned as *Marina Bay v. City of North Wildwood* and docketed as CPM-L-759-08 (hereinafter, the "*Financial Agreement Matter*"); and

WHEREAS, the Tax Lien Foreclosure Matter was litigated to conclusion, pursuant to the decision of the Appellate Division in *Royal Tax Lien Services, I.L.C. v. Marina Bay Towers Urban Renewal II, L.P.*, No. A-1638-13 (App. Div. Aug. 14, 2015), certif. denied, 224 N.J. 528 (2016) (the "*Final Tax Lien Decision*"), with the exception of (1) a cross-claim for alleged civil rights violations against the City by PAC Capital, LLC ("*PAC*"), the sole and majority owner of the Essex County Improvement Authority ("*ECIA*") mortgage revenue Series A and B Bonds ("*ECIA Bond Mortgage*"), which was severed and assigned to the Law Division under docket No., CPM-L-444-14, now pending before the Appellate Division, Docket No. A-771-17 (the "*PAC Claims Appeal*"), and (2) a limited remand concerning the identification and tax mapping of specific non tax-exempt property owned by Beach Creek Marina, Inc. ("*Beach Creek*"), the ground lessor and fee simple owner of the land upon which the Marina Bay Project is situated, which remand determined the portions of the property that are not subject to an exemption from ad valorem taxation pursuant to the Financial Agreement and the portions which are exempt; and

WHEREAS, on June 6, 2016, the Superior Court of New Jersey Cape May County Chancery Division entered a Final Order in the Tax Lien Foreclosure Matter (hereinafter, the "*Final Exemption Order*") clarifying and establishing, *inter alia*, the "Applicable Condominium Areas, Common Elements, Site Infrastructure, Easements and Rights-Of-Way Schedule for The Marina Bay Towers Condominium" situated on the Block 152 property which condominium property description was recorded on the title of the subject property on July 12, 2016 in the Cape May County Clerk's Office, Book D3685 Pages 768, in accordance with the Final Exemption Order and as may be amended pursuant the Final Restructuring Plan and Judgment (see below) and attendant modifications to the condominium master deed of Marina Bay Towers Condominium Association, Inc. ("*Exempted Property*" or "*Condominium Ground Lease Area*"); and

WHEREAS, Anglesea Properties, I.L.C, an entity 100% owned and controlled by Paul Coccoziello ("*Anglesea*"), filed a Mount Laurel builder's remedy suit against the City concerning the Ownership Interests' properties, pending before the Law Division and captioned as *Anglesea Properties, I.L.C. v. City of North Wildwood*, Docket No. CPM-L-359-15 (the "*Anglesea Matter*"); and

WHEREAS, in addition to the above, the City, the Marina Bay II, PAC and Beach Creek (the latter three entities referred to collectively hereinafter as the "Ownership Interests") and other parties, including the State of New Jersey's Department of Community Affairs ("*DCA*") and Housing and Mortgage Finance Agency ("*HMFA*"), are parties to an ECIA Bond Mortgage foreclosure matter filed by Trustee for the ECIA Bonds, Manufacturers and Traders Trust Company ("*Trustee*") in the Superior Court of New Jersey Cape May County, Chancery Division known as *Manufacturers and Traders Trust Company v. Marina Bay et al.* docketed as CPM-F-049229-14 ("*Mortgage Foreclosure Matter*") in which matter the Honorable Mark H. Sandson, P.J.Ch., filed an Order on May 22, 2018 ("*Restructuring Order*"), approving the sale of the Marina Bay Project to a "New Owner" (see below) and a financial "Restructuring Plan" providing for the reconfiguration, reconstruction and renovation of the Marina Bay Project; and

WHEREAS, also on May 22, 2018, the Honorable Julio L. Mendez, A.J.S.C., signed and filed an Order appointing a Special Master which was subsequently amended by the Amended Order entered on July 2, 2018 (the "*Special Master Order*"); and

WHEREAS, pursuant to the Restructuring Order and the Special Master Order, the final number and income mix of dwelling units provided by the Restructured Marina Bay Project (as defined below) shall be in accordance with the final, updated and/or modified Restructuring Plan approved by the Court and as may be further ordered by the Court as part of a final judgment in the Foreclosure Matter pursuant to Paragraph 5 of the Special Master Order (hereinafter, the "*Final Restructuring Plan and Judgment*"); and

WHEREAS, on April 12, 2017, the Superior Court of New Jersey Cape May County Law Division, the Honorable Christopher Gibson, J.S.C. presiding, entered a Final Judgment in the Financial Agreement Matter (hereinafter, the "*Final Financial Agreement Order*"); and

WHEREAS, the City filed an appeal of the Final Financial Agreement Order in October 2017 and Marina Bay responded and filed a cross-appeal in the Superior Court of New Jersey Appellate Division in connection therewith bearing Appellate Court Docket Court No. A-004089-16T4 ("*Financial Agreement Appeal*") which is currently pending (the Financial Agreement Appeal and the PAC Claims Appeal collectively referred to herein as the "*Appeals*"); and

WHEREAS, on June 26, 2018, the DCA and HMFA jointly filed a motion for leave, and were subsequently granted the right, to file an interlocutory appeal in the Appellate Division in the Mortgage Foreclosure Matter with respect to the Restructuring Order, bearing Appellate Court Docket No. A-005879-17 ("*Interlocutory Appeal*"); and

WHEREAS, the Appellate Division issued a decision on October 22, 2019 ("*Appellate Foreclosure and Restructuring Opinion*") substantially affirming Judge Sandson's decision in relevant part, including Paragraph 6 of the Restructuring Order, as may be amended in remand proceedings pending in the Mortgage Foreclosure Matter, which provides that the Financial Agreement shall be amended and assigned consistent with the Restructuring Order; and

WHEREAS, the Parties are desirous of cooperating and complying with the Restructuring Order and Appellate Foreclosure and Restructuring Opinion; and

WHEREAS, in furtherance of the Parties' compliance with the Restructuring Order and Final Restructuring Plan and Judgment once entered, the City and Marina Bay desire to amend and supplement the Financial Agreement by executing and entering into a First Amendment and take further land use legislative actions in furtherance of the Final Restructuring Plan and Judgment, as set forth in more detail herein; and

WHEREAS, Tax Lien Foreclosure Matter, Financial Agreement Matter, Financial Agreement Appeal, PAC Claims Appeal, Mortgage Foreclosure Matter, and Anglesea Matter (hereinafter, collectively, the "*Block 152 Litigation*") have been and continue to be cost-generative and a delaying factor and impediment to the implementation of various plans presented during the course of the Block 152 Litigation to restore and provide affordable housing on Block 152 damaged by various hardships including SuperStorm Sandy. The Honorable Mark H. Sandson, J.S.C., found that "The record clearly shows that [the Trustee] and PAC Capital made numerous revisions to the proposed [Sandy Recovery and Redevelopment] plan to attempt to accommodate the various interested parties. The numerous hardships the project was forced to undergo, including Super Storm Sandy . . . have hobbled this important public resource" and Ordered that

**BLOCK 152 LITIGATION
GLOBAL SETTLEMENT DOCUMENT INDEX/CHECKLIST
AS OF FEBRUARY 25, 2020**

No.	DOCUMENT TITLE/DESCRIPTION	STATUS AS OF 02/20/2020
1.0	Settlement Agreement	Complete for execution on 02/20/2020
1.1	Exhibit "A" – Amended Redev. Plan Ordin.	Complete for execution on 02/20/2020
1.2(i)	- Amended Redevelopment Plan	Complete for execution on 02/20/2020
1.2(ii)	Schedule I – Map of Redev. & NWM Zones	Complete
1.3	Exhibit "B" – First Amend. To Fin. Agr. Ordin.	Complete for execution on 02/20/2020
1.4	- First Amendment To Fin. Agr.	Complete for execution on 02/20/2020
1.5– Copy Orig. 2002 Financial Agr.	Complete
1.6	Exhibit "C" – Map of Redev. & NWM Zones	Complete
1.7	Exhibit "D" – NWM Zoning District Ordin.	Complete for execution on 02/20/2020
1.8	Exhibit "E" – Partial Street Vacation Ordin.	Complete for execution on 02/20/2020
1.9	- Map of Partial Vacated Street	Complete
1.10	- Metes & Bounds Description	Complete
1.11	Exhibit "F" – Warrant to Satisfy Judgment	Complete for execution on 02/25/2020
1.12	Exhibit "G"- Corp. Resolutions of Signatories	Drafts to be provided
1.13	- MBTUR II	MBT II to provide form of resolution
1.14	- PAC Capital LLC	PAC to provide form of resolution
1.15	- Beach Creek Marina, Inc.	Beach Creek to provide form of resolution
1.16	- Manufact. & Traders Trust Co.	Trustee to provide form of resolution
1.17	Exhibit "H" – City Resolution Authoriz. Settlm.	Complete for execution on 02/20/2020
2.0	Order / Stip. of Voluntary Dismissal of Appeals w/out Prejudice in form for filing by the Appellate Division	Judge Fall is providing a Word copy to Keith Bonchi, Esq. so he may edit in accordance with comments discussed on 02/20/2020
3.0	MOU – Municipal Chief Exec. agreement to recommend Settlement documentation in the final negotiated form to City Council	Complete and executed on 02/20/2020

SETTLEMENT AGREEMENT

THIS SETTLEMENT AND RELEASE AGREEMENT (“*Settlement Agreement*”) is made and entered into on this 6th day of April, 2020 by, among and between Marina Bay Towers Urban Renewal II, L.P. (“*Marina Bay II*”), PAC Capital, LLC (“*PAC*”), Beach Creek Marina, Inc. (“*Beach Creek*”) (hereinafter, collectively, the “*Ownership Interests*”), Manufacturers and Traders Trust Company (“*Trustee*”) and City of North Wildwood (“*City*”), the Trustee, Ownership Interests, and the City referred to herein as the “*Parties*” or “*Party*”).

RECITALS

WHEREAS, on August 30, 2002, the City and Marina Bay Towers Urban Renewal, L.P. (“*Marina Bay I*”), executed a Financial Agreement Between The City of North 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. (the “*Financial Agreement*”) in connection with the senior citizen low- and moderate-income rental housing units contained in Marina Bay Project (as such term is defined in the Financial Agreement) (hereinafter “*Marina Bay Project*” or “*Project*”); and

WHEREAS, on August 16, 2005, the City and Marina Bay I executed and entered into that certain Assignment, Consent to Assignment, and Acknowledgment of Continuing Liability agreeing to and acknowledging, *inter alia*, the assignment of the Financial Agreement from Marina Bay I to Marina Bay II; and

WHEREAS, there have been disputes between the City and Marina Bay II with respect the Financial Agreement and annual service charges and sewer service charges, which were the subject of a municipal lien sale and foreclosure matter captioned as *Royal Tax Lien v. Marina*

Bay Towers Urban Renewal II, LP, et al., docketed as CPM-F-010203-11 (the “**Tax Lien Foreclosure Matter**”), as well as a Law Division action captioned as Marina Bay v. City of North Wildwood and docketed as CPM-L-759-08 (hereinafter, the “**Financial Agreement Matter**”); and

WHEREAS, the Tax Lien Foreclosure Matter was litigated to conclusion, pursuant to the decision of the Appellate Division in Royal Tax Lien Services, L.L.C. v. Marina Bay Towers Urban Renewal II, L.P., No. A-1638-13 (App. Div. Aug. 14, 2015), certif. denied, 224 N.J. 528 (2016) (the “**Final Tax Lien Decision**”), with the exception of (1) a cross-claim for alleged civil rights violations against the City by PAC, the sole and majority owner of the Essex County Improvement Authority (“**ECIA**”) mortgage revenue Series A and B Bonds (“**ECIA Bond Mortgage**”), which was severed and assigned to the Law Division under docket No., CPM-L-444-14, now pending before the Appellate Division, Docket No. A-771-17 (the “**PAC Claims Appeal**”), and (2) a limited remand concerning the identification and tax mapping of specific non tax-exempt property owned by Beach Creek, the ground lessor and fee simple owner of the land upon which the Marina Bay Project is situated, which remand determined the portions of the property that are not subject to an exemption from ad valorem taxation pursuant to the Financial Agreement and the portions which are exempt; and

WHEREAS, on June 6, 2016, the Superior Court of New Jersey Cape May County Chancery Division entered a Final Order in the Tax Lien Foreclosure Matter (hereinafter, the “**Final Exemption Order**”) clarifying and establishing, *inter alia*, the “Applicable Condominium Areas, Common Elements, Site Infrastructure, Easements and Rights-Of-Way Schedule for The Marina Bay Towers Condominium” situated on the Block 152 property which condominium property description was recorded on the title of the subject property on July 12, 2016 in the

Cape May County Clerk’s Office, Book D3685 Pages 768, in accordance with the Final Exemption Order and as may be amended pursuant the Final Restructuring Plan and Judgment (see below) and attendant modifications to the condominium master deed of Marina Bay Towers Condominium Association, Inc. (“*Exempted Property*” or “*Condominium Ground Lease Area*”); and

WHEREAS, Anglesea Properties, LLC, an entity 100% owned and controlled by Paul Cocoziello (“*Anglesea*”), filed a Mount Laurel builder’s remedy suit against the City concerning the Ownership Interests’ properties, pending before the Law Division and captioned as *Anglesea Properties, LLC v. City of North Wildwood*, Docket No. CPM-L-359-15 (the “*Anglesea Matter*”);

WHEREAS, in addition to the above, the Trustee, the City, the Ownership Interests and other parties, including the State of New Jersey’s Department of Community Affairs (“*DCA*”) and Housing and Mortgage Finance Agency (“*HMFA*”), are parties to an ECIA Bond Mortgage foreclosure matter in the Superior Court of New Jersey Cape May County, Chancery Division known as *Manufacturers and Traders Trust Company v. Marina Bay et al.* docketed as CPM-F-049229-14 (“*Mortgage Foreclosure Matter*”) in which matter the Honorable Mark H. Sandson, P.J.Ch., filed an Order on May 22, 2018 (“*Restructuring Order*”), approving the sale of the Marina Bay Project to a “New Owner” (see below) and a financial “Restructuring Plan” providing for the reconfiguration, reconstruction and renovation of the Marina Bay Project; and

WHEREAS, also on May 22, 2018, the Honorable Julio L. Mendez, A.J.S.C., signed and filed an Order appointing a Special Master which was subsequently amended by the Amended Order entered on July 2, 2018 (the “*Special Master Order*”); and

WHEREAS, in addition to the Mortgage Foreclosure Matter, the City and Marina Bay II are additionally bound by the rulings issued in the Final Tax Lien Decision and the determinations adjudicated on remand by the New Jersey Superior Court, Chancery Division in the Final Exemption Order; and

WHEREAS, the Restructuring Order provides that a number of dwelling units contained in the Restructured Marina Bay Project (as defined below) may be converted to individual condominium units and sold and/or transferred without regard to, or limitation upon, the income or age of the occupants thereof in accordance with the law and 42 U.S.C. § 3607(b)(2)(B) or (C)), if applicable, and which shall not be subject to the Deed Restriction to be entered upon Final Judgment of Foreclosure pursuant to Paragraph 5 of the Restructuring Order, and that any such dwelling units once sold and/or transferred in the form of the newly created and renovated condominium unit(s) after completion of the Restructuring Plan as evidenced by written notice to the City of relinquishment of tax exempt status pursuant to N.J.S.A. 40A:20-13 for each such condominium unit sold pursuant to Paragraph 6 of the Restructuring Order (referred to in the Restructuring Order and herein as the “*Unrestricted Project Portion*”) will no longer be part of the Exempted Property or subject to the Financial Agreement as amended by the First Amendment to Financial Agreement (as defined hereinafter); and

WHEREAS, pursuant to the Restructuring Order and the Special Master Order, the final number and income mix of dwelling units provided by the Restructured Marina Bay Project (as defined below) shall be in accordance with the final, updated and/or modified Restructuring Plan approved by the Court and as may be further ordered by the Court as part of a final judgment in the Foreclosure Matter pursuant to Paragraph 5 of the Special Master Order (hereinafter, the “*Final Restructuring Plan and Judgment*”);

WHEREAS, on April 12, 2017, the Superior Court of New Jersey Cape May County Law Division, the Honorable Christopher Gibson, J.S.C. presiding, entered a Final Judgment in the Financial Agreement Matter (hereinafter, the “*Final Financial Agreement Order*”); and

WHEREAS, the City filed an appeal of the Final Financial Agreement Order in October 2017 and Marina Bay responded and filed a cross-appeal in the Superior Court of New Jersey Appellate Division in connection therewith bearing Appellate Court Docket Court No. A-004089-16T4 (“*Financial Agreement Appeal*”) which is currently pending (the Financial Agreement Appeal and the PAC Claims Appeal collectively referred to herein as the “*Appeals*”); and

WHEREAS, on June 26, 2018, the DCA and HMFA jointly filed a motion for leave, and were subsequently granted the right, to file an interlocutory appeal in the Appellate Division in the Mortgage Foreclosure Matter with respect to the Restructuring Order, bearing Appellate Court Docket No. A-005879-17 (“*Interlocutory Appeal*”); and

WHEREAS, the Appellate Division issued a decision on October 22, 2019 (“*Appellate Foreclosure and Restructuring Opinion*”) substantially affirming Judge Sandson’s decision in relevant part, including Paragraph 6 of the Restructuring Order, as may be amended in remand proceedings pending in the Mortgage Foreclosure Matter, which provides that the Financial Agreement shall be amended and assigned consistent with the Restructuring Order; and

WHEREAS, the Parties are desirous of cooperating and complying with the Restructuring Order and Appellate Foreclosure and Restructuring Opinion; and

WHEREAS, in furtherance of the Parties’ compliance with the Restructuring Order and Final Restructuring Plan and Judgment once entered, the City and Marina Bay desire to amend and supplement the Financial Agreement by executing and entering into a First Amendment and

take further land use legislative actions in furtherance of the Final Restructuring Plan and Judgment, as set forth in more detail herein; and

WHEREAS, Tax Lien Foreclosure Matter, Financial Agreement Matter, Financial Agreement Appeal, PAC Claims Appeal, Mortgage Foreclosure Matter, and Anglesea Matter (hereinafter, collectively, the “*Block 152 Litigation*”) have been and continue to be cost-generative and a delaying factor and impediment to the implementation of various plans presented during the course of the Block 152 Litigation to restore and provide affordable housing on Block 152 damaged by various hardships including SuperStorm Sandy. The Honorable Mark H. Sandson, J.S.C., found that “The record clearly shows that [the Trustee] and PAC Capital made numerous revisions to the proposed [Sandy Recovery and Redevelopment] plan to attempt to accommodate the various interested parties. The numerous hardships the project was forced to undergo, including Super Storm Sandy . . . have hobbled this important public resource” and Ordered that “time is of the essence in terms of preserving the ability of current tenants to remain in the building and minimizing expenses”;

WHEREAS, the parties are desirous of implementing a prompt and efficient resolution of all Block 152 Litigation in furtherance of the public interest since it will provide a realistic opportunity to provide for, and assist the effort to more cost effectively and speedily facilitate, the rehabilitation and provision of this important affordable housing public resource found by the Courts;

WHEREAS, in furtherance of and in consideration for reaching a full and final settlement of the Block 152 Litigation;

NOW, THEREFORE, for and in consideration of the foregoing premises and the mutual covenants, promises, and representations set forth hereinafter, and for other good and valuable

consideration, the receipt and adequacy of which are hereby acknowledged and mutually consented to, the Parties agree as follows:

1. The foregoing and all of the Exhibits annexed hereto are incorporated herein by reference.

2. The Trustee shall submit to the Court a revised Restructuring Plan (“*Plan*”), which will provide for a maximum of 165 total dwelling units, including up to a minimum of 105 “*Affordable Rental Units*” (as such term is defined in Section 2 of the First Amendment to Financial Agreement annexed hereto as Exhibit “B”), which units the Trustee or its designee intends to structure as a “housing facility” pursuant to Housing for Older Persons Act of 1995, of which 33 will have their rent set at the applicable 50% AMI HUD indices for Cape May County and the balance thereof will be set at 80% AMI. The balance of the dwelling units, up to 60, may be market rate, non-age-restricted, so long as they are rented by Marina Bay Towers Urban Renewal III, L.P. (“*MBT III*”) or other qualified housing sponsor designated by the Trustee or its designee; such units, however, may be sold as market rate and non-age restricted units to purchasers, as may be permitted in accordance with applicable law. Consistent with the Appellate Foreclosure and Restructuring Opinion, all rental units securing the lien of the ECIA Bonds will be operated as a “Qualified Residential Rental Project” subject to the Federally subsidized bond loan program pursuant to 26 U.S.C. 142(d), and shall satisfy the “minimum set-aside” pursuant to 142(d)(1)(A) requiring that a minimum of 20% of the units financed by the ECIA Bonds be restricted to occupancy by individuals whose income is 50 percent or less of area median gross income during the “Qualified Project Period” pursuant to 142(d)(2)(A).

The form of deed restriction shall be modified to specify the number of units subject to the restriction, the specific income limits, its commencement and termination dates and to

provide that an Execution of Foreclosure sale by any other class of creditor or mortgagee other than those specified in the deed restriction shall not result in a release of the “Restricted Unit Property” (as such term is defined in the deed restriction instrument) from these restrictions, provided, however, that nothing herein or in the deed restriction shall constitute a waiver or modification of the applicable provisions of 26 U.S.C. § 142, the attendant regulations to such section, the CIAL and any of Beach Creek’s rights and remedies as ground lessor. In order to implement the Plan, and in consideration for the settlement of the PAC Claims Appeal and Financial Agreement Appeal, the Plan contemplates that the City will conduct the process to adopt municipal legislation in accordance with certain terms of the Final Restructuring Order expected by the parties to be filed in or about February 2020 by the Honorable Michael J. Blee, P.Ch.J., in the Mortgage Foreclosure Matter:

A. An Ordinance adopting a certain “Amended Redevelopment Plan For Redevelopment Plan Adopted Pursuant to Ordinance No. 1231” (hereinafter, “**Amended Redevelopment Plan**”) in connection with the implementation of the Final Restructuring Plan and Judgment and the “**Phase I Project**” (as such term is defined in the Amended Redevelopment Plan) in the form annexed hereto as **Exhibit “A”**; and

B. An Ordinance authorizing a certain First Amendment to Financial Agreement by and between the City and Marina Bay II (“**First Amendment**”) in the form annexed hereto as **Exhibit “B”**; and

C. A zoning amendment applicable to the entirety of Block 152 to eliminate the underlying zoning which is currently the Bayside Business District (“**BB**”) and replace it with a new zone which will be named the North Wildwood Marina Zoning District (“**NWM Zoning District**”), which will incorporate, *inter alia*, substantially all of the provisions of the BB

District. The Amended Redevelopment Plan shall constitute an “overlay zoning district,” pursuant to N.J.S.A. 40A:12A-7(c), applicable to the Phase I Project, as described and set forth in Exhibits “A” and “C” annexed hereto (“**Phase I Redevelopment Overlay Zone**”). In addition, the NWM Zoning District will also incorporate land use, bulk and dimensional standards and allowances to facilitate development of the “Phase II” building (“**Phase II Project**”) on a portion of the northern area of the site consisting of approximately 0.76 acres (including portions of partially vacated Fifth and New York Avenues, respectively) which is also described and set forth in **Exhibit “C”** annexed hereto (“**Phase II Development Area**”). The Phase II Project will be limited to 12 multi-family or hotel stories over parking and common facilities, with a maximum height not to exceed 200 feet from the Base Flood Elevation (BFE) which is currently 11 feet above sea level, and shall be regulated for land use and development purposes by the form of “**NWM Zoning District Ordinance**”, which the City will conduct the process to adopt, annexed hereto as **Exhibit “D”**.

After referral by the City Council upon introduction, the Planning Board will review the NWM Zoning District Ordinance land use regulation, pursuant to N.J.S.A. 40:55D-26, and prepare a report and recommendations to the City Council (“**Planning Board Report**”), and the City Council will, on the date of its next scheduled Council meeting following the Planning Board Report, conduct the process to adopt the NWM Zoning District Ordinance pursuant to N.J.S.A. 40:55D-26, provide all requisite public and legal notice requirements, hold a hearing on the NWM Zoning District Ordinance in the form annexed hereto as Exhibit “D” without amendment on second reading, and comply with all the applicable procedures for final passage pursuant to N.J.S.A. 40:49-2 and 2.1 and the Municipal Land Use Law. If the City Council exercises its discretion to disapprove, reject and/or modify any proposed revisions to the NWM

Zoning District Ordinance recommended by the Planning Board in the Planning Board Report, by a majority vote of its full authorized membership, it shall record in its minutes the reasons for not following such recommendation(s) pursuant to N.J.S.A. 40:55D-26. The Council Meeting Agenda for the both the first and second readings will contain the following summary description of the NWM Zoning District Ordinance:

“North Wildwood Marina Zoning District Ordinance No. _____. An Ordinance 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 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 and affirmed by the Appellate Division in the Manufacturers and Traders Trust Co. v. Marina Bay Towers Urban Renewal, L.P. (Docket No. CPM-F-04999-14) 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.”

D. In conjunction with the adoption of the zoning amendment, the City will conduct the process to adopt an ordinance partially vacating Fifth Avenue from the water line to the corner of New York Avenue and conveying a portion of such vacated street to the landowner of Block 152 and also vacating a portion of New York Avenue and conveying a portion of that vacated street to the landowner of Block 152 to accommodate the development of Phase II Project. The form of such vacation ordinance together with a mapping and metes and bounds description of the street area to be partially vacated is annexed hereto as **Exhibit “E”**.

3. The zoning amendment will also incorporate language to satisfy anticipated permit reviews 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*”) that this zoning amendment is part of a comprehensive development scheme or words to that effect, which are required by applicable CAFRA regulations and its high-rise policies incorporated therein (e.g., N.J.A.C. 7:7-15.14). The City will cooperate with the Ownership Interests’ or their designee’s efforts to obtain NJDEP and CAFRA permitting of Phases I and II, by timely taking any action required including adopting appropriate resolution(s) and ordinances adjusting the bulk requirements to meet DEP and CAFRA requirements or the elective height specifications included in the site plan documents of the Ownership Interests or their designee(s) but the maximum height of the Phase II Project shall not be more than 200 feet from the BFE nor exceed the maximum height standards provided by the Amended Redevelopment Plan for the Phase I Project, and by providing other forms of written or verbal communication to advocate municipal support of attendant NJDEP applications.

4. It is hereby acknowledged that the Phase II Development Area is not part of or included in the Phase I Redevelopment Overlay Zone within Block 152 (as described in Exhibit “C”), and further that the Phase II Development Area is not a “redevelopment area” and the Phase II Project will not constitute a “redevelopment project”, “housing project” or “area appurtenant thereto” under N.J.S.A. 40A:12A-1, *et seq.* or N.J.S.A. 40A:20-1, *et seq.* The Parties acknowledge that the NWM Zoning District Ordinance will regulate development within the Phase II Development Area and development of the Phase II Project.

Any connection of the Phase II Development Area to the Marina Club/Restaurant Building or other improvements or infrastructure on the site shall not operate to alter in any way

the foregoing separation of the Phase II Development Area from the Phase I Redevelopment Overlay Zone. Notwithstanding anything to the contrary herein, solely for all architectural and engineering planning, site planning and Governmental Approval (as defined below) purposes, the entire Block 152 Lot 1 on the Municipal Tax Map, including the areas incorporated by the partial street vacation and conveyance provided herein, shall constitute a single “lot” within the meaning of N.J.S.A. 40:55D-4(3.1).

5. The City will not take any steps to alter the UEZ status of Block 152.

6. Phase I Project and Phase II Project will require site plan approval. PAC Capital or its designee shall file site plan application(s) for Phase I within two weeks of the ordinances referred to above becoming effective and the Phase II Project within 180 days of the ordinances referred to above becoming effective. The ordinances described above will be introduced and scheduled for public hearing on adoption within 60 days of the Court entering an order approving the Final Restructuring Plan. The City shall conduct review of such site plans expeditiously and shall grant preliminary and final major site plan approval within 60 days of submission. No Party shall be deemed to be in violation of this Agreement or of any Court Order imposing time limits relating to the above actions if they are prevented from complying with such time limits by acts of nature or third parties that are not affiliates, employees, representatives or consultants under the control of the Party that is being prevented from compliance. Commencement of the Phase I rehabilitation work in connection with the Project under the Final Restructuring Plan and Judgment shall be a pre-condition included in any site plan approval for issuance of a building permit in connection with the Phase II Project. For the purposes of this Agreement, “*Commencement*” shall mean: (1) issuance of any building permit for the demolition or construction work under the Final Restructuring Plan, (2) securing all

financing for the Phase I rehabilitation work in connection with the Project under the Final Restructuring Plan, and (3) mobilization and commencement of interior demolition work. To evidence satisfaction of the foregoing three requirements constituting Commencement and in full satisfaction of the condition of site plan approval for the Phase II Project described above, the City and the Special Master shall be provided with Ownership Interests' or its designee's written attestation therefor, and (i) the Special Master shall have the right to review such financing commitment(s) at the offices of counsel for PAC Capital, and (ii) the City shall have the right to inspect the commencement of such demolition work within five (5) business days of receipt of the aforesaid attestation. Failure of the City to conduct such inspection within the foregoing five (5) business day period after receipt of the Commencement attestation shall be deemed acceptance of the Commencement requirements provided herein. In addition, Substantial Completion of the Phase I rehabilitation work in connection with the Project shall be a pre-condition contained in any final site plan approval resolution issued by the City's Planning Board for occupancy of the Phase II Project. For purposes of this Agreement, the term "Substantial Completion" in the preceding sentence shall mean substantial completion of the electrical, plumbing, heating, ventilation and cooling system(s), and finish work appurtenant to the interior dwelling space of the Affordable Rental Units (as such term is defined in the First Amendment) as shall be evidenced by delivery to the City and Special Master of a copy of the Project architect's written documentation stating that "The electrical, plumbing, heating, ventilation and cooling system, and finish work provided in the construction contract documents, as modified by any change orders, is substantially complete with respect to the interior dwelling space of the Affordable Rental Units". Notwithstanding anything to the contrary herein, the Ownership Interests are authorized to proceed with expansions, renovations, and improvements to the

existing Marina Club/Restaurant (or new construction thereof) and/or improvements, renovations or expansions of other existing marina improvements independently from and in advance of the Phase II residential development, and may seek separate approvals for same pursuant to the land use regulatory standards provided in the Amended Redevelopment Plan. In the event that the ordinances outlined above are not adopted, or the site plans are not filed as contemplated herein, or approved as required by this Settlement Agreement, Marina Bay II, PAC Capital and/or the City shall have the right to re-file and prosecute the Appeals, which have previously been dismissed without prejudice. Marina Bay II, PAC Capital and the City shall further have the right to re-file and prosecute the Appeals, pursuant to the terms and conditions of the Order Dismissing Appeals Without Prejudice to be entered by the New Jersey Superior Court Appellate Division as provided herein, based upon a failure of any Party to comply with this Settlement Agreement or the failure to obtain all required or applicable non-appealable Municipal, County, State and Federal governmental approvals (“*Governmental Approvals*”) for the entire development (Phase I and II Projects inclusive) of the Project contemplated by this Settlement Agreement. Simultaneously with the execution hereof, Marina Bay II will execute and deliver a Warrant to Satisfy Judgment or Release to the City, in the form attached hereto as **Exhibit “F”**, and the City, PAC Capital and Marina Bay II shall additionally execute and deliver the form of Order Dismissing Appeals Without Prejudice previously agreed by those parties, both of which shall be held in escrow and filed with the Appellate Division by counsel for the City upon expiration of the twenty (20) day period after adoption on second reading by the City Council of all the Ordinances provided herein and their publication which date is anticipated by the Parties hereto to be no later than April 30, 2020. It is further understood that the final adoption by the City of all of the Ordinances described above are contingent on the Appeals being dismissed

without prejudice and delivery of the Warrant to Satisfy Judgment prior to final adoption. Upon receipt of all nonappealable Governmental Approvals for all development contemplated by this Settlement Agreement (Phase I and Phase II Projects inclusive) and the satisfaction of all conditions of such approvals so that building permits may be immediately issued with respect to Phase I Project, the Appeals and the Anglesea Matter will be dismissed by all Parties with prejudice and the City may proceed to file and/or record the Warrant to Satisfy Judgment. The dismissal of the Appeals and Anglesea Matter with prejudice will be a condition subsequent of site plan approval for the Phase II development and precondition for the issuance of any building permits solely for the Phase II development. The approvals and permits for the expansions, renovations and improvements to the existing Marina Club/Restaurant and other existing marina improvements and the Phase I Project will not be conditioned upon the dismissal of the Appeals and Anglesea Matter with prejudice but may proceed simultaneous with the Phase I Project.

7. Provided that the City is timely proceeding with site plan reviews for the Phase I and Phase II Projects in accordance with this Agreement, unless delays are caused by the Ownership Interests, and no Governmental Approvals have been denied, the Ownership Interests will direct Anglesea to hold any action to prosecute the Anglesea Matter in abeyance and/or dismiss the Anglesea Matter without prejudice and the Ownership Interests shall not directly or through any related entity or affiliate (including but not limited to Anglesea), seek or receive any alteration, increase, enhancement or enlargement of the height and bulk limits set forth in Exhibits “A” and “D” attached hereto, through any proceeding in the Anglesea Matter or through action or intervention by any party, person or entity in this matter. The Ownership Interests and/or Anglesea may proceed with the prosecution of any and all claims in the Anglesea Matter in the event that the City does not comply with the foregoing conditions, fails to participate in the

defense of any adopted ordinance provided for in this Settlement Agreement or any Governmental Approvals have been denied. In the event that any party, person or entity moves in the Anglesea Matter or in this proceeding for any form of relief with respect to the inclusion of affordable units within the Phase II Project or addition of affordable units to Phase I, the Ownership Interests acknowledge that they shall not be entitled to any alteration, increase, enhancement or enlargement of the development standards set forth in Exhibits “A” and “D” hereto and if the Court grants any relief to such person, party or entity with respect to the inclusion of affordable units in the Phase II Project or addition of affordable units to Phase I, the Ownership Interests acknowledge that they shall not be entitled to and will not be granted any additional density, height or bulk beyond what is set forth in Exhibits “A” and “D” hereto. The City expressly agrees that it will not take any action to alter the terms of this Settlement Agreement.

8. At such time that a construction permit is issued for the Phase II Development Area, the existing master deed of the Marina Bay Towers Condominium will be restructured to incorporate the changes required to implement the Plan. Once restructured, the common elements of the existing Marina Bay Towers Condominium that are located within the Phase II Development Area will not be common elements exclusive to the existing Marina Bay Towers Condominium. Notwithstanding the foregoing, the Marina Bay Project shall be entitled to continue use of any reclassified common elements of the existing Marina Bay Towers Condominium that continue to be necessary or incidental to its operation, regulatory compliance, financing, site engineering and the like.

9. Notwithstanding anything to the contrary stated herein in connection with the foregoing Phase I Project changes, nothing shall otherwise limit or condition the rights of the

landowner and owner of the existing marina and marina/club/restaurant improvements and infrastructure, Phase I Project condominium owner(s), and Phase II Project condominium owner(s) to amend, restate and/or file or re-file the ground lease and condominium master deed(s) in accordance with applicable law, provided such actions do not result in any outcome or consequence contrary to any agreements and understandings set forth herein.

Specifically, but without limitation, the sole exemption from taxation is the one agreed pursuant to the First Amendment to Financial Agreement, which is annexed hereto as Exhibit “B”, and no part of the Phase II Development Area or Phase II Project shall be subject to any tax exemption, unless, independent of this Agreement, separately authorized by the City in its sole discretion, as may be permitted under applicable law. The City acknowledges that condominium common elements cannot be separately assessed and taxed and that the value of such common elements is imputed to each condominium unit in its proportionate interest share. Accordingly, the value of the common elements of the Marina Bay Towers Condominium situated on the Phase II Development Area are currently imputed to the Marina Bay Towers Condominium and, as a result, included within the tax exemption under the Financial Agreement. It is the express intent herein to reassign such common elements so that the value of such common elements are imputed to the units within the Phase I and Phase II Condominiums, in their proportionate interest share, and as a result, will no longer be exclusively a part of the property exempt from taxation pursuant to the First Amendment to Financial Agreement and not deemed “property of” or a “public facility” of a county improvement authority, pursuant to N.J.S.A. 40:37A-82 and 85, respectively. The foregoing shall not alter or diminish the Marina Bay Project’s entitlement to continue use of any reclassified common elements pursuant to Paragraph 8 herein.

Additionally, no other tax exemptions upon any other property are authorized by the Financial Agreement and the First Amendment. The Financial Agreement does not currently and shall not, and the First Amendment shall not, apply to the existing, renovated or new Restaurant/Marina Club or any other existing marina building improvements or the land upon which such building improvements are situated (collectively, the "**Marina Property**"), none of which shall be exempt from taxation pursuant to this Financial Agreement and First Amendment but all of which is currently and shall continue to be subject to *ad valorem* taxation. New development that is situated within the Phase II Development Area described in Exhibit C, inclusive of all improvements constructed thereon, all land and all common elements shall not be subject to the First Amendment or be exempt from taxation pursuant thereto but shall be subject to *ad valorem* taxation. Notwithstanding the continued taxability of the Marina Property and the Phase II Development Area, condominium common elements owned or assigned to condominium unit owners on the Block 152 property are not subject to separate *ad valorem* taxation in accordance with the New Jersey Condominium Act and the value of same shall be imputed to such unit owners in their respective percentage share. Additionally, in no event will the Exempted Project Portion (as such term is defined in the First Amendment to Financial Agreement) own any unit that is part of the Marina Property nor shall it have exclusive assignment, ownership or control of any common elements on the Marina Property or the Phase II Development Area, and as a result, no such common elements will be exclusively a part of the Exempted Project Portion and the value of such common elements shall be imputed to the units within the Exempted Project Portion and Phase II Project in their proportionate interest share.

Additionally, reassignment of the common elements in the Phase II Development Area as set forth above shall be accomplished in such manner that no part of the Phase II Project

improvements or Phase II project land shall (1) be deemed a condominium unit(s) of the Exempted Project Portion (as such term is defined in the First Amendment) (2) be subject to the tax exemption under the First Amendment or (3) be “property of” or a “public facility” of a county improvement authority, pursuant to N.J.S.A. 40:37A-82 and 85, respectively. The foregoing shall not alter or diminish the Marina Bay Project’s entitlement to continue use of any reclassified common elements pursuant to Paragraph 8 herein. Any action by the Ownership Interests contrary this understanding and acknowledgment shall be a breach of this Agreement.

10. The City will not oppose the Final Restructuring Plan as described herein and will take all actions reasonable and necessary in furtherance thereof and will timely cooperate with the Trustee or its designees’ efforts to implement the Plan. In this regard, the City will (a) not solicit the involvement of, or support or assist objections to the Plan by, any parties that may have an interest in there being income restricted units in the Phase II Project or in Unrestricted Portion of the Phase I Project to take any action contrary to the implementation of the Final Restructuring Plan and Judgment and the undertakings in this Settlement Agreement and (b) will not take, directly or indirectly, any position in connection with any such efforts that seek any alteration of the Final Restructuring Plan and Judgment and the terms of this Settlement Agreement. In addition to not soliciting or supporting objections by any such parties, if the City is contacted by any parties for information concerning this Settlement Agreement or the Restructuring Plan, it will not disclose any substance thereof, unless and until such information has previously been made public, and will otherwise specifically limit its response to any such inquiries to publically-available information (*e.g.*, the submission and proceeding dates in Mortgage Foreclosure Matter or documents already filed therein). Notwithstanding, the Ownership Interests, the Trustee and the City shall have the right, but shall not have the

obligation, to defend or participate in the defense of any legal proceedings initiated by any third parties challenging any actions taken pursuant to this Settlement Agreement or otherwise in furtherance of the Final Restructuring Plan and Judgment and any Party choosing not to participate in such actions or proceedings shall not be responsible for any costs in connection therewith; provided, however, if the City Council adopts one or more of the forms of ordinance annexed hereto as Exhibits “A”, “B”, “D”, and “E”, respectively, and a party other than a Party challenges the validity or enforceability of one or more of such ordinances, should the Ownership Interests and/or the Trustee elect in their sole discretion to defend any such challenge(s), the City shall join in such defense of any such ordinance(s), either independently or by formally joining with the Ownership Interests or Trustee. Furthermore, if the City Council fails to either adopt or defend one or more of the forms of ordinances annexed hereto as Exhibits “A” and “B”, respectively, or the Ownership Interests and/or the Trustee elect not to defend a challenge to such ordinances, the Ownership Interests and/or the Trustee shall have the unilateral right in their sole discretion to terminate the Settlement Agreement and reinstate and prosecute any and all of the Block 152 Litigation.

11. The Ownership Interests, in their sole discretion, may waive in writing any required Governmental Approval that does not comply with the requirements of the Settlement Agreement and enforce this agreement pursuant to all of its remaining terms.

12. The Trustee, the Ownership Interests and the City shall each bear their respective expenses, costs and fees, including attorneys’ fees, in connection with the prosecution and defense of all of the legal actions and proceedings referenced or addressed herein.

13. Subject to the specific terms of this Agreement, each Party shall make, execute, acknowledge and deliver such other instruments and documents and take such other actions as

may be required or otherwise reasonable and appropriate to effectuate the purposes of this Agreement and to consummate the transactions contemplated hereby.

14. By entering into and accepting this Settlement Agreement, none of the Parties admits any liability or wrongdoing, nor shall the acceptance of the terms, conditions and provisions set forth herein be regarded or construed by any Party, or any other person or entity, as an admission of wrongdoing or liability by any Party, and the Parties do hereby stipulate and agree that this Settlement Agreement shall specifically not be admissible in any future proceedings or matters, except in any such proceeding to enforce any of the terms, conditions or provisions herein.

15. Based upon and in consideration for this Settlement Agreement and in consideration of and upon the dismissal with prejudice of the Appeals and the Anglesea Matter pursuant to the terms of Paragraph 6 hereof, the Parties agree that no sums or amounts that any Party did claim or could have claimed were due in any of the Block 152 Litigation are due from any other Party and each Party.

16. The Parties have received independent legal advice from their attorneys in connection with the negotiation, drafting and execution of this Agreement.

17. The Parties to this Agreement have made their own independent investigation of the facts pertaining to this settlement, this release, and all of the matters pertaining thereto as they deem necessary, and the Parties agree and stipulate that they have entered into this Agreement and settlement voluntarily of their own free will.

18. The Parties to this Agreement have not heretofore assigned, transferred or granted or purported to assign, transfer or grant any of the claims, demands, or cause or causes of action encompassed by this Agreement.

19. The Parties are aware that they may hereafter discover claims or facts in addition to or different from those that they now know or believe to exist or to be true, with respect to the matters related herein. Nevertheless, the Parties agree that this Agreement shall remain binding and effective, notwithstanding the subsequent discovery of new information or facts.

20. Upon the full execution of this Agreement and the execution of the Stipulations of Dismissal with prejudice of the Appeals referenced in Paragraph 6, and in consideration of and expressly conditioned upon the full performance of all obligations created by the provisions of this Agreement, Trustee and the Ownership Interests, for itself and for themselves, beneficiaries, heirs, executors, administrators, trustees, legal representatives and assigns, forever knowingly and voluntarily release and discharge the City, and its respective officers, directors, agents, employees, legal representatives, and affiliates, from any and all charges, complaints, judgments, awards, claims, orders, actions, demands, causes of action, losses, debts, dues, sums of money, expenses, fees, and liabilities of any kind whatsoever, known or unknown, suspected or unsuspected, which the Ownership Interests has had or now has against the City, by reason of any act, omission, transaction, practice, plan, policy, procedure, conduct, occurrence, or other matter arising at any time prior hereto up through and including the effective date of this Agreement, including, but not necessarily limited to, all claims based upon, related to, arising out of, brought in, or that could have been brought in any of the legal proceedings referenced herein.

21. Upon the full execution of this Agreement and the execution of the Stipulations of Dismissal with prejudice of the Appeals and the Anglesea Matter referenced in Paragraph 6, and in consideration of and expressly conditioned upon the full performance of all obligations created by the provisions of this Agreement, the City, for itself, beneficiaries, heirs, executors, administrators, trustees, legal representatives and assigns, forever knowingly and voluntarily

release and discharge the Ownership Interests, and their respective officers, directors, agents, employees, legal representatives, and affiliates, from any and all charges, complaints, judgments, awards, claims, orders, actions, demands, causes of action, losses, debts, dues, sums of money, expenses, fees, and liabilities of any kind whatsoever, known or unknown, suspected or unsuspected, which the City has had or now has against the Ownership Interests, by reason of any act, omission, transaction, practice, conduct, occurrence, or other matter arising at any time prior hereto up through and including the effective date of this Agreement, including, but not necessarily limited to, all claims based upon, related to, arising out of, brought in, or that could have been brought in any of the legal proceedings referenced herein.

22. Each signatory below on behalf of a Party has the authority to execute this Agreement on behalf of said Party and to bind that Party to the terms, conditions and provisions herein. Copies of the corporate or company resolutions or similar documentation authorizing execution of this Settlement Agreement on behalf of each said Party are annexed as **Exhibit “G”**. The signatories below on behalf of the City have the authority to execute this Agreement on behalf of the City and to bind the City to the terms, conditions and provisions of this Agreement. A Copy of the Resolution of North Wildwood City Council authorizing execution of the Agreement on behalf of the City is annexed as **Exhibit “H”**. The Parties further stipulate and agree that the terms, conditions and provisions of this Agreement shall be binding upon them and their heirs, successors and assigns, as their interests may appear.

23. The representations, covenants and warranties contained in this Agreement shall survive the execution and delivery of this Agreement and the completion of the transactions contemplated herein.

24. If any provision of this Agreement, including any phrase, sentence, clause, section or sub-section shall be deemed invalid, inoperative or unenforceable for any reason, then such phrase, sentence, clause, section or sub-section, as the case may be, shall be deemed to be deleted and the remaining provisions of this Agreement shall continue in full force and effect.

25. Any headings contained in this Agreement are for the purpose of convenience only and shall not affect the meaning or interpretation of any of the clauses or provisions of this Agreement.

26. This Agreement and the documents appended hereto set forth the full, final and integrated understanding and agreement of the Parties hereto with respect to the subject matter hereof. All prior oral or written or contemporaneous oral representations, understandings and agreements by or among the parties, or any of them, as to the subject matter hereof are merged herein and superseded hereby. This Agreement may not be modified or amended, nor may its provisions be waived, in whole or in part, except in writing signed by all of the parties hereto. This Agreement is not subject to oral modification. No oral order, objection claim or notice by any Party to any other Party shall affect or modify or alter any of the terms or obligations contained in this Agreement. No amendment, modification or discharge of this Agreement, and no waiver hereunder, by the Party against whom enforcement of the amendment, modification, or waiver is sought shall be valid or binding unless set forth in writing duly executed with the same formalities as were attendant to the approval, adoption and execution of this Agreement in the first place.

27. It is specifically understood and agreed that this Agreement shall not extend to or be for the benefit of third parties unaffiliated with the Parties, their successors, and assigns, and

such third parties shall have no rights hereunder, including but not limited to rights as a third party beneficiary.

28. A Party that is prevented from, or is delayed in, performing an obligation under this Agreement by reason of natural disaster or calamity, acts of terrorism, war, acts of a government other than those of the City, or similar force majeure beyond the control of the Parties shall not be considered a default of this Agreement.

29. The failure of a Party to insist upon strict performance of any of the covenants or conditions of this Agreement shall not be construed as a waiver by such Party of any of its rights or remedies under this Agreement and shall not be construed as a waiver, relinquishment or failure of any such covenants, conditions or rights.

30. In the event of any dispute concerning the interpretation of the terms of this Agreement or of the obligations of any Party under this Agreement, then the Parties agree to submit the dispute to mediation. Except as set forth herein with respect to payment of mediation fees, costs and expenses, for the purposes of this sub-paragraph, the Ownership Interests and Trustee shall be considered one Party notwithstanding the fact that the Ownership Interests and Trustee are comprised of four entities. As a result, the four entities comprising the Ownership Interests shall only be entitled to designate one mediator. The mediation shall be initiated by one Party serving the other Party with a written demand to mediate. Within fourteen (14) days of receipt of the mediation demand, the Parties shall propose potential mediators and shall confer in good faith to designate a mutually-agreeable mediator, who shall be a retired judge of the Superior Court of New Jersey. Payment of mediation fees, costs and expenses shall be split evenly between the City and Ownership Interests. The mediated resolution of the dispute may include a provision that provides for something other than an even split of the mediation fees,

costs and expenses. Unless otherwise agreed to by the parties, mediation shall be limited to forty-five (45) days.

31. This Agreement and all its terms and conditions shall not be confidential. The Ownership Interests acknowledge that the City is subject to, and is required to comply with, the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1, et. seq, and with common law concerning access to government records under the provisions of which the City, upon receipt of a request for “government records,” may be required to provide copies of this Agreement and any other document or record in its possession concerning this Agreement or related to it or the making of it, including written communications between the Parties and their representatives. Upon the City’s receipt of such a request for government records concerning this Agreement, North Wildwood shall provide the Ownership Interests with a copy of the request for government records. The City will be solely responsible for determining whether a record is completely or partially exempted from disclosure. Upon the City’s provision to the Ownership Interests of a copy of a request for government records that the City has received, the Ownership Interests will not (and will not allow any of its personnel) communicate with the person or entity that has made the request concerning the request until the City complies with the request or in the event of litigation arising under the request for records a final, non-appealable decision concerning the request for records has been rendered by the Superior Court of New Jersey. With regard to any such litigation arising under the request for records, nothing in this Paragraph shall be interpreted as curtailing the right of the any of the Parties that comprise the Ownership Interests from seeking to intervene in such litigation in order to advocate that any one or more records are exempt from disclosure under the New Jersey Open Public Records Act or common law and the City will consent to intervention. When responding to a request for government

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records the City shall provide the Ownership Interests with a list of the records being provided by the City to the person making the request.

32. All Notices required or permitted under this Agreement shall be given in writing. Delivery of Notices by email shall not constitute an acceptable method of delivery of Notice under this Agreement and no Notice or other document may be validly served by email. Notices shall be deemed sufficiently given if personally served or if sent by United States certified mail, return receipt requested or by a nationally recognized overnight delivery service (e.g., FedEx, UPS). Notices shall be delivered to the following addresses:

Ownership Interests:

Marina Bay or New Owner: First Community Development Corp.
31 Styretown Road
Building D
Clifton, NJ 07102

With a copy to:

Goldenberg, Mackler, Sayegh et al.
660 New Road, First Floor
Northfield, NJ 08225
Attn: Keith Bonchi, Esq.

And with a copy to:

PAC Capital LLC c/o The Rubicon Companies
One Gateway Center, Suite 920
Newark, New Jersey 07102
Attention: Paul A. Coccoziello

and its counsel:

Nehmad, Perillo & Davis, P.C.
4030 Ocean Heights Avenue
Egg Harbor Township, New Jersey 08234
Attn: Salvatore Perillo, Esq.

Beach Creek: c/o Rubicon Properties LLC
One Gateway Center, Suite 920
Newark, NJ 07102
Attention: Paul A. Coccoziello

and its counsel:

Zazzali, Fagella, Nowak, Kleinbaum & Friedman
570 Broad Street, Suite 1402
Newark, New Jersey 07102
Attention: Robert Fagella, Esq.

Trustee:

Manufacturers and Traders Trust Co. and
Wilmington Trust, N.A.
25 South Charles Street
11th Floor
Mail Code: MD2-CS58
Baltimore, MD 2120
Attention: Corporate Trust

and its counsel:

Wollmuth Maher & Deutsch LLP
500 Fifth Avenue
New York, NY 10110
Attention: James N. Lawlor, Esq.

City of North Wildwood:

City Clerk
City of North Wildwood
901 Atlantic Avenue
North Wildwood, NJ 08260

and its counsel:

Wilentz, Goldman & Spitzer, PA
90 Woodbridge Center Drive Suite 900
Woodbridge, NJ 07095-0958
Attention: Robert Beckelman, Esq.

32. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall together constitute one in the same instrument.

33. This Agreement shall be governed in all respects, including its validity, interpretation and effect, by the laws of the State of New Jersey, without giving effect to the conflict of laws rules thereof. Any Party claiming to be aggrieved by the breach of this

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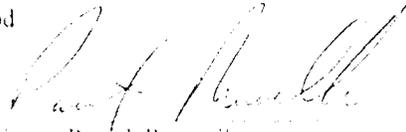
Agreement by any other Party may seek to enforce this Agreement, as well as any legal action relating to or arising from this Agreement, shall be commenced exclusively within the Superior Court of New Jersey, Chancery Division, Cape May County. No enforcement action, however, shall be initiated by any Party until there has been compliance with the Mediation provisions of Paragraph 30 of this Agreement and the Mediation has failed to resolve the dispute.

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IN WITNESS WHEREOF, this Agreement has been duly executed and delivered on behalf of the parties as of the date first above written.

For the City of North Wildwood



Name: Patrick Rosencello
Title: Mayor

For Marina Bay Towers Urban Renewal II, L.P., its general partner,
First Community Development Corporation

Name: Rocco J. Meola
Title: President

PAC Capital LLC

Name: Paul A. Cocozziello
Title: Managing Member

Beach Creek Marina, Inc.

Name: Paul A. Cocozziello
Title: President

Marine Harbor's Traders Trust

Name:
Title:

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Title: Managing Member

Beach Creek Marina, Inc.:

Name: Paul A. Coccoziello
Title: President

Manufacturer's Traders Trust:



Name: JAY SMITH
Title: Vice President

CITY OF NORTH WILDWOOD
COUNTY OF CAPE MAY, NEW JERSEY

ORDINANCE NO. _____

**VACATING PORTIONS OF 5th 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**

WHEREAS, N.J.S.A. 40:67-1b confers upon municipalities the authority to “vacate any public street, highway, lane, alley, or any part thereof...,” and

WHEREAS, in furtherance of, and implementation of, the dispositions of Superior Court of New Jersey Cape May County Chancery Division’s litigation entitled *Manufacturers and Traders Trust Company v. Marina Bay et al.* docketed as CPM-F-049229-14, the Final Order of which issued on January __, 2020, and as required by the “Final Restructuring Plan” pursuant to the foregoing Final Order, the City has agreed to vacate portions of 5th 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

WHEREAS, it has been determined by the Mayor and Council of the City of North Wildwood that it is in the best interests of the City of North Wildwood that the public’s right, title and interest in, along, upon and over the lands hereinafter described be vacated, surrendered and extinguished, and the public interest will be better served by releasing those vacated areas;

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of North Wildwood in the County of Cape May and State of New Jersey as follows:

Section 1. The public right, title and interest in, along and over the portions of 5th Avenue and over the portions of New York Avenue, as defined by the metes and bounds description incorporated herein as Exhibit “A” and as further shown in the exhibit entitled “Block 152 Redevelopment Partial Street Vacancies” prepared by Geoffrey R. Lanza, N.J.P.L.S., of Bowman Consulting Group, Ltd., dated _____, annexed hereto and incorporated herein as Exhibit “B”, the City Council hereby vacates the areas described in Exhibits “A” and “B” and releases such property from the dedication of the land for a public street and extinguishes the public right arising from such dedication; excepting , however, the sidewalk easement areas set forth in the metes and bounds description contained in Exhibit “C” which is annexed hereto and incorporated herein expressly constitute a public pedestrian access easement in perpetuity. In the event of any inconsistencies between Exhibit A and Exhibit B, the metes and bounds in Exhibit A shall control.

Section 2. Upon this Ordinance becoming effective, the City shall promptly satisfy the obligations pursuant to Section 2.D. of that certain Settlement Agreement dated _____ by and between the City of North Wildwood and the Block 152 Ownership Interests, and do all things necessary and appropriate to effectuate the consolidation of the street areas vacated hereby and vest the vacated areas into the Block 152 landowner.

Section 3. Nothing contained herein shall be deemed to vacate, surrender or extinguish any right or privilege of the City of North Wildwood or of any public utility, telecommunications provider or cable television company to maintain, repair or replace any of their existing poles, wires, pipes, conduits, sewer mains, water mains or other existing facilities in, adjacent to, over or under the streets herein vacated or any part or parts thereof.

Section 4. If any portion of this Ordinance is determined to be invalid by a court of competent jurisdiction, that determination shall have no effect upon the remainder of this Ordinance, which shall remain valid and operable.

Section 5. All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same hereby are repealed.

Section 6. This Ordinance shall take effect immediately upon final passage and publication as provided by law.

Section 7. As required by N.J.S.A. 40:67-21, upon this Ordinance becoming effective, the City Clerk shall promptly file with the Cape May County Clerk for recording a certified copy of this Ordinance, under seal of the City of North Wildwood, together with a copy of the proof of publication of this Ordinance.

TAKE NOTICE that the foregoing Ordinance was introduced and passed on first reading at a regular meeting of the Mayor and Council of the City of North Wildwood, County of Cape May on the ____ day of ____ 2020. A second reading, hearing and final consideration of the above ordinance will be held in the Council Chambers, City Hall, Tenth and Atlantic Avenues at ____ o'clock in the _____ on the _____ day of _____ 2020.



Patrick Rosenello, Mayor

W. Scott Jett, R.M.C. City Clerk

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
Tolomeo					Koehler				
Rullo					Bishop				
Kane					Zampirri				
Del Conte									

ORDINANCE # _____

EXHIBIT A TO CITY COUNCIL ORDINANCE NO. _____
AMENDED REDEVELOPMENT PLAN FOR REDEVELOPMENT PLAN
ADOPTED PURSUANT TO ORDINANCE NO. 1231

I. INTRODUCTION

On May 7, 1996, pursuant to N.J.S.A. 40A:12A-6 of the Local Redevelopment and Housing Law (the "**LRHL**"), the governing body of the City adopted Ordinance No. 1231, adopting a redevelopment plan (the "**Redevelopment Plan**") that provided for, *inter alia*, "the construction of one hundred and forty-two (142) units of low income rental housing for elderly persons" as well as 4,200 square feet of commercial space to benefit the tenants of the units in the senior citizen housing, as well as persons living in surrounding residential areas . . ." (the "**Project**").

In August 2005, the Essex County Improvement Authority ("**ECIA**") issued bonds (the "**ECIA Bonds**"), pursuant to the County Improvement Authorities Law, N.J.S.A. 40:37A-44, et seq. (the "**CIAL**") and 26 U.S.C. § 142, which were sold to PAC Capital, LLC ("**PAC**") and designated JPMorgan Chase Bank, N.A., as indenture trustee which has been succeeded by Manufacturers and Traders Trust Company ("**Trustee**") pursuant to a Trust Indenture dated as of August 1, 2005 ("**Trust Indenture**").

"[I]n order to assist in the further development and financing of the Project", the City authorized ECIA as the redevelopment entity for the Project in 2005 under and pursuant to N.J.S.A. 40A:12A-4 with respect to the Project having all the rights and powers conferred to a "redevelopment entity" under the [LRHL], including, but not limited to, those contained in N.J.S.A. 40A:12A-8, pursuant to Ordinance No. 1475. Also to facilitate the further development and financing of the Project, the Cape May County Board of Chosen Freeholders, via Resolution No. 372-05, authorized the ECIA to issue the ECIA Bonds, pursuant to N.J.S.A. 40:37A-45.

After the damages and impacts of SuperStorm Sandy (FEMA-4086-DR), the Trustee declared the ECIA Bonds in default and instituted a foreclosure action, pursuant to N.J.S.A. 40:37A-116, in the matter known as Manufacturers and Traders Trust Company v. Marina Bay et al. (Docket No. CPM-F-049229-14) (the "**Foreclosure Matter**") in which Foreclosure Matter PAC and various related entities sought approval of a restructuring plan to modify the number of affordable units to allow for the addition of market rate units to assist in financing the further redevelopment and rehabilitation of the Project (the "**Restructuring Plan**"). The Honorable Mark H. Sandson, P.J.Ch, entered an Order in the Foreclosure Matter on May 22, 2018, provisionally approving a Restructuring Plan for the Marina Bay Project (the "**Restructuring Order**").

The Court also ordered the appointment of a special master by an associated Order of the Honorable Julio L. Mendez, A.J.S.C., also filed on the same date and further amended the foregoing by entry of an Amended Order also entered by Judge Mendez on July 2, 2018 (collectively, the "**Special Master Order**") with general duties of evaluating and making recommendations to the court with respect to the Restructuring Plan.

Pursuant to the Restructuring Order, PAC or its designee is required to file a site plan application within 150 days of the final approval of the Restructuring Plan which the Special

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Master Order directs is subject to changes based upon the recommendations of the Special Master and final review and approval of the Chancery Court ("**Final Restructuring Plan**").

The New Jersey Department of Community Affairs (the "**DCA**") and New Jersey Mortgage and Housing Finance Agency ("**HIMFA**") jointly filed for leave to appeal of the Restructuring Order, which was granted and which concluded with the decision of the Appellate Division, filed October 22, 2019, affirming the Restructuring Order in substantial part but remanding the matter for supplemental proceedings prior to entry of final judgment within 45 days (the "**Appellate Court Order**").

In order to facilitate the proceeding of the replanning and updating of Restructuring Plan expeditiously upon such final trial court approval, consistent with the direction of the Appellate Court Order, the City adopts this Amended Redevelopment Plan ("**Amended Redevelopment Plan**") to implement zoning standards required to support the efficient completion of the Final Restructuring Plan and in partial consideration of the settlement of litigation between the City and ownership interests now pending before the Appellate Division, captioned as *Royal Tax Lien Services, L.L.C. v. Marina Bay Towers*, Docket No. A-771-17, *Marina Bay Towers Urban Renewal II, LP v. City of North Wildwood*, Docket Court No. A-004089-16T4, and before the Law Division captioned as *Anglesea Properties, LLC v. City of North Wildwood*, Docket No. CPM-L-359-15 (the "**Litigation**") in accordance with the terms and conditions of that certain Settlement Agreement executed on or about February __, 2020, by and among, *inter alia*, the City, PAC and the Trustee.

Contemporaneously herewith, in further consideration of the foregoing, the City Council is conducting the process pursuant to N.J.S.A. 40:55D-26 to adopt Ordinance No. ___ authorizing the replacement, in its entirety, of current Bayside Business (BB) Zoning District regulations with new zoning regulations establishing the "North Wildwood Marina Zoning District" ("**NWM Zoning District**"), which the City recognizes will be capable of further encouraging the rehabilitation of the Project and restoration of the maximum number of affordable housing units found by the Court to be in the public interest in connection with the Final Restructuring Plan. Planning goals contained in the NWM Zoning District include municipal planning objectives and policies such as economic development, revitalization, vertical development, long-term tax stability, and expansion of the City's water-dependent and water-oriented land uses along the bayside waterways, improvements to public access of the bayside marina district with expanded waterfront walkways and connection between the private North Wildwood Marina site and the City's public boat launching ramp and bayside parking facilities. Companion to the foregoing legislation is Ordinance No. ___ vacating a small portion of Fifth and New York Avenue in and around Block 152 to be more flexibly and efficiently developed.

To further facilitate and expedite implementation of the Final Restructuring Plan and in furtherance of facilitating the renovations, expansions, construction, rehabilitation and repair of the Project, improvements to the existing marina improvements, including the renovated, expanded or new Restaurant/Marina Club, shall be permitted as set forth herein and consistent with the land use, bulk and dimensional standards (referred to collectively herein as the "**Phase I Project**"), as set forth within the Phase I Redevelopment Overlay Zone (see below).

II. PURPOSES, GOALS AND OBJECTIVES

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This Amended Redevelopment Plan is authorized and implemented pursuant to N.J.S.A. 40A:12A-7 of the LRHL, for the purpose of implementing the Restructuring Plan approved pursuant to the Restructuring Order, as may be updated and revised by the Final Restructuring Plan. This Amended Redevelopment Plan is intended to be consistent with the Final Restructuring Plan to be approved by the Court in the Foreclosure Matter. Both the Restructuring Plan and Final Restructuring Plan require modifications to the Redevelopment Plan which will be accomplished through the adoption of this Amended Redevelopment Plan, which shall supersede and replace the original Redevelopment Plan in its entirety.

The primary purpose of this Amended Redevelopment Plan is to appropriately and timely comply with the Restructuring Order to facilitate the implementation of the Final Restructuring Plan and attendant replanning, designing and approval of the site plan required pursuant to the Restructuring Order, including the establishment of land use and building requirements for the Phase I Project in a manner consistent with the Final Restructuring Plan as shall be finally approved by the Court.

III. STATUTORY REQUIREMENTS

Pursuant to N.J.S.A. 40A:12A-7, the Redevelopment Plan shall include an outline for the planning, development, redevelopment or rehabilitation of the project area sufficient to indicate:

1. Its relationship to definitive local objectives, including appropriate land uses, density of population and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements;
2. Proposed land uses and building requirements;
3. Adequate provision for the temporary and permanent relocation, as necessary, of residents in the project area;
4. Identification of properties to be acquired, if any;
5. Any significant relationship of the Redevelopment Plan to the Master Plans of contiguous municipalities, the County and the State Development and Redevelopment Plan;
6. An inventory of affordable housing units to be removed as a result of the implementation of the Plan; and
7. A plan for the provision of replacement affordable housing units to be removed as a result of the implementation of the Plan.
 - A. **Relationship of the Amended Redevelopment Plan to the City's Master Plan and Local Objectives and Goals, and Relationship with Other Municipal, County or State Plans.**

The Redevelopment Plan provided for the construction of senior affordable housing in furtherance of the goals and objectives of the City's Master Plan in establishing a bayside marina area. The Amended Redevelopment Plan is not proposing any uses that are inconsistent with the original Redevelopment Plan or the underlying zoning or Master Plan, and furthers the objectives

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of the City's Master Plan. The Amended Redevelopment Plan is not inconsistent with any County plans nor does it impact or have any relation to the master plans of any adjacent municipalities.

B. Proposed Land Uses and Building Requirements.

This Amended Redevelopment Plan will supersede and replace the Redevelopment Plan for the applicable redevelopment portion of Block 152 and shall be an overlay zoning district within the underlying BB Zoning District being replaced, as aforesaid, by the NWM Zoning District ("**Phase I Redevelopment Overlay Zone**"). Annexed hereto as **Schedule 1** is a copy of the Block 152 Map describing the Phase I Redevelopment Overlay Zone and area that is not included in the redevelopment area situate the consolidated Block 152 site (the "**Phase II Development Area**"), which shall be governed by the new NWM Zoning District. To the extent that there is any zoning or development standard(s) not specifically addressed in the Amended Redevelopment Plan, the provision of any otherwise applicable or relevant underlying zoning regulations or provisions shall apply.

Notwithstanding the 2002 consolidation of former Blocks 152 and 153 subsequent to the adoption of the Redevelopment Plan, this Amended Redevelopment Plan and the zoning, use and building requirements herein shall not apply to any new development in the Phase II Development Area which is situated in a portion of former Block 153, which development shall be governed by the NWM Zoning District.

However, in an effort to facilitate the implementation of the Final Restructuring Plan and in furtherance of facilitating the expeditious rehabilitation and repair of the senior housing, the City acknowledges and agrees that Beach Creek Marina, Inc., or its designee, shall have the right to make improvements to the marina and restaurant structures located in the Phase I Redevelopment Overlay Zone in accordance with applicable building requirements and allowances provided herein and/or otherwise pursuant to the NWM Zoning District requirements.

This Amended Redevelopment Plan and the zoning, use and building requirements herein shall, except as noted otherwise herein with respect to improvements to existing marina structures and existing, renovated, expanded or new Restaurant/Marina Club Building, apply only to development and implementation of the Final Restructuring Plan and the Phase I Project within the Phase I Redevelopment Overlay Zone described in Schedule 1.

The senior affordable housing portion of the Project is currently subject to a financial agreement for payment in lieu of taxes (the "**Financial Agreement**"), pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq (the "**LTTEL**"). The tax exemption authorized under the Financial Agreement currently includes the existing housing condominium described as Block 152, Lot 10001 in the Municipal Real Property Tax Duplicate and final Order of June 6, 2016, recorded at Bk D3685 Pages 762 through 773 on July 12, 2016 ("**Final Exemption Order**"). The City acknowledges that the adoption of this Amended Redevelopment Plan shall not alter and shall have no impact upon the Financial Agreement, as amended by the First Amendment (see below), or the parties' respective rights thereunder.

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The applicable use, bulk and design standards and requirements as set forth in this Amended Redevelopment Plan below shall govern the use, bulk and design standards for the Phase I Project. It is expressly the intent of this Amended Redevelopment Plan to provide for development consistent with the terms of the Final Restructuring Plan to be approved pursuant to the Final Judgment in the Foreclosure Matter, discussed in the Introduction.

The following use and building requirements shall govern and control development of the Phase I Redevelopment Overlay Zone and Phase I Project but shall not apply to new development in any portion of the Phase II Development Area which, as noted above, is regulated for local land use purposes pursuant to the newly established NWM Zoning District rules.

1. Principal Permitted Uses-
 - a) Affordable low- and moderate-income, age-restricted (as defined pursuant to 42 U.S.C. § 3607(b)(2)(B) or (C)) and multifamily housing and market-rate, age-restricted OR non-age-restricted housing, to the extent authorized under 42 U.S.C. §142(d)(1)(a) in accordance with the law and 42 U.S.C. §3607(b)(2)(B) or (C), if applicable, pursuant to the Final Restructuring Plan;
 - b) Commercial and institutional uses (first floors only) in the Project and all other non-residential uses permitted in the North Wildwood Marina Zoning District;
 - c) Existing Mixed-Use/Residential/Marina Services Building and all uses otherwise permitted in the North Wildwood Marina Zoning District;
 - d) Existing or new Restaurant/Marina Club Building and all uses otherwise permitted in the North Wildwood Marina Zoning District;
 - e) Existing Marina/Lighthouse/Guardhouse Building and all uses otherwise permitted in the North Wildwood Marina Zoning District; and
 - f) All other non-residential uses permitted in the North Wildwood Marina Zoning District.
2. Accessory Uses Permitted-
 - a) All uses accessory and incidental to the principal use(s).
3. Maximum Building Height-
 - a) Multifamily Residential/Commercial building comprising the Project shall not exceed 115 feet / 8 stories from the base flood elevation (BFE). No dwelling units shall be constructed above the 8th floor ceiling assembly.
 - b) Height Limits for Rooftop Uses. The following structures may be erected above the heights prescribed in this subsection 3(a) above: (i) Mechanical rooms and other roof structures for access and the housing of stairways, elevators, recreational facilities, tanks, ventilating fans, HVAC equipment, cellular telephone antennas and/or associated equipment or similar equipment required to operate and maintain the building; (ii) Skylights, spires, cupolas, flagpoles, signage, pursuant to City Code §276-40, chimneys or similar structures; and (iii) Safety enclosures of rooftop areas of condominium/apartment buildings,

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restaurants, hotels and motels used for sundecks, swimming pools and other commercial, community, congregate, tourism or recreational amenities and purposes; but in no case shall the height of any of these appurtenances exceed a height equal to 15% more than the maximum height permitted for the particular use in the district.

- c) The height of the existing or renovated Mixed Use/Residential/Marina Services Building shall not exceed 50 feet from the base flood elevation (BFE) except that (i) mechanical rooms and other roof structures for access and the housing of stairways, elevators, recreational facilities, tanks, ventilating fans, HVAC equipment, cellular telephone antennas and/or associated equipment or similar equipment required to operate and maintain the building, and (ii) open or enclosed recreational, safety service, skylights, spires, cupolas, flagpoles, signage pursuant to City Code §276-40, chimneys or similar structures may be constructed at or above the roof level at a height not to exceed 10% of the prescribed 50 foot height limitation. The foregoing height allowance shall not apply to any proposed residential development within the existing Mixed Use/Residential/Marina Services Building, which shall be governed by the applicable North Wildwood Marina Zoning District standards.
- d) The height of the existing, renovated, expanded or new Restaurant/Marina Club Building shall not exceed 55 feet from the base flood elevation (BFE) except that (i) Mechanical rooms and other roof structures for access and the housing of stairways, elevators, recreational facilities, tanks, ventilating fans, HVAC equipment, cellular telephone antennas and/or associated equipment or similar equipment required to operate and maintain the building, and (ii) open or enclosed recreational, safety service, skylights, spires, cupolas, flagpoles, signage pursuant to City Code §276-40, chimneys or similar structures may be constructed at or above the roof level at a height not to exceed 20% of the prescribed 55 foot height limitation. The foregoing height allowance shall not apply to any proposed residential development within the existing Restaurant/Marina Club Building, which shall be governed by the applicable North Wildwood Marina Zoning District standards.
- e) The height of the existing or renovated Marina/Lighthouse/Guardhouse Building shall not exceed 65 feet from the base flood elevation (BFE) except that (i) Mechanical rooms and other roof structures for access and the housing of stairways, elevators, recreational facilities, tanks, ventilating fans, HVAC equipment, cellular telephone antennas and/or associated equipment or similar equipment required to operate and maintain the building, and (ii) open or enclosed recreational, safety service, skylights, spires, cupolas, flagpoles, signage pursuant to City Code §276-40, chimneys or similar structures may be constructed at or above the roof level at a height not to exceed 20% of the prescribed 65 foot height limitation.

4. Area and Yard Requirements within the Phase I Redevelopment Overlay Zone.

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Maximum Number of Dwelling units in Existing or Renovated Multifamily Condominium Building 165 Dwelling Units

Minimum Lot Area	N/A
Minimum Lot Depth	100 feet
Minimum Side Yard (each)	0
Minimum Front Yard	5 feet
Minimum Rear Yard	N/A
Accessory Buildings	
Minimum Side Yard	0 feet
Minimum Rear Yard	0 feet
Distance to Other Buildings	4 feet
Floor Area Ratio	N/A
Maximum Lot Coverage of Principal Buildings	80%
Maximum Lot Coverage	90%

5. Off-Street Parking:

Multifamily

A. Age-restricted residential units:

Efficiency Apartment:	0.5 Parking Spaces per Unit
One-Bedroom Apartment:	0.5 Parking Spaces per Unit
Two-Bedroom Apartment:	1.0 Parking Spaces per Unit
Three-Bedroom Apartment:	1.5 Parking Spaces per Unit

B. Non-age-restricted residential units:

Efficiency Apartment:	0.5 Parking Spaces per Unit
One-Bedroom Apartment:	0.5 Parking Spaces per Unit
Two-Bedroom Apartment:	1.3 Parking Spaces per Unit
Three-Bedroom Apartment:	1.9 Parking Spaces per Unit
Ground/First Floor Commercial/Institutional Condo Unit:	15 Parking Spaces

Restaurant/Marina Club Building and Marina/Lighthouse/Guardhouse Building

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No additional parking spaces for the permitted non-residential use consisting of the existing, renovated, expanded or new Restaurant/Marina Club Building are required to be provided, notwithstanding anything to the contrary in City Code §276 Land Development or the newly established NWM Zoning District rules therein as may be amended from time to time.

No additional parking spaces for the permitted non-residential use consisting of the existing or renovated Marina/Lighthouse/Guardhouse Building are required to be provided, notwithstanding anything to the contrary in City Code §276 Land Development or the newly established NWM Zoning District rules therein as may be amended from time to time.

All site applications and reviews pursuant to this Amended Redevelopment Plan shall include the entire Block 152 Lot 1 site as a denominator for all civil engineering/planning purposes and for the calculation of bulk and dimensional allowances permitted by this Amended Redevelopment Plan.

C. Relocation

Pursuant to the Restructuring Order, the Final Restructuring Plan and this Amended Redevelopment Plan, the existing tenants in good standing under their existing leases residing in Project will not be required to vacate the building during construction, will be relocated to rehabilitated apartments within same building, and will continue their tenancy under new leases pursuant to the 50% Area Median Income and rent indices ("AMI") published annually by the United States Department of Housing and Urban Development for the Cape May County region.

D. Properties Anticipated to Be Acquired

The City does not anticipate utilizing its powers of eminent domain to acquire any property in order to facilitate the Final Restructuring Plan.

E. Affordable Housing

The implementation of the Final Restructuring Plan is designed, *inter alia*, to rehabilitate and/or otherwise provide the maximum number of affordable rental housing units determined to be feasible by the Court and which may constitute a regional "fair share" contribution by the City pursuant to the Council on Affordable Housing's regulations. The total number of low- and moderate- income units which is proposed by the Trustee to consist of 105 income and rent restricted dwelling units shall be determined pursuant to the final judgment in the Foreclosure Matter. Notwithstanding the foregoing, the minimum requirements shall be as follows with respect to all units or portions of the Project, if applicable, which shall be subject to a deed restriction under the Final Restructuring Plan (the "**Restricted Units**");

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(1) The Restricted Units shall be marketed and operated as rental units for senior citizen persons 55 years of age or older in compliance with 42 U.S.C. § 3607(b)(2)(B) or (C);

(2) At least 20% or 33 of the total number of all Restricted Units shall be restricted to occupancy by seniors 55 years of age or older whose income is 50 percent (50%) or less of area median gross income pursuant to U.S.C. §142(d)(1)(A);

(3) The remaining Restricted Units, proposed to number up to 72, shall be restricted to occupancy by seniors 55 years of age or older whose income is 80 percent (80%) or less of area median gross income pursuant to Section 304(c) of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.;

(4) All tenants in good standing under their leases currently occupying the Property shall be entitled to continue such occupancy at rents affordable to households earning 50 percent (50%) or less of area median gross income, pursuant to Section 304(c) of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.; and

(4) The term of the deed restriction shall be effective through December 31, 2035.

IV. ECIA CONTINUES AS THE REDEVELOPMENT ENTITY

The ECIA shall continue its designation as the Redevelopment Entity for the Project and the implementation of the Final Restructuring Plan in connection therewith. Such continued designation and function shall in no way impact, alter or diminish the ECIA's powers pursuant to the CIAL or the ECIA Bonds and security therefor, or any amended or supplemental trust indentures executed or issued with respect thereto.

The Redeveloper shall be a qualified housing sponsor qualified pursuant to N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 40:37A-107(j) as may be approved pursuant to the Final Restructuring Plan. Redeveloper may request the City's and ECIA's consent to assignment of the redevelopment rights and Redeveloper designation, which consent shall not be unreasonably withheld.

In any event, Trustee, PAC and Redeveloper or its assignee covenant, pursuant to N.J.S.A. 40A:12A-9, which covenant shall run with the land, that: (1) only the uses established in this Amended Redevelopment Plan shall be constructed; (2) Redeveloper shall begin and complete the building of the improvements for those uses within the period of time under the Final Restructuring Plan; and (3) Trustee, PAC and/or Redeveloper, as applicable, shall be without power to sell, lease or otherwise transfer the Project, or any part thereof, without the written consent of the City and/or ECIA, which consent shall not be unreasonably withheld. Upon completion of the required improvements to the Project, the conditions determined to exist at the time the area was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and improvements thereon shall no longer be subject to eminent domain as a result of those determinations. The aforesaid covenants, provisions, controls shall be deemed satisfied upon construction of the improvements hereunder, which shall be evidenced by a Certificate of Completion (as defined in

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Section VII below) issued by the City and/or ECIA. The rights of any third party acquired prior to termination of these covenants, including, but not limited to, the Financial Agreement, Trust Indenture and the land uses rights regulated hereunder with respect to the Phase I Project, shall not be negatively affected by termination and satisfaction of the covenants.

V. ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

Upon compliance with the requirements of applicable law, the City Council may, with the written consent of the Trustec or PAC and Redeveloper, amend, revise or modify this Amended Redevelopment Plan, or do any of the foregoing upon application of the Trustee or PAC or their designee and Redeveloper, if deemed necessary and desirable to implement the Final Restructuring Plan approved by the Court and as circumstances may make such changes appropriate. This Amended Redevelopment Plan does not provide for variance relief pursuant to N.J.S.A. 40:55D-70(d). The City Council and/or Planning Board may, in their discretion and as may be authorized by applicable law, grant variance relief pursuant N.J.S.A. 40:55D-70(c) or provide a waiver from any design requirements if it deems such waiver generally consistent with the goals and objectives herein.

VI. TAX EXEMPTIONS

The senior rental portion of the Project and its condominium common elements are already subject to the Financial Agreement for a tax exemption, as described in Section 3(b) herein. The Financial Agreement as amended by the First Amendment to the Financial Agreement entered into on ___, 20__ (“*First Amendment*”) shall remain in effect for the “Exempted Project Portion” pursuant to the terms of the First Amendment. No other tax exemptions upon any other property are authorized by the Financial Agreement and the First Amendment. The Financial Agreement does not currently and shall not, and the First Amendment shall not, apply to the existing, renovated, expanded or new Restaurant/Marina Club Building or any other existing marina improvements or land upon which such improvements are situated (the “Marina Property”), none of which shall be exempt from taxation pursuant to this Financial Agreement and First Amendment but all of which is currently and shall continue to be subject to *ad valorem* taxation. New development that is situated within the Phase II Development Area described in Schedule I, inclusive of all improvements constructed thereon, all land and all common elements shall not be subject to the First Amendment or be exempt from taxation pursuant thereto but shall be subject to *ad valorem* taxation. Notwithstanding the continued taxability of the Marina Property and the Phase II Development Area, condominium common elements owned or assigned to condominium unit owners on the Block 152 property are not subject to separate *ad valorem* taxation, in accordance with the New Jersey Condominium Act, and the value of same shall be imputed to such unit owners in their respective percentage share. Additionally, in no event will the Exempted Project Portion own any unit that is part of the Marina Property or Phase II Development Area nor shall it have exclusive assignment, ownership or control of any common elements on the Marina Property or the Phase II Development Area, and as a result, no such common elements will be exclusively a part of the Exempted Project Portion and the value of such common elements shall be imputed to the units within the Exempted Project Portion and Phase II Project in their

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proportionate interest share. - Any such new development within the Phase II Development Area situate within Block 152 shall be governed by the NWM Zoning District Ordinance.

VII. DURATION OF AMENDED REDEVELOPMENT PLAN

This Amended Redevelopment Plan shall remain in effect until the earlier of (a) issuance of a "Certificate of Completion" for the Project in the form annexed hereto as **Schedule 2**, or (b) six (6) years from the date of the Court's entry of final non-appealable judgment approving the Final Restructuring Plan and sheriff's sale. Thereafter, this Amended Redevelopment Plan will no longer have any effect, except that the land use and building controls and standards herein shall continue to apply and shall be incorporated into the City Land Use Ordinances as overlay zoning, and the property will no longer be deemed an area in need of redevelopment or subject to eminent domain pursuant to N.J.S.A. 40A:12A-9.

[1.2(ii)] - Schedule 1 - ACP

NORTH WILDWOOD MARINA ZONING DISTRICT (ENTIRETY OF BLOCK 152 LOT 1 - 3.04 AC)

PHASE I REDEVELOPMENT
AREA OVERLAY ZONE
PHASE II DEVELOPMENT
AREA
FEE SIMPLE OWNED
BY BEACH CREEK

2.04 AC

↕↕ 0.24 AC

0.76 AC

↕

BUS STOP

Bowman
CONSULTING

BLOCK 152 REDEVELOPMENT
OVERALL AREA

1
3

THESE PLANS ARE NOT
TO BE USED FOR BID
OR CONTRACT



PHASE I REDEVELOPMENT AREA OVERLAY ZONE

PHASE I REDEVELOPMENT
AREA OVERLAY ZONE
FEE SIMPLE OWNED
BY BEACH CREEK

2.04 AC

0.24 AC

BUS STOP

THESE PLANS ARE NOT
TO BE USED FOR BID
OR CONSTRUCTION

2
3

BLOCK 152 REDEVELOPMENT
PHASE I REDEVELOPMENT AREA

<p>Project Name: Block 152 Redevelopment Phase I</p> <p>Client: Beach Creek</p> <p>Date: 10/15/2011</p> <p>Scale: 1" = 100'</p>

Bowman
CONSULTING

<p>Project No.:</p> <p>Client No.:</p> <p>Scale:</p> <p>Date:</p>

<p>Project Name:</p> <p>Client Name:</p> <p>Date:</p>

PHASE II DEVELOPMENT AREA

PHASE II DEVELOPMENT
AREA
FEE SIMPLE OWNED
BY BEACH CREEK

↕ 0.24 AC

↕ 0.76 AC

BUS STOP



THESE PLANS ARE NOT
TO BE USED FOR AND
OR CONSTRUCTION

3	BLOCK 152 REDEVELOPMENT	Bowman CONSULTING	DATE: 11/11/11	DRAWN BY: [Name]	CHECKED BY: [Name]	SCALE: [Scale]	SHEET NO. [Number]
	PHASE II DEVELOPMENT AREA						
3	BLOCK 152						

CITY OF NORTH WILDWOOD
Cape May County, New Jersey

ORDINANCE NO. _____

AUTHORIZING THE MAYOR OF THE CITY OF NORTH WILDWOOD TO EXECUTE A FIRST AMENDMENT TO FINANCIAL AGREEMENT Between The City of North 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. dated August 30, 2002 and assigned to Marina Bay Towers Urban Renewal II, L.P. on August 16, 2005.

WHEREAS, pursuant to Resolution No. 169-02, the City authorized the execution of a certain 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. ("**Financial Agreement**"); and

WHEREAS, on August 16, 2005, the City and Marina Bay executed and entered into that certain Assignment, Consent to Assignment, and Acknowledgment of Continuing Liability agreeing to and acknowledging, *inter alia*, the assignment of the "Financial Agreement Between The City of North 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." to Marina Bay Towers Urban Renewal II, L.P. (hereinafter, "**Marina Bay**"); and

WHEREAS, the City, Marina Bay and other parties to a foreclosure matter in the Superior Court of New Jersey Cape May Count Chancery Division known as *Manufacturers and Traders Trust Company v. Marina Bay et al.*, docketed as CPM-F-049229-14 ("**Foreclosure Matter**") in which matter the Honorable Mark H. Sandson, P.J.Ch., filed an Order on May 22, 2018 (the "**Restructuring Order**"), approving a financial Restructuring Plan providing for the reconstruction and renovation of the Marina Bay Project; and

WHEREAS, Paragraph 6 of the Restructuring Order provides that the Financial Agreement shall be amended and assigned consistent with the Restructuring Order; and

WHEREAS, in order to further implement the provisions of the Restructuring Order, the City desires to authorize the Mayor to execute a First Amendment to Financial Agreement in the form annexed hereto and made part hereof as **Exhibit A**; and

WHEREAS, there is pending litigation between the parties in which the subject matter concerns the Financial Agreement, as more fully-described in the recitals to the First Amendment to Financial Agreement annexed hereto as **Exhibit A**, with respect to which the parties have executed a settlement agreement, the terms of which provides, *inter alia*, that the parties will execute the First Amendment to Financial Agreement in consideration for the parties' dismissal and release of their respective claims in the litigation.

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NOW, THEREFORE, BE IT ORDAINED that the City hereby authorizes the Mayor to execute the First Amendment to Financial Agreement in the form annexed hereto and made part hereof as **Exhibit A**.

1. If any portion of this Ordinance is determined to be invalid by a court of competent jurisdiction, that determination shall have no effect upon the remainder of this Ordinance, which shall remain valid and operative.

2. All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same hereby are repealed.

3. This Ordinance shall take effect immediately upon final passage and publication as provided by law.

4. Upon adoption of this Ordinance, the City Clerk shall forthwith transmit to the Director of the Division of Local Government Services and the Tax Assessor pursuant to N.J.S.A. 40A:20-12 and shall also provide a certified copy of this Ordinance and the First Amendment to the Financial Agreement to the Chief Financial Officer of the County and the County Counsel for information purposes.

TAKE NOTICE that the foregoing Ordinance was introduced and passed on first reading at a regular meeting of the Mayor and Council of the City of North Wildwood, County of Cape May on the ____ day of ____ 2020. A second reading, hearing and final consideration of the above ordinance will be held in the Council Chambers, City Hall, Tenth and Atlantic Avenues at ____ o'clock in the _____ on the _____ day of _____ 2020.

Dotted line separator
Dated: _____, 2020

Signed: _____
W. Scott Jett, City Clerk

Approved: _____
Patrick T. Rosenello, Mayor

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
Tolomeo					Koehler				
Rullo					Bishop				
Kane					Zampirri				
Del Conte									

ORDINANCE # _____

EXHIBIT A

TO

ORDINANCE NO. _____

**FIRST AMENDMENT TO FINANCIAL AGREEMENT
Between The City of North 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.**

This First Amendment To Financial Agreement (this "*First Amendment*") made and entered into this ____ day of _____, 2020, amends and supplements a certain Financial Agreement dated August 30, 2002 (hereinafter, "*Financial Agreement*") by and between the **CITY OF NORTH WILDWOOD**, New Jersey (the "*City*") and **MARINA BAY TOWERS URBAN RENEWAL II, L.P.**, a New Jersey limited partnership, having a registered business address of One Gateway Center, Suite 920, Penn Plaza, Newark, New Jersey 07102 as successor in interest to Marina Bay Towers Urban Renewal, L.P. ("*Marina Bay*").

WHEREAS, on August 16, 2005, the City and Marina Bay executed and entered into that certain Assignment, Consent to Assignment, and Acknowledgment of Continuing Liability agreeing to and acknowledging, *inter alia*, the assignment of the "Financial Agreement Between The City of North City of North Wildwood, New Jersey and Marina Bay Towers Urban

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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." to Marina Bay; and

WHEREAS, there have been disputes between the City and Marina Bay with respect the Financial Agreement and annual service charges and sewer service charges, which were the subject of a municipal lien sale and foreclosure matter captioned as Royal Tax Lien v. Marina Bay Towers Urban Renewal II, L.P., et al.; docketed as CPM-F-010203-11 (the "**Tax Lien Foreclosure Matter**"), as well as a Law Division action caption as Marina Bay v. City of North Wildwood and docketed as CPM-L-759-08 (hereinafter, the "**Financial Agreement Matter**"); and

WHEREAS, the Tax Lien Foreclosure Matter was litigated to conclusion, pursuant to the decision of the Appellate Division in Royal Tax Lien Services, L.L.C. v. Marina Bay Towers Urban Renewal II, L.P., No. A-1638-13 (App. Div. Aug. 14, 2015), certif. denied, 224 N.J. 528 (2016) (the "**Final Tax Lien Decision**"), with the exception of (1) a cross-claim for alleged civil rights violations against the City by one of the parties to that action, the sole and majority owner of the Essex County Improvement Authority ("**ECIA**") mortgage revenue Series A and B Bonds ("**ECIA Bond Mortgage**"), PAC Capital, LLC ("**PAC**"), which was severed and assigned to the Law Division under docket No., CPM-L-444-14, now pending before the Appellate Division, Docket No. A-771-17 (the "**PAC Claims Appeal**"), and (2) a limited remand concerning the identification and tax mapping of specific non tax-exempt property owned by Beach Creek Marina, Inc. ("**Beach Creek**"), the ground lessor and fee simple owner of the land upon which the Marina Bay Project is situated, which remand determined the portions of the property that are not subject to an exemption from *ad valorem* taxation pursuant to the Financial Agreement and the portions which are exempt; and

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WHEREAS, on June 6, 2016, the Superior Court of New Jersey Cape May County Chancery Division entered a Final Order in the Tax Lien Foreclosure Matter (hereinafter, the "***Final Exemption Order***") clarifying and establishing, *inter alia*, the "Applicable Condominium Areas, Common Elements, Site Infrastructure, Easements and Rights-Of-Way Schedule for The Marina Bay Towers Condominium" situated on the Block 152 property which condominium property description was recorded on the title of the subject property on July 12, 2016 in the Cape May County Clerk's Office, Book D3685 Pages 768, in accordance with the Final Exemption Order and as may be amended pursuant the Final Restructuring Plan and Judgment (see below) and attendant modifications to the condominium master deed of Marina Bay Towers Condominium Association, Inc. ("***Exempted Property***" or "***Condominium Ground Lease Area***"); and

WHEREAS, in addition to the above, the City, Marina Bay and other parties, including the State of New Jersey's Department of Community Affairs ("***DCA***") and Housing and Mortgage Finance Agency ("***HMFA***"), are parties to a mortgage foreclosure matter in the Superior Court of New Jersey Cape May Count Chancery Division known as *Manufacturers and Traders Trust Company v. Marina Bay et al.* docketed as CPM-F-049229-14 ("***Mortgage Foreclosure Matter***") in which matter the Honorable Mark H. Sandson, P.J.Ch., filed an Order on May 22, 2018 ("***Restructuring Order***") approving the sale of the Marina Bay Project to a "New Owner" (see below) and a financial "Restructuring Plan" providing for the reconfiguration, reconstruction and renovation of the Marina Bay Project; and

WHEREAS, the Honorable Julio L. Mendez, A.J.S.C., entered an Order appointing a Special Master also filed on the same date as the Restructuring Order but amended by the Amended Order entered on July 2, 2018 (the "***Special Master Order***"); and

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WHEREAS, in addition to the Mortgage Foreclosure Matter, the City and Marina Bay are additionally bound by the rulings issued in the Final Tax Lien Decision and the determinations adjudicated on remand by the New Jersey Superior Court, Chancery Division in the Final Exemption Order; and

WHEREAS, the Restructuring Order provides that a number of dwelling units contained in the Restructured Marina Bay Project (as defined below) may be converted to individual condominium units and sold to purchasers without regard to, or limitation upon, the income or age of the occupants thereof in accordance with the law and 42 U.S.C. § 3607(b)(2)(B) or (C)), if applicable, and which shall not be subject to the Deed Restriction to be entered upon Final Judgment of Foreclosure pursuant to Paragraph 5 of the Restructuring Order, and that any such dwelling units once sold and transferred as aforesaid to purchasers of the general public in the form of the newly created and renovated condominium unit(s) after completion of the Restructuring Plan as evidenced by written notice to the City of relinquishment of tax exempt status pursuant to N.J.S.A. 40A:20-13 for each such condominium unit sold pursuant to Paragraph 6 of the Restructuring Order and in accordance with Section 3 hereof (referred to in the Restructuring Order and herein as the "*Unrestricted Project Portion*") will no longer be part of the Exempted Property or subject to the Financial Agreement or First Amendment; and

WHEREAS, pursuant to the Restructuring Order and the Special Master Order, the final number and income mix of dwelling units provided by the Restructured Marina Bay Project (as defined below) shall be in accordance with the final, updated and/or modified Restructuring Plan and as may be further ordered by the Court as part of a final judgment in the Foreclosure Matter pursuant to Paragraph 5 of the Special Master Order (hereinafter, the "*Final Restructuring Plan and Judgment*");

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WHEREAS, on April 12, 2017, the Superior Court of New Jersey Cape May County Law Division, the Honorable Christopher Gibson, J.S.C. presiding, entered a Final Judgment in the matter of Marina Bay v. City of North Wildwood docketed as CPM-L-759-08 (hereinafter, the "**Final Financial Agreement Order**"); and

WHEREAS, the City filed an appeal of the Final Financial Agreement Order in October 2017 and Marina Bay responded and filed a cross-appeal in the Superior Court of New Jersey Appellate Division in connection therewith bearing Appellate Court Docket Court No. A-004089-16T4 ("**Financial Agreement Appeal**") which is currently pending; and

WHEREAS, on June 26, 2018, the DCA and HMFA jointly filed a motion for leave, and were subsequently granted the right, to file an interlocutory appeal in the Appellate Division in the Mortgage Foreclosure Matter with respect to the Restructuring Order, bearing Appellate Court Docket No. A-005879-17 ("**Interlocutory Appeal**"); and

WHEREAS, the Appellate Division issued a decision on October 22, 2019 ("**Appellate Foreclosure and Restructuring Opinion**") substantially affirming Judge Sandson's decision in relevant part, including Paragraph 6 of the Restructuring Order, as may be amended in remand proceedings pending in the Mortgage Foreclosure Matter, which provides that the Financial Agreement shall be amended and assigned consistent with the Restructuring Order; and

WHEREAS, the City and Marina Bay are desirous of cooperating and complying with the Restructuring Order and Appellate Foreclosure and Restructuring Opinion by entering into to this First Amendment to amend the Financial Agreement consistent with the Final Restructuring Plan and Judgment and provide written consent to the transfer of the Marina Bay Project and Restructured Marina Bay Project (as defined below) and assignment of the Financial Agreement and this First Amendment to Marina Bay Towers Urban Renewal III, L.P. and its successors and

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assigns or other successor urban renewal entity and “qualified housing sponsor” qualified pursuant to N.J.S.A. 40A:20-1 et seq. and N.J.S.A. 40:37A-107(j) (collectively, the “*New Owner*”) in accordance with the Restructuring Order and Appellate Foreclosure and Restructuring Opinion, and

WHEREAS, in furtherance of and in consideration for reaching a full and final settlement of the PAC Claims Appeal and the City and Marina Bay’s respective claims and cross-claims on appeal in the pending Financial Agreement Appeal, and the City’s facilitation of the Restructuring Order, the parties to this First Amendment and certain other parties are entering into that certain Settlement Agreement by and between Marina Bay, PAC, Beach Creek, Manufacturers and Traders Trust Company (“*Trustee*”) and the City dated ___ (“*Settlement Agreement*”); and

WHEREAS, in furtherance of the City’s facilitation of the Restructuring Order, as substantially affirmed by the Appellate Foreclosure and Restructuring Opinion, and the objective provided therein to feasibly rehabilitate, preserve and provide what the Court determines to be the maximum number of affordable dwelling units in the Marina Bay Project in the public interest, the City is contemporaneously herewith adopting Ordinance No. ___ _ authorizing that certain Amended Redevelopment Plan For Redevelopment Plan Adopted Pursuant To Ordinance No. 1231 (“*Amended Redevelopment Plan*”) in connection the portion of Block 152 Lot 1 designated as the “*Phase I Redevelopment Overlay Zone*” as such term is defined therein; and

WHEREAS, to further encourage the rehabilitation of the Marina Bay Project and restoration of the maximum number of affordable housing units to be found by the Court in connection with the Final Restructuring Plan, the City is also conducting the process to adopt municipal legislation authorizing (a) a zoning amendment applicable to the entirety of Block 152 to eliminate the underlying zoning which is currently the Bayside Business District (“*BB*

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District) and replace it with a new zone which will be named the North Wildwood Marina Zoning District ("*NWM Zoning District*"), and (b) an ordinance partially vacating Fifth Avenue from the water line to the corner of New York Avenue and conveying a portion of such vacated street to the landowner of Block 152 and also vacating a portion of New York Avenue and conveying a portion of that vacated street to the landowner of Block 152 (clauses (a) and (b) collectively, the "*Phase II Entitlements*"), all of the foregoing in accordance with certain terms of the Final Restructuring Plan and Judgment expected by the parties to be filed in February 2020 by the Honorable Michael J. Blee, P.Ch.J., in the Mortgage Foreclosure Matter; and

WHEREAS, in furtherance of the parties' compliance with the Restructuring Order and Final Restructuring Plan and Judgment once entered, the City and Marina Bay desire to amend and supplement the Financial Agreement by executing and entering into this First Amendment; and

WHEREAS, in furtherance of and in consideration for reaching a full and final settlement of the PAC Claims Appeal and the City and Marina Bay's respective claims and cross-claims on appeal in the pending Financial Agreement Appeal;

NOW, THEREFORE, in consideration for the mutual covenants herein contained, it is agreed as follows:

Section 1. Incorporation of Preamble; Restated Definition of the term "Agreement";
Legal Basis For Agreement. The capitalized term "Agreement" contained in the Financial Agreement shall hereby be amended and restated wherever therein it is used by the term "*First Amendment*" as defined herein. The recitals of the Financial Agreement are hereby supplemented with the recitals provided hereinabove and both are incorporated by reference and are made part of this First Amendment as though the same were repeated and set forth at length herein. The

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Financial Agreement amended hereby is annexed to this First Amendment as Exhibit "A" for reference. The Marina Bay Project condominium building is situated upon the Condominium Ground Lease Area. The exemption from taxation and annual service charge for municipal services and payments in lieu of taxes shall continue to apply to the Condominium Ground Lease Area and Condominium Unit "B" or the RESIDENTIAL UNIT as set forth in that certain Master Deed for Marina Bay Towers Condominium dated October 5, 1999, and recorded November 5, 1999, in Deed Book 2831 Page 299 all as supplemented and memorialized in the recorded Final Exemption Order containing the Exempted Property description, as set forth in more detail in Sections 3 and 6 below. For purposes of real property taxation and exemption from such taxation, pursuant to N.J.S.A. 46:8b-6 and -19, respectively, the Condominium Ground Lease Area constitutes a non-partitionable common element of the Marina Bay Towers condominium property and is exempt from real property taxation. Consistent with the Tax Lien Foreclosure Decision and Final Exemption Order, all applicable laws authorizing exemptions from taxation or deductions from tax bills, namely the Long Term Tax Exemption Law, N.J.S.A. 40A:20A-1 et seq. ("*LTTL*") and the County Improvement Authorities Law, N.J.S.A. 37A-44 et seq. ("*CIAL*") shall be applicable to each individual unit contained in the Exempted Project Portion (as defined below) to the same extent they are applicable to other separate property.

Section 2. Restated Definition of the term "Marina Bay Project". Pursuant to the Restructuring Order and the Special Master Order, the Final Restructuring Plan and Judgment will provide the final number of rental units, not to exceed 165 total dwelling units, contained in the Marina Bay Project consisting, alternatively, of:

- A. If non-appealable municipal legislation authorizing the Phase II Entitlements is adopted pursuant to the terms and conditions set forth in the Settlement

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Agreement, (i) 105 dwelling units which shall be operated as low- and/or moderate-income rental dwelling units, as defined under N.J.S.A. 52:27D-304(c) and (d), 33 of which shall be at rents affordable to households earning 50 percent (50%) or less of area median gross income (AMI) and 72 of which shall be at rents affordable to households earning up to 80 percent (80%) or less of area median gross income, for senior citizen persons 55 years of age or older (i.e., in compliance with 42 U.S.C. § 3607(b)(2)(B) or (C)), which New Owner intends to structure as part of a separate age-restricted "housing facility or community" or condominium regime within the meaning of 24 CFR 100.304(b) ("**Affordable Rental Units**"); and (ii) (a) up to 60 additional dwelling units that may be operated as rental units but without any income or age restriction, which New Owner intends to structure as part of a separate non-age-restricted "housing facility or community" or condominium regime within the meaning of 24 CFR 100.304(b) (the "**Market Rental Units**") (the Affordable Rental Units and the Market Rental Units together hereinafter shall be referred to as the "**Exempted Project Portion**"), or (b) any and all such Market Rate Units (i.e., up to 60 non-age or income restricted units comprising the Market Rental Units) that may be sold and/or transferred shall, upon such sale and/or transfer, comprise the Unrestricted Project Portion (all of the foregoing, collectively, the "**Restructured Marina Bay Project**"); and

B. If non-appealable municipal legislation authorizing the Phase II Entitlements is *not* adopted pursuant to the terms and conditions set forth in the Settlement Agreement, (i) the Affordable Rental Units shall only total thirty-three (33) units at rents affordable to households earning 50 percent (50%) or less subject to the same age restrictions set forth in subsection (A)(i) above; and (ii) the Market Rental Units shall total

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up to and including one hundred thirty-two (132,) which may be operated, sold and/or transferred as provided in subsection A(ii)(a) and (b) above. In this subsection (B) unit mix, the up-to-132 Market Rental Units that are not sold and/or transferred, together with the total of 33 Affordable Rental Units, will comprise the Exempted Project Portion.

All tenants in good standing under their leases currently occupying the Property shall be entitled to continue such occupancy at rents affordable to households earning 50 percent (50%) or less of area median gross income, pursuant to Section 304(c) of the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

Section 3. Tax Abatement; Term of First Amendment. Paragraph 5 of the Financial Agreement is hereby deleted and replaced in its entirety by the following provision:

"The Exempted Property and the Exempted Project Portion of the Restructured Marina Bay Project constitute a 'qualified subsidized housing project' pursuant to the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.) and, for purposes of this First Amendment.

Unless earlier terminated pursuant to the applicable terms hereof, this First Amendment shall terminate on the later to occur of (i) the date of December 31, 2035, or (ii) as authorized pursuant to N.J.S.A. 40A:20-13.1, the date that is co-terminus with the final redemption date of the federally subsidized mortgage bond or other Federally subsidized financing as may be amended by supplemental trust indenture, refinancing, refunding or re-issuance, if any.

During the term hereof, the Exempted Property and the Exempted Project Portion of the Restructured Marina Bay Project shall be exempt from taxation on all improvements, land and limited and general common elements comprising it in accordance with applicable law and the terms and conditions of this First Amendment. As used in this First Amendment, the term "**Exempted Project Portion**" shall include, prior to completion of the Restructured Marina Bay Project, all improvements, land and limited and general common elements comprising Condominium Unit "B" or the RESIDENTIAL UNIT as set forth in that certain Master Deed for Marina Bay Towers Condominium dated October 5, 1999, and recorded November 5, 1999, in Deed Book 2831 Page 299 ("**Master Deed**") and, subsequent to completion of the Restructured Marina Bay Project, the portion thereof containing both the Affordable Rental Units and the Market Rental Units as set forth in the final form of new Deed Restriction constituting Exhibit "B" of the

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Restructuring Order ("**Deed Restriction**"). as are authorized to be amended pursuant to the Final Restructuring Plan and Judgment and attendant amended Master Deed and final form of Deed Restriction, but shall exclude individual condominium units contained in the Unrestricted Project Portion that are sold or transferred in accordance with the procedures therefor as provided herein. As used in this First Amendment, the term "**Unrestricted Project Portion**" shall include any and all individual dwelling units in the Restructured Marina Bay Project sold and transferred to purchasers, but shall exclude any and all Affordable Rental Units and Market Rental Units owned by New Owner.

The City hereby consents to the sale and/or transfer of all or portions of the property of Marina Bay to New Owner in accordance with this First Amendment and the Restructuring Order. The City hereby consents to the sale and/or transfer or occupancy of the individual condominium units that will comprise the Unrestricted Project Portion. The City and Marina Bay agree that upon sale and/or transfer of any unit(s) that will comprise the Unrestricted Project Portion in the form of the newly created and renovated condominium unit(s) after completion of the Restructuring Plan as evidenced by written notice to the City of relinquishment of tax exempt status pursuant to N.J.S.A. 40A:20-13 for each such condominium unit sold and/or transferred pursuant to Paragraph 6 of the Restructuring Order, the tax exemption provided herein shall terminate with respect to such unit(s) upon the date of such sale and/or transfer and notice, and such unit(s) shall thereafter be subject to *ad valorem* taxation pursuant to the "added/omitted" assessment procedures of Title 54 of the New Jersey statutes for the tax year in which any such sale or transfer and notice occurs and thereafter, pursuant to applicable law and regulation. After the date upon which New Owner's sale and/or transfer of any Unrestricted Project Portion unit(s) and notice to the City thereof occurs: (i) New Owner shall thereafter cease to bear any liability whatsoever for annual service charges, except as may have accrued up to the time of sale or transfer, or municipal charges and/or *ad valorem* real property tax levies with respect to such transferred condominium unit(s), which shall thereafter be the responsibility of the purchaser or transferee of such unit(s) and (ii) such unit(s) so conveyed and its(their) purchaser(s) or transferee(s) shall no longer be subject to this First Amendment.

The commercial portion of the Restructured Marina Bay Project shall not be exempt from taxation pursuant to this First Amendment. The existing structures other than Marina Bay Towers located upon Block 152, currently or as may be improved, and any land upon which such existing structures are situated, will not be exempt from taxation pursuant to this Amendment. Any new improvements constructed upon Block 152, and any land upon which such improvements are constructed, will not be exempt from taxation pursuant to this First Amendment."

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Section 4. Project Approval; Compliance with Court Orders and Rulings in the Matters Docketed as CPM-F-010203-11 and CPM-F-56520-09, Respectively. The second sentence of Paragraph 4 of the Financial Agreement shall be amended by inserting the words “. . . Tax Exemption Order, Final Exemption Order, Final Restructuring Plan and Judgment,” between the words “conform to” and “all applicable statutes”.

Section 5. Payments in Lieu of Taxes; Annual Service Charge; Annual Sewer Service Charge. Paragraph 6 of the Financial Agreement is hereby amended by deleting the first sentence thereof and replacing it with the following sentence:

“In consideration of the aforesaid abatement of taxation on improvements and common elements comprising the Exempted Project Portion, during the first year of the exemption, and each succeeding year thereafter through the term hereof, Marina Bay shall pay to North Wildwood per annum an annual service charge in lieu of taxes (herein “*Annual Service Charge*”) upon the Exempted Project Portion in an amount equal to (i) seven percent (7%) of the per annum gross revenue actually collected as rents on all the Affordable Rental Units by Marina Bay, or on its behalf, and (ii) ten percent (10%) of the per annum gross revenue actually collected as rents on all the Market Rental Units by Marina Bay, or on its behalf, from the tenant-occupants thereof.

In addition to the Annual Service Charge payable hereunder, Marina Bay shall pay for its municipal sewer service usage for the Exempted Project Portion an annual service charge, paid quarterly at a constant rate of Four Dollars (\$4.00) per One Thousand Gallons (1,000 gal.) of actually metered water consumption for the first five years commencing ninety (90) days from the entry of a non-appealable Final Restructuring Plan and Judgment and Sheriff’s Sale in the Mortgage Foreclosure Matter which constant rate shall be subject to an increase on each five year anniversary during the term hereof at the lesser of two (2%) percent or the amount of the Consumer Price Index for Philadelphia (“Annual Sewer Service Charge”) for the preceding five year period and remain constant for each successive five year period during the term hereof. For purposes of the preceding sentence, the first five year anniversary of the term hereof shall be deemed to be January 1, 2026. The parties acknowledge and agree that the Annual Sewer Service Charge is in addition to, and not included in, the Annual Service Charge.

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Upon termination or expiration of this First Amendment, the Exempted Project Portion shall be subject to *ad valorem* taxation and to sewer charges pursuant to City Code §360-32, *et seq.*

Paragraph 6 of the Financial Agreement is hereby further amended by deleting the entirety of the third sentence thereof beginning with the words "After expiration of the first fifteen (15) year period, . . ." through and including subsection (d) thereof and replacing it with the following provision:

"Pursuant to N.J.S.A. 40A:20-12.1, the provisions of N.J.S.A. 40A:20-12 requiring staged increases in Annual Service Charges over the term of the financial agreement and establishing a minimum annual service charge shall not apply to the Restructured Marina Bay Project."

Section 6. Financial Data: Computation of Gross Revenue. The method for computing gross revenue hereunder shall be the same as provided in Paragraphs 6 and 9 of the Financial Agreement except that sale proceeds received, and income or gain realized, by the New Owner on the sale of the Restructured Marina Bay Project or on the sale of individual condominium unit(s), whether or not taxable under federal or State law, shall not be included in computing gross revenue. Annual financial statements provided by Marina Bay shall provide an itemized basis for determining gross rent receipts with respect to Affordable Rental Units and Market Rental Units, respectively.

Paragraph 9 is further amended by amending the third sentence thereof as follows:

"Tenants of the Exempted Project Portion units pay their own individual apartment utilities except for sewer and water consumption. Payment of sewer and water consumption in connection with the Exempted Project Portion shall be the responsibility of Marina Bay and New Owner, and such payment responsibility is in addition to, and separate and apart from, the Annual Service Charges due hereunder. Marina Bay and New Owner shall have no responsibility for

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payment of water and sewer consumption by purchasers of dwelling units with respect to the Unrestricted Project Portion for any water or sewer charges that are billed to a subsequent unit owner based upon new separate water meter(s) installed in connection with the water service for such units (see Section 11B. herein below).

Section 7. Termination. Section 11 of the Financial Agreement is hereby amended by adding the following clause at the end of that single sentence provision after the words "procedures under N.J.S.A. 40A:20-13": ", or as otherwise permitted by law."

Additionally, to the extent permitted by law, the City may seek to partially terminate this First Amendment based upon an "Uncured Payment Default", which is defined for purposes of this provision as the failure of Marina Bay or New Owner to pay two (2) consecutive quarterly Annual Service Charge installments or sewer charges on or before the expiration of forty-five (45) business days after the City's delivery of written notice of default thereof pursuant to this First Amendment in accordance with the Notice provision hereof. Payment made within fifteen (15) days of receipt of such foregoing notice shall be deemed to cure any such default. Upon an Uncured Payment Default, the City may assert that: As a result of an Uncured Payment Default, the Market Rate Units are (i) no longer exempt; (ii) this First Amendment shall terminate and be of no further effect or force as to the Market Rate Units; (iii) the tax exemption agreed hereunder shall cease upon the date of such termination as to the Market Rate Units; (iv) the Market Rate Units shall thereafter be subject to real property taxation pursuant to Title 54 of the New Jersey Statutes; and (v) the procedure for the *ad valorem* assessment and apportionment of the taxes for the year shall be the same as in the case of other changes in tax exemption status of taxable condominium property during the tax year pursuant to applicable law and regulation. Notwithstanding anything to the contrary contained herein, if Marina Bay shall have served a

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notice of default to the City in connection with this First Amendment prior to Marina Bay's receipt of any notice of Uncured Payment Default, the time to cure any such Annual Service Charge or sewer charge installment payment default shall be extended day-for-day until the date following either the City's cure of its default or other final resolution thereof. Beach Creek, PAC and/or the Trustee shall have the right, but not the obligation, to make a payment hereunder, which shall be accepted by the City as if made by Marina Bay or the New Owner.

Section 8. **Notices.** Notice may be made by means of electronic mail and the notice parties and addresses contained in Paragraph 12 of the Financial Agreement are hereby amended in their entirety as follows:

Marina Bay or New Owner: First Community Development Corp.
31 Styretown Road
Building D
Clifton, NJ 07102
Attn: Paul Coccoziello
pcoccoziello@rubiconcompanies.net

With a copy to:
Goldenberg, Mackler, Sayegh et al.
660 New Road, First Floor
Northfield, NJ 08225
Attn: Keith Bonchi, Esq.
keith@gmslaw.com

PAC

And with a copy to:
c/o The Rubicon Companies
One Gateway Center, Suite 920
Newark, New Jersey 07102
Attention: Paul A. Coccoziello
pcoccoziello@rubiconcompanies.net

and its counsel:

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Nehmad, Perillo & Davis, P.C.
4030 Ocean Heights Avenue
Egg Harbor Township, New Jersey 08234
Attn: Salvatore Perillo, Esq.
sperillo@npdlaw.com

Beach Creek:

c/o Rubicon Properties LLC
One Gateway Center, Suite 920
Newark, NJ 07102
Attention: Paul A. Cocozziello
pcocozziello@rubiconcompanies.net

and its counsel:

Zazzali, Fagella, Nowak, Kleinbaum & Friedman
570 Broad Street, Suite 1402
Newark, New Jersey 07102
Attention: Robert Fagella, Esq.
Rfagella@zazzali-law.com

City of North Wildwood:

City Clerk
City of North Wildwood
901 Atlantic Avenue
North Wildwood, NJ 08260
Attn: Scott Jett
sjett@northwildwood.com

and its counsel:

Wilentz, Goldman & Spitzer, PA
99 Woodbridge Center Drive Suite 900
Woodbridge, NJ 07095-0958
Attention: Robert Beckelman, Esq.
rbeckelman@wilentz.com

Section 9. Jurisdiction and Venue. Paragraph 19 of the Financial Agreement shall be amended by deleting the words "Superior Court of New Jersey, Cape May County" and replacing same with the following: "by arbitration pursuant to N.J.S.A. 40A-20-9f, which the parties agree shall be conducted by a retired New Jersey Supreme Court, Appellate Division or Superior Court judge mutually selected and agreed by the Parties and held at or near the offices of said arbiter in accordance with the procedures set forth in N.J.S.A. 2A:23B-1, et seq.".

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Section 10. Assignments. By entering into this First Amendment the City is providing its prior written consent to the assignment of the Financial Agreement as amended by this executed First Amendment to the New Owner.

Section 11. Resolution of the Final Financial Agreement Appeal and PAC Claims Appeal. This First Amendment has been negotiated and approved by the parties, in part, in consideration for the Parties' agreement to enter into the Settlement Agreement, pursuant to which the Parties agree to dismiss the Financial Agreement Appeal and PAC Claims Appeal subject to a reservation of the right of reinstatement. In the event that the conditions precedent to final dismissal of the Financial Agreement Appeal and PAC Claims Appeal with prejudice are not satisfied pursuant to the Settlement Agreement and the Appeals will be reinstated, then the Ordinances adopting this First Amendment and Amended Redevelopment Plan shall remain in effect, subject to any ruling or decision on the Financial Agreement Appeal, or any further proceedings thereon, provided the New Owner is pursuing or has obtained all required Governmental Approvals for the Phase I Project (as such terms are defined in the Settlement Agreement) and is proceeding timely to implement the rehabilitation of the Marina Bay Project pursuant to the Final Restructuring Plan and Judgment, and remains in compliance with all obligations hereunder and under the Settlement Agreement solely with respect to the Marina Bay Project, and in the case New Owner is not in compliance with the foregoing, the City may rescind the Ordinance adopting the First Amendment and terminate this First Amendment.

Ninety (90) days from the entry of a non-appealable Final Restructuring Plan and Judgment and Sheriff's Sale in the Mortgage Foreclosure Matter, Marina Bay, New Owner or its successor, shall be obligated to commence Annual Service Charge and Annual Sewer Service Charge payments as provided in this First Amendment, and Annual Sewer Service Charge based on the

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rental revenue receipts and metered water consumption readings prorated as of the calendar day of such ninetieth day after entry of a non-appealable Final Restructuring Plan and Judgment and Sheriff's Sale in the Mortgage Foreclosure Matter. If individual condominium units are sold to purchasers hereunder, Marina Bay, New Owner or its successor shall be obligated to install a separate water service and meter for any such units no later than ninety (90) days after sale, and municipal sewer service thereafter for any such individual condominium units shall be separately assessed and payable solely by such unit purchaser(s), pursuant to City Code §360-32, *et seq.*

Section 12. The City shall have no obligation to defend or participate in the defense of any legal challenges to this First Amendment and shall not be responsible for any costs incurred, or that may be incurred, in defending any legal challenges to this First Amendment.

All other provisions of the Financial Agreement not expressly amended by this First Amendment shall continue in full force and effect.

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IN WITNESS WHEREOF, the City and Marina Bay duly signed and executed this First Amendment to Financial Agreement on the date first written above.

For the City of North Wildwood:

Name: Patrick Rosenello
Title: Mayor

For Marina Bay Towers Urban Renewal II, L.P., its general partner,
First Community Development Corporation:

Name: Rocco J. Meola
Title: President of

With the consent of:

The Ground Lessor, Beach Creek Marina, Inc.:

Name: Paul A. Cocozziello
Title: President

The ECIA Bondholder, PAC Capital LLC:

Name: Paul A. Cocozziello
Title: Managing Member

1.5

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.

This Financial Agreement ("Agreement") is entered into this 30th day of August, 2002
by and between the City of North Wildwood, New Jersey ("North Wildwood") and Marina
Bay Towers Urban Renewal, L.P. f/k/a St. Anne's Urban Renewal, L.P., a New Jersey limited
partnership ("Marina Bay").

WITNESSETH:

WHEREAS, Marina Bay has undertaken the development and construction of 142 low
and moderate income senior apartments which development will accrue to the benefit of all
of the citizens of North Wildwood; and

WHEREAS, Marina Bay owns the senior apartments through ownership of one of two
condominium units that together comprise the building of which the senior apartments' unit
occupies approximately ninety-seven percent of the space in the building; and

WHEREAS, the City of North Wildwood and St. Anne's Urban Renewal, L.P., pursuant
to authorization granted by City of North Wildwood Resolution #166-97, adopted on
September 16, 1997, executed a Payment in Lieu of Taxes (PILOT) Agreement on September
17, 1997 under the terms of which St. Anne's Urban Renewal, L.P. was exempted from certain

real property taxes; and

WHEREAS, the September 1997 PILOT Agreement was executed under the auspices of and was governed by the New Jersey Housing and Mortgage Finance Agency (HMFA) Law of 1983 and, in particular, was governed by N.J.S.A. 55:14K-37; and

WHEREAS, a statutory pre-condition to the September 1997 PILOT Agreement being effective and binding was the existence of a mortgage upon the development that is the subject of this Agreement under the terms of which the HMFA was a mortgagee; and

WHEREAS, during the course of development, Marina Bay restructured its financing and HMFA does not hold a mortgage upon the subject development; and

WHEREAS, the HMFA, as the New Jersey governmental agency that allocates tax credits, adopted a Board resolution on July 18, 2002 that rescinds its April 12, 2002 notice returning tax credits allocated to Marina Bay; and

WHEREAS, said rescission is conditioned upon several factors including, but not necessarily limited to, the existence of a fully executed PILOT Agreement; and

WHEREAS. the September 1997 PILOT Agreement is of no force and effect; and

WHEREAS. the Long-Term Tax Exemption Law (N.J.S.A. 40A:20-1, et seq.; the "Law") and. in particular, N.J.S.A. 40A:20-4 gives authority to the governing body of a municipality to enter into a PILOT Agreement with urban renewal entities for a low and moderate income housing project; and

WHEREAS, the Long-Term Tax exemption Law defines "qualified subsidized housing project" as including, among other things, low and moderate income housing owned by a limited dividend entity for the purpose of developing, constructing and operating rental housing for senior citizens; and

WHEREAS, the Mayor and Municipal Council of North Wildwood have resolved to exempt Marina Bay from real property taxes in accordance with the Law; and

WHEREAS, North Wildwood and Marina Bay have agreed that in lieu of property taxes North Wildwood shall impose upon Marina Bay an annual service charge as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained, the parties hereto hereby agree as follows:

1. Incorporation of Preamble. All of the recitals of the preamble of this Agreement are incorporated by reference there and are made a part of this Agreement as though the same were repeated and set forth at length herein.

2. Controlling Law. This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law (N.J.S.A. 40A:20-1 et seq.). It is expressly understood and agreed that North Wildwood relies upon the facts, data and representations contained in the Application. Marina Bay shall at all times prior to the expiration or other termination of this Agreement remain bound by all of the provisions of the Law.

3. Legal Basis for Agreement. North Wildwood has granted its approval for an urban renewal project whose nature, magnitude and description are disclosed in the Application. Hereinafter the project shall be referred to as the "Marina Bay Project". The Marina Bay Project has been built on the land described in the Application, commonly known on the Official Tax Map of North Wildwood as Block 152, Lots 400-418, which land is ground leased from an unrelated New Jersey corporation, Beach Creek Marina, Inc., and which ground lease is a common element of the condominium.

4. Project Approval. Approval has been granted to Marina Bay for undertaking the Marina Bay Project on the lands described above. The Marina Bay Project shall in all respects comply and conform to all applicable statutes and municipal ordinances, and the lawful

regulations made pursuant thereto, governing land, buildings and the use thereof.

5. Tax Abatement. Beginning on January 1, 2001 and ending on the day before the thirty-fifth anniversary of such date, December 31, 2035, the senior citizen portion of the Marina Bay Project shall be exempt from taxation on all improvements in accordance with the Law. The commercial portion of the Marina Bay Project shall not be exempt from taxation. The fee simple interest in the land upon which the Marina Bay Project is constructed shall not be exempt from taxation. Marina Bay warrants and represents that it shall use, manage and operate the Marina Bay Project as residential real estate for low and moderate income senior citizens throughout the term of this Agreement.

6. Payments in Lieu of Taxes. In consideration of the aforesaid abatement of taxation on improvements, during the first year of the exemption, and each succeeding year thereafter through the fifteenth year, Marina Bay shall pay to North Wildwood per annum an annual service charge for municipal services (herein "Annual Service Charge") supplied to the Marina Bay Project in an amount equal to seven percent (7%) of the per annum gross revenue actually collected as rents on senior rental units by Marina Bay, or on its behalf, from the tenants of the Marina Bay Project (hereinafter, "Annual Gross Revenue"). The Annual Service Charge shall be payable by Marina Bay to North Wildwood in four quarterly installments as are nearly equal as practicable on those dates when quarterly real estate tax

payments are due North Wildwood. After expiration of the first fifteen (15) year period, the Annual Service Charge for the remainder of the abatement period shall be determined as provided in N.J.S.A. 40A:20-12 as follows:

(a) For the 16th year and for each succeeding year thereafter through the 21st year, an amount equal to either 7% of the Annual Gross Revenue or 20% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(b) For the 22nd year and for each succeeding year thereafter through the 27th year, an amount equal to either 7% of the Annual Gross Revenue or 40% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater;

(c) For the 28th year and for each succeeding year thereafter through the 33rd year, an amount equal to either 7% of the Annual Gross Revenue or 60% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater; and

(d) For the 34th year and 35th, an amount equal to either 7% of the Annual Gross Revenue or 80% of the amount of taxes otherwise due on the value of the land and improvements, whichever shall be greater.

7. Minimum Payment. In no event shall the Annual Service Charge for the Marina Bay Project, together with taxes on the Marina Bay Project land, in any calendar year during the term of this Agreement, be less than the total taxes levied against all real property in the

area covered by the Marina Bay Project for the last full calendar year preceding the year of the acquisition by Marina Bay of the Marina Bay Project from the prior owner.

8. Limited-Dividend Entity. During the period of tax abatement herein, the distribution of profits and dividends payable by Marina Bay to its owners shall be limited according to the limitations on distributions of profits and dividends under the Law. During the period of tax abatement as provided herein, Marina Bay shall be subject to the limitation on its profits pursuant to N.J.S.A. 40A:20-3. Within ninety (90) days of the end of each fiscal year during such period, Marina Bay shall submit an annual audited statement to the Mayor and Municipal Council of North Wildwood and to the Director of the Division of Local Government Services of the Department of Community Affairs, pursuant to N.J.S.A. 40A:20-9 d., including therein a calculation of "Net Profit," as defined in N.J.S.A. 40A:20-3.

9. Financial Data. Attached hereto as Schedule A and made a part hereof, is the method for computing gross revenue for Marina Bay. The tenants do not pay insurance, operating and maintenance expenses for the Project. Tenants pay their own individual apartment utilities except for sewer and water. Appended to Schedule A are the plans for financing the Marina Bay Project, including the estimated total project cost, the amortization rate on the total project cost, the source of funds, the interest rate to be paid on the construction financing, the source and amount paid in capital, the terms of mortgage

amortization and the rentals, schedules and lease terms to be used with respect to units in the Marina Bay Project.

10. Inspection. Marina Bay covenants and agrees that it shall upon written request permit inspection by North Wildwood and its duly authorized representatives of the equipment, building and other facilities of the Marina Bay Project during normal business hours; and upon written request by North Wildwood shall permit the examination and audit by North Wildwood of its books, contracts, records, documents and papers of the Marina Bay Project. Such audit shall occur at a minimum on a yearly basis at no cost to Marina Bay.

11. Termination. This Agreement shall terminate at the end of the tax exemption period described in Section 5 hereof, unless sooner terminated in accordance with the procedures under N.J.S.A. 40A:20-13.

12. Notices. Any approval, consent, request, waiver, notice or other document required or permitted to be given pursuant to any provision of this Agreement shall be deemed duly given only when in writing, signed by or on behalf of the person giving the same, and either personally delivered (with receipt acknowledged by the recipient) or deposited in a designated United States mail depository registered or certified mail, return receipt requested, postage prepaid, addressed to the person or persons to whom such approval, consent, request,

waiver or notices to be given at their respective addresses:

If to North Wildwood to:

Mr. John J. Holman, Administrator
The City of North Wildwood
North Wildwood, New Jersey 08260

With a copy to

City Solicitor
c/o City Clerk
901 Atlantic Avenue
North Wildwood, New Jersey 08260

If to Marina Bay to:

Marina Bay Towers Urban Renewal, L.P.
c/o Mr. Paul A. Coccoziello, President, Authorized Person
The Rubicon Companies, LLC
625 Eagle Rock Avenue
West Orange, New Jersey 07052

13. Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Marina Bay and its successors and assigns shall at all times prior to the termination of this Agreement be bound by all of the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20 et seq.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall for all purposes constitute one agreement which is binding upon the parties

hereto.

15. Severability. Each provision of this Agreement is severable, and the invalidity and the illegality of any of the provisions of this Agreement or its application to any person shall not affect the validity or the legality of any other provisions or applications.

16. Waiver. Any term of this Agreement to which any party is entitled to the benefit of, may be waived at any time by such party by written instrument duly executed and such waiver shall not constitute or be deemed a waiver of any other term or provision of this Agreement.

17. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the matter set forth herein and supersedes any prior understandings or agreements, oral or written.

18. Amendment. This Agreement may be amended only in writing by the mutual agreement of the parties hereto.

19. Jurisdiction and Venue. The parties agree that all disputes arising under this Agreement shall be resolved in the Superior Court of New Jersey, Cape May County.

20. Assignments. Marina Bay shall not assign this Agreement to any person without the prior written consent of North Wildwood which consent shall not be unreasonably withheld.

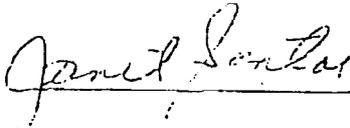
21. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.

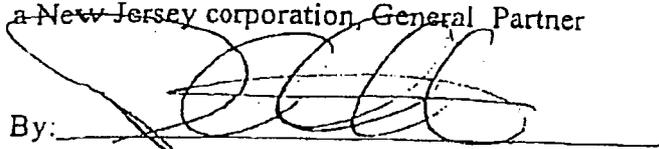
IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

WITNESS:

MARINA BAY TOWERS URBAN RENEWAL, L.P.

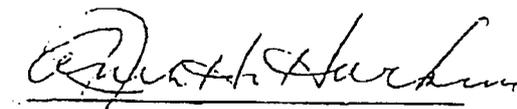
By: First Community Development Corporation,
a New Jersey corporation, General Partner




By: _____
Paul A. Coccoziello, Authorized Person

ATTEST:

CITY OF NORTH WILDWOOD



Janet Harkins, City Clerk

By: 

Aldo A. Palombo, Mayor

PHASE I REDEVELOPMENT AREA OVERLAY ZONE

PHASE I REDEVELOPMENT
AREA OVERLAY ZONE
FEE SIMPLE OWNED
BY BEACH CREEK

2.04 AC

0.24 AC



THESE PLANS ARE NOT
TO BE USED FOR BID
OR CONSTRUCTION

	2	BLOCK 152 REDEVELOPMENT	Bowman Consulting Group, Ltd.					
	3	PHASE I REDEVELOPMENT AREA	BLOCK 152 CITY OF NORTH WINDYBROOK, ILLINOIS COUNTY, ILLINOIS REGISTRY # R. LANZAN - Professional Engineer - C. 0452126620					

PHASE II DEVELOPMENT AREA

PHASE II DEVELOPMENT
AREA
FEE SIMPLE OWNED
BY BEACH CREEK

0.76 AC

0.24 AC



THESE PLANS ARE NOT
FOR CONSTRUCTION

	BLOCK 152 REDEVELOPMENT PHASE II DEVELOPMENT AREA	Bowman Consulting Group, Inc. <small>10000 ...</small>		<small>DATE: 10/26/11</small> <small>BY: J. LANGLEY</small>	<small>PROJECT NO. 10000</small>	<small>SCALE: AS SHOWN</small>
	BLOCK 152 <small>10000 ...</small>	<small>JEFFREY A. LANGLEY, Professional Engineer, No. 26523</small>				

Exhibit "D" – NWM Zoning District Ordinance

Chapter 276. Land Development

Article IV. District Regulations

§ 276- . North Wildwood Marina Zoning District.

A. Purpose statement.

(1) The purpose of the North Wildwood Marina Zoning District is to replace the current Bayside-Business (BB) Zoning District in and around the City's bayside boat launching ramp and parking facilities situate on Block 154 and adjacent to the North Wildwood Marina site on Block 152, and to more effectively provide for an appropriate mix of water-dependent and water-oriented uses designed to maximize the use of the City's bayside waterfront, including vertical development, and to enhance the opportunities for economic development in the form of new and expanded housing, dining and recreational facilities in the City as part of the City's comprehensive development scheme.

The North Wildwood Urban Enterprise Zone Plan pursuant to N.J.S.A. 52:27H-60 et seq. (the "UEZ Law") shall continue and not be affected by the creation of the North Wildwood Marina Zoning District and its replacement of the current Bayside-Business (BB) Zoning District. In addition, a portion of consolidated Block 152 constitutes an area in need of redevelopment and overlay zone pursuant to N.J.S.A. 40A:12A-1 et seq. (the "Local Redevelopment Law"). The City adopted its Redevelopment Plan for Block 152 on May 7, 1996 pursuant to City Ordinance No. 1231 to authorize development of affordable senior citizen multifamily housing ("Redevelopment Project"). Thereafter, in furtherance of a restructuring and rehabilitation plan for the Redevelopment Project approved by the New Jersey Super Court, Chancery Division, in *Manufacturers and Traders Trust Co. v. Marina Bay Towers Urban Renewal, L.P.* (Docket No. CPM-F-04999-14) ("M&T Matter") and the attendant public purposes, interests and benefits discussed by the Court in the M&T Matter, which include, among other things, the restoration of the maximum number of affordable dwelling units determined by the Court to be feasible (the "Restructuring Plan"), the City took action pursuant to City Ordinances Nos. _____ and _____, respectively, to amend the 1996 Redevelopment Plan ("Amended Redevelopment Plan") in connection with the Redevelopment Project, as well as the adjacent existing marina and restaurant structures and infrastructure (collectively, the "Phase I Project" as more particularly set forth in the Amended Redevelopment Plan) and the Financial Agreement for payment in lieu of taxes ("First Amendment To Financial Agreement") to facilitate the Restructuring Plan and resolve litigation between the City and property ownership interests. In addition, the City has adopted Ordinance No. _____, partially vacating Fifth and New York Avenue at the north and northeastern perimeter of Block 152 to enhance the new district's ability to be more flexibly and efficiently developed. In the event of any conflict between this North Wildwood Marina Zoning District Ordinance and the Amended Redevelopment Plan with respect to development and implementation of the Phase I Project pursuant to the Amended Redevelopment Plan, the Amended Redevelopment Plan shall control. In adopting this North Wildwood Marina Zoning District Ordinance and the associated ordinances referenced hereinabove, the City recognizes and accepts the public purpose found by the Chancery Division and affirmed by the Appellate Division

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Exhibit "D" - NWM Zoning District Ordinance

in the M&T Matter in restoring and maximizing the number of affordable housing units in the Restructuring Plan which is now final. In particular, the [Chancery Division] judge observed there was a "vital public interest" involved in providing affordable senior housing, and believed that any further delay of the case was "against [the] public policy of the State." App. Div. Opinion in the M&T Matter, page 28. In addition, the Court found that a "strong public interest" is at risk of deprivation to all concerned, and authorized the Restructuring Plan; the Appellate Division noted that the Chancery Court, in Ordering the Restructuring Plan appropriately exercised its equitable powers "with the express goal of maximizing the amount of affordable units available . . . [and] to better effectuate the important goal of re-establishing a vital housing resource and to ensure the greatest number of affordable units are preserved". Memorandum of Decision in the M&T Matter, page 40; App. Div. Opinion, pages 68-69. This Ordinance and associated ordinances are being adopted for, among other municipal planning objectives, the purposes of settling and resolving long-standing litigation with the ownership interests, which resolution is designed to enhance the feasibility and more cost effective and efficient implementation of the Restructuring Plan that the Court deemed a vital public interest, without further delay.

In October 2018, the City adopted its most recent Master Plan Reexamination Report which continued the City's policy to review and revise land use ordinances to encourage and implement the City's policy of balancing of economic development and the changing demands of the tourist economy with the need to maintain the City of North Wildwood as a premier shore resort destination as well as a year-round community. Those policies include the establishment, within the Land Use Plan and Land Development Ordinance, appropriate locations and standards for encouraging: vertical development including modifying the Land Use Plan and Land Development Ordinance consistent with the direction recommended by NJDEP as a basis for permitted Vertical Development in the City thereby maximizing the City's ratable base and providing for long-term tax stability; improve the marina area by improving public access with expanded waterfront walkways in connection with the private North Wildwood Marina complex neighboring the City's boat launch ramp and parking facilities on Block 154 which is zoned ROSE Recreation. In addition to the reasons set forth above herein, it is the goal that the creation of the North Wildwood Marina Zoning District be in furtherance and implementation of these objectives.

(2) In addition to the regulations established herein, the expansion, extension, improvement or renovation of structures and properties of the North Wildwood Marina Zoning District may be subject to the requirements of the Coastal Area Review Act (N.J.A.C. 7:7E-1.1 et seq.)(1) (CAFRA) and the New Jersey Department of Environmental Protection Waterfront Development Regulations, as well as other relevant regulations of governmental agencies having jurisdiction over lands within the boundary of tidal waters.

[1]

Editor's Note: The provisions of N.J.A.C. 7:7E-1.1 through 1.5 were repealed by R.2015 d.108.

(3) The zone boundary lines for the North Wildwood Marina Zoning District Ordinance are to be modified to reflect current parcel geometry.

B. Principal permitted uses and structures on the land and in buildings:

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Exhibit "D" – NWM Zoning District Ordinance

(1) Water-dependent uses (as defined in § 276-7).

(a) Development that cannot physically function without direct access to the body of water along which it is proposed. Uses, or portions of uses, that can function on sites not adjacent to the water are not considered water-dependent, regardless of the economic advantages that may be gained from a waterfront location. Maritime activity, commercial fishing, public waterfront recreation and marinas are examples of water-dependent uses, but only the portion of the development requiring direct access to the water is water-dependent. The test for water dependency shall assess both the need of the proposed use for access to the water and the capacity of the proposed water body to satisfy the requirements and absorb the impacts of the proposed use. A proposed use will not be considered water-dependent if either the use can function away from the water or if the water body proposed is unsuitable for the use. For example, in a maritime operation, a dock or quay and associated unloading area would be water-dependent, but an associated warehouse would not be water-dependent.

(b) Examples of water-dependent uses include, but are not limited to: docks; piers; marina activities requiring access to the water, such as launching, commissioning or decommissioning of new and/or used boats and/or watercraft; boat storage/repair; automobile parking for persons participating in a water-dependent activity; port activities requiring the loading and unloading of boats; residential uses limited to vessels designed and manufactured for such purpose, registered as a vessel by the State of New Jersey, provided that such vessels are able to navigate under their own power or by sail and are connected to municipal or otherwise approved water and sanitary infrastructure (portable sanitary facilities are expressly prohibited in meeting this test); and water-borne recreational activities.

(c) Examples of uses which are not water-dependent include but are not limited to: land-based housing; hotels and motels; warehousing; manufacturing facilities; automobile parking for persons not participating in a water-dependent activity; and non-water-borne recreational activities.

(2) Watercraft sales and rentals and ancillary uses commonly associated with such use.

(3) Water-oriented uses (see § 276-7 for definition) as conditional uses under N.J.S.A. 40:55D-67, provided that the following conditional use facilities take full advantage of any waterfront location:

(a) Hotels and motels, (see § 276-7 for definition)¹

(b) Eating and drinking establishments, including restaurants and specialty food outlets (including those with window service for take-out fare), but excluding drive-in or fast-food restaurants.

(c) Bars (defined as an establishment serving alcoholic beverages, but not food) and taverns (defined as an establishment serving alcoholic beverages and cooked-to-order food which is prepared and served on the premises).

¹ This use qualifies to apply for a liquor license pursuant to the requirements of N.J.S.A. 33:1- 12.20 provided that the statutory requirements are met.

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Exhibit "D" – NWM Zoning District Ordinance

(d) Specialized entertainment venues, such as theaters, arenas, amphitheaters, aquariums, museums (cultural or popular), and other like and similar attractions.

(e) Public utilities' central substations (see § 276-7 for definition), subject to the following:

[1] The proposed installation in a specific location must be necessary for the satisfactory provision of service by the utility to the neighborhood or area in which the particular use is located;

[2] The design of any structure in connection with such facility must not adversely affect the safe, comfortable enjoyment of property rights in the surrounding area;

[3] Adequate fencing and other safety devices shall be provided and shall be installed in accordance with the applicable requirements of the New Jersey Board of Public Utilities and/or other applicable codes. Barbed-wire-topped fences or similar trespassing-deterrent devices are expressly discouraged; and

[4] Off-street parking shall be provided as determined by the needs of the facility unless otherwise regulated herein or pursuant to the Amended Redevelopment Plan as applicable by its terms and provisions.

(4) Age-restricted and non-age-restricted housing (see § 276-7 for definition).

(5)(i) New detached single-family dwelling units, single-family semidetached (duplex) dwelling units, and two-family stacked (multistory) dwelling units will be permitted subject to the following area, yard, height and off-street parking standards:

(a) Area and yard requirements.

Category	Single-Family Semidetached	
	Detached Single-Family (Duplex); Two-Family Stacked Family Dwellings (Multistory)	
Principal building, minimum		
Lot area	4,000 square feet	6,000 square feet
Lot frontage	40 feet	60 feet
Lot width	40 feet	60 feet
Lot depth	100 feet	100 feet
Side yard (each) ^{1,2}	6 feet	10 feet
Front yard ^{1,2,3}	10 feet	10 feet
Rear yard ^{1,2,3}	10 feet	10 feet
Maximum building coverage (all buildings)	70%	70%
Maximum impervious lot coverage (all buildings and impermeable surfaces)	80%	80%

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Exhibit "D" – NWM Zoning District Ordinance

Category	Detached Family Dwellings	Single-Family (Duplex); Two-Family Dwellings (Multistory)	Semidetached Stacked
Accessory building, minimum			
Distance to side line	4 feet	4 feet	4 feet
Distance to rear line	4 feet	4 feet	4 feet
Distance to other building	8 feet	8 feet	8 feet

NOTES:

¹ Existing stairs and porches may be replaced with identical stairs and porches regardless of the setback requirements of the district in which the subject property is located. For new construction/reconstruction of open porches, stairs and/or steps, they must meet applicable zoning requirements and shall require a zoning and/or construction permit where required, as applicable, in order to permit construction in this regard.

² Eaves, cornices or overhangs more than 10 feet above lot grade may project into yard setback areas a maximum of 24 inches. In order to create an aesthetically pleasing building facade along the side of a building which fronts a street, bay windows or other architectural detailing more than 10 feet above lot grade may extend into the front yard setback a maximum of 24 inches.

(b) Maximum building height. No building height shall exceed 36 feet, or three stories, whichever is less, in height from the base flood elevation (BFE), except as allowed as follows:

[1] Height limits. The following structures may be erected above the heights prescribed by this chapter, but in no case shall the height of any of these appurtenances exceed a height equal to 10% more than the maximum height permitted for the particular use in the zoning district:

[a] Mechanical rooms and other roof structures for the housing of stairways, tanks, ventilating fans, HVAC equipment or similar equipment required to operate and maintain the building.

[b] Skylights, spires, cupolas, flagpoles, chimneys or similar structures.

[c] Safety enclosures of rooftop areas of hotels and motels used for sundecks and other recreational purposes.

[2] Cellular telephone antennas and/or associated equipment are expressly excluded from this provision.

(c) Minimum off-street parking. Each individual use shall provide parking spaces according to the following minimum provisions:

[1] Dwelling units described in this chapter shall provide parking spaces in accordance with the standards established by the New Jersey Residential Site Improvement Standards (RSIS) (N.J.S.A.

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5:21-1 et seq.). RSIS standards include parking requirements for residential uses based on unit (bedroom) size. If the applicant/developer does not specify the number of bedrooms per dwelling unit, then each dwelling unit shall be subject to the RSIS parking space requirements for a four-bedroom dwelling unit.

[2] Places of worship shall provide one space per every three permanent seats. (One seat shall be considered 22 inches in calculating the capacity of pews or benches).

[3] See § 276-35, Off-street parking, loading areas and driveway, for additional standards.

(5)(ii) New multifamily dwelling unit high-rise and/or hotel high-rise construction situated on the northern portion of consolidated Block 152 Lot 1¹ fronting New York Avenue, as delineated on Schedule _____, below (the “Phase II Development Area”) , will be permitted subject to the following area, yard, height and off-street parking standards:

(a) Area and yard requirements.

Category	Multifamily High-Rise Dwellings and/or Hotel Northern Portion of Block 152 fronting New York Avenue
Principal building, minimum	
Lot area	6,000 square feet
Lot frontage	60 feet
Lot width	60 feet
Lot depth	150 feet
Side yard (each)	0 feet
Front yard	0 feet
Rear yard	N/A
Maximum building coverage (all buildings)	No Maximum
Maximum impervious lot coverage (Principal Buildings)	90%
Maximum Number of Dwelling Units	No Maximum
Accessory building, minimum	
Distance to side line	4 feet
Distance to rear line	0 feet
Distance to other building	0 feet
Maximum Building Height & Density	

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Category	Multifamily High-Rise Dwellings and/or Hotel Northern Portion of Block 152 fronting New York Avenue
Height from Base Flood Elevation (BFE) ^{1,2,3}	200 feet
Number of Dwelling Units or Hotel Rooms Use Occupied Floors (parking facilities excluded)	12 occupied floors
Off-Street Parking- Multi-Family High-Rise Only^{3,4}	
Efficiency Unit:	0.5 spaces per unit
One-Bedroom Unit:	0.6 spaces per unit
Two-Bedroom Unit:	1.3 spaces per unit
Three-Bedroom Unit:	1.9 spaces per unit
Four-Bedroom Unit:	2.0 spaces per unit

NOTES:

1 Block 152 Lot 1. All site applications and reviews shall include the entire Block 152 Lot 1 site as a denominator for all civil engineering/planning purposes and for the calculation of bulk and dimensional allowances permitted by this district ordinance.

2 Height Limits for Rooftop Uses. The following structures may be erected above the heights prescribed in this subsection 3(a) above: (i) Mechanical rooms and other roof structures for access and the housing of stairways, elevators, recreational facilities, tanks, ventilating fans, HVAC equipment, cellular telephone antennas and/or associated equipment or similar equipment required to operate and maintain the building; (ii) Skylights, spires, cupolas, flagpoles, signage, pursuant to City Code §276-40, chimneys or similar structures; and (iii) Safety enclosures of rooftop areas of condominium/apartment buildings.

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Exhibit "D" – NWM Zoning District Ordinance

**Multifamily High-Rise
Dwellings and/or Hotel
Northern Portion of Block 152
fronting New York Avenue**

Category

restaurants, hotels and motels used for sundecks, swimming pools and other commercial, community, congregate, tourism or recreational amenities and purposes; but in no case shall the height of any of these appurtenances exceed a height equal to 15% more than the maximum height permitted for the particular use in the district.

3

These parking requirements apply to dwellings to which the RSIS is inapplicable. In the event development in the "Phase II Development Area" incorporates a hotel/motel lodging use, the following parking standards shall apply notwithstanding any inapplicability of RSIS to such use:

1 Bedroom	1.0 parking space(s)
2 Bedroom	1.3 parking spaces
3 Bedroom	1.9 parking spaces

4

In the event that after the Phase II Development Area obtains site plan approval a change to another permitted use is sought, the property owner shall be required to obtain site plan approval for such change of use pursuant to §276-63(b)(1).

[3] See § 276-35, Off-street parking, loading areas and driveway, for additional standards.

(6) Wireless antennas, provided that new antennas utilize co-location or are installed on existing structures.

(7) Club facilities and institutional uses.

C. Accessory uses permitted:

(1) Off-street parking.

(2) Fences and walls.

(3) Signs.

(4) Off-street parking and private garages [see § 276- G herein below and § 276-35 (Off-street parking, loading areas and driveways)]. Detached garages to the principal structure shall require the front of the garage to be set back a minimum of 20 feet from the front facade of the principal

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structure, not exceeding 15 feet in height, and altogether not exceeding 400 square feet in gross floor area.

(5) Satellite dish antennas. All satellite dish antennas shall be no larger than eight feet in diameter, located on the principal structure, or as an accessory structure meeting accessory structure yard requirements stated below and located in the rear yard. For all practical purposes, satellite dish antennas shall not be seen from the front facade of the building or the street.

(6) Recreational facilities, including without limitation, swimming pools, as are usual and customary to a permitted principal use.

(7) Temporary construction trailers and one sign not exceeding 100 square feet advertising the prime contractor, subcontractor(s), architect, financing institution and similar data for the period of construction, beginning with the issuance of a construction permit and concluding with the issuance of a certificate of occupancy or one year, whichever is less, provided said trailer(s) and sign are on the site where construction is taking place and set back at least 10 feet from all street and lot lines.

(8) For lots which abut the City's canals or bayside waterways, boat slips for the tie-up of private boats owned and/or used by the residents of the premises and/or rented to other private individuals on a contractual basis. All boats shall be licensed as required with the appropriate agencies.

(9) Public utility cabinet(s) not exceeding three feet in height, with adequate landscaping screening as necessary and not located in sight triangle easements at street corner intersections. It is recommended that public utility cabinet(s) be located underground in watertight vaults. Suggested plant species are referenced in Appendix A.[2]

[2] Editor's Note: Appendix A is on file in the City offices.

(10) Air-conditioning/HVAC compressor units and emergency electrical generators are not permitted in the front yard of any principal structure and/or lot. Air-conditioning/HVAC compressor units and emergency electrical generators are not permitted in the front 50% of a side yard setback; and as to any such equipment that is located in a side yard setback, it shall be screened so as to not be visible from any street or adjoining property when viewed from ground level. Temporary (i.e., removable) window air-conditioning units and temporary ductless air-conditioning/HVAC compressor units that do not project more than one foot beyond the existing structure are permitted when incorporated into an existing building by way of renovation. Replacement of in-kind units, without any increase in footprint size, located in the setback area prior to the adoption of this section are exempt from this regulation.

(11) Solar energy systems (see Article XII).

(12) Christmas tree sales. The annual sale of Christmas trees is permitted between December 1 and December 25, inclusive.

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(13) Public election voting places. The provisions of this chapter shall not be construed as to interfere with the temporary use of any property as a voting place in connection with a municipal or other public election.

(14) Outdoor dining areas with tables on the water's edge of the property and/or boardwalk or sidewalk in front of or on the side of the non-automobile-oriented restaurants and specialty food outlets premises is permitted. Outdoor dining areas shall take place on site but not be located in the public sidewalk and/or public/street right-of-way for permitted uses, unless approved by Mayor and Council. Outside tables and seats may be situated outside of the building on the parcel/lot, or on elevated and/or floating docks, but not in the public/street right-of-way, unless approved by Mayor and Council. No operation of a business in the North Wildwood Marina Zoning District shall be located in such a way that less than five feet of paved sidewalk remains for the exclusive use of the traveled way for pedestrians, nor shall any such operation of the business or outside tables and seats project or protrude into, on or above the required five-foot-wide pedestrian passageway.

(a) The hours of operation of outdoor dining areas shall be limited to the hours of operation of the associated restaurant. In no event shall hours of operation go past 2:00 a.m.

(b) Outdoor dining is defined as any part of a food establishment located outdoors. See also § 276-22G. Outdoor dining in locations located in the public sidewalk and/or public/street right-of-way is permitted subject to the exclusive approval of the Mayor and Council. The inclusion of outdoor dining will not require any additional parking based upon the number of permitted tables and/or permitted seats.

(c) Parklets shall be permitted in locations subject to the exclusive approval of the Mayor and Council.

(d) Adequate lighting shall be provided to promote safe passage of pedestrians and for patrons.

(e) Awnings and/or umbrellas may be used in conjunction with the outdoor dining areas. Awnings shall be adequately secured. Awnings, including supporting structures, must be within the property line. The bottom of the awning shall be seven feet from the ground.

(f) Dockage for recreational boats is permitted, where legally part and parcel to the property. Adequate staff to assist in docking is required. Adequate dockage security is needed for eating, drinking establishments and bars to screen patrons below the minimum alcoholic beverage age entering the establishment from waterside dockage.

D. Maximum building height. Except hotels and motels regulated pursuant to sub-section B.5(ii) of this Ordinance, hotels and motels are permitted to a maximum building height of 65 feet from the base flood elevation (BFE) or six stories, whichever is less. No other permitted use shall have a building height that shall exceed 36 feet in height from the BFE or three stories, whichever is less, except as follows:

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(1) The following structures may be erected above the heights prescribed by this chapter, but in no case shall the height of any of these appurtenances exceed a height equal to 10% more than the maximum height permitted for the particular use in the zoning district:

(a) Mechanical rooms and other roof structures for the housing of stairways, tanks, ventilating fans, HVAC equipment or similar equipment required to operate and maintain the building.

(b) Skylights, spires, cupolas, flagpoles, chimneys or similar structures.

(c) Safety enclosures of rooftop areas of hotels and motels used for sundecks and other recreational purposes.

(2) Cellular telephone antennas and/or associated equipment are expressly excluded from this provision.

E. Applicable area and yard requirements except if otherwise regulated pursuant to the Amended Redevelopment Plan or standards provided pursuant to Section B.5(ii) of this Ordinance.

Category	Requirement
Principal buildings, minimum	
Lot area	3,000 square feet
Lot frontage ¹	30 feet
Lot width ¹	30 feet
Lot depth	100 feet
Side yard (each)	6 feet
Front yard	10 feet
Rear yard	15 feet
Maximum coverage of principal building	60%
Maximum lot (impervious) coverage	75%
Accessory building, minimum	
Distance to side line	04 feet
Distance to rear line	04 feet
Distance to other building	04 feet
Floor area ratio	0.75

NOTES:

¹ No building or addition constructed thereon shall be constructed under this subsection on a lot less than 30 feet wide without variance relief.

F. General requirements.

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(1) Any principal building may contain more than one permitted use and/or organization, provided that the total building coverage of the combined activities does not exceed the maximum building coverage specified for the district and, further, that any building shall have a maximum of three permitted uses within it, and that each activity occupies a minimum gross floor area of 750 square feet for individual uses.

(2) Merchandise, products, equipment or similar materials or objects can be displayed or stored outside so long as the merchandise, products, equipment or similar materials or objects shall be located/installed in such a manner that they do not interfere with or are not located in the sidewalk and/or sidewalk area to prevent free travel of pedestrians.

(3) All areas not utilized for buildings, parking, loading, access aisles, driveways or pedestrian walkways shall be suitably landscaped with shrubs, ground cover, seeding or similar plantings and maintained in good condition. Suggested plant species are referenced in Appendix A.[3]

[3] Editor's Note: Appendix A is on file in the City offices.

(4) The conditional uses in the North Wildwood Marina District shall be subject to review by the Planning Board for a determination of the appropriateness of the proposed use as it relates to existing adjoining uses and the community at large.

(5) No use creating a nuisance as determined by the City under applicable codes and regulations shall be permitted.

(6) Air-conditioning/HVAC compressor units and emergency electrical generators are not permitted in the front yard of any principal structure and/or lot. Air-conditioning/HVAC compressor units and emergency electrical generators are not permitted in the front 50% of a side yard setback; and as to any such equipment that is located in a side yard setback, it shall be screened so as to not be visible from any street or adjoining property when viewed from ground level. Temporary (i.e., removable) window air-conditioning units and temporary ductless air-conditioning/HVAC compressor units that do not project more than one foot beyond the existing structure are permitted when incorporated into an existing building by way of renovation. Replacement of in-kind units, without any increase in footprint size, located in the setback area prior to the adoption of this section are exempt from this regulation.

(7) Landscaping shall be provided in the front yard area and shall be reasonably distributed throughout the entire front yard area. Suggested plant species are referenced in Appendix A.[4]

[4] Editor's Note: Appendix A is on file in the City offices.

(8) Bicycle racks shall be located on the business site, with a minimum capacity of seven bicycles. No locking mechanisms need to be provided. The racks shall be located/installed in such a manner that they do not interfere with or are not located in the public/street right-of-way and/or sidewalk area.

G. Minimum off-street parking. Unless otherwise regulated pursuant to the Amended Redevelopment Plan or pursuant to Section B.5(ii) hereof, each individual use shall provide

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Exhibit "D" – NWM Zoning District Ordinance

parking spaces according to the following minimum provisions. Where a permitted use of land includes different specific activities with different specific parking requirements, the total number of required parking spaces shall be obtained by individually computing the parking requirements for each different activity and adding the resulting numbers together.

(1) Water-dependent uses, watercraft sales and rentals and ancillary uses shall provide parking at the ratio of one space per 150 square feet of gross floor area.

(2) Hotels and motels shall provide parking spaces as follows:

1 Bedroom	1.0 parking space(s)
2 Bedroom	1.3 parking spaces
3 Bedroom	1.9 parking spaces

(3) Eating and drinking establishments, including restaurants and specialty food outlets, bars and taverns shall provide a minimum of one space for every four seats, but in all cases a sufficient number of spaces to prevent any parking along public rights-of-way or private driveways, fire lanes and aisles.

(4) Water-dependent uses and any other permitted uses shall provide parking as determined during site plan review.

(5) Outdoor seating/dining areas intended for use during spring, summer and autumn months shall not be considered when calculating the number of parking spaces required by this subsection.

(6) Unless otherwise provided herein or inapplicable, all residential dwelling units described in this chapter shall provide parking spaces in accordance with the standards established by the New Jersey Residential Site Improvement Standards (RSIS) (N.J.S.A. 5:21-1 et seq.). RSIS standards include parking requirements for residential uses based on unit (bedroom) size. If the applicant/developer does not specify the number of bedrooms per dwelling unit, then each dwelling unit shall be subject to the RSIS parking space requirements for a four-bedroom dwelling unit.

(7) See § 276-35 for additional standards.

H. Permitted signs.

(1) Except for any high-rise development permitted pursuant to this zoning district regulation, each individual use in an individual building may have one primary sign attached to the building not exceeding an area equivalent to 10% of the first-floor portion of the front facade or 100 square feet, whichever is smaller. Each individual use may have one freestanding sign along each road on which the tract in question abuts. Such sign shall not exceed a height of 25 feet, shall be set back from the street rights-of-way and driveways at least five feet, or shall be set back from any property line a minimum of five feet, shall not exceed an area of 200 square feet, and shall be used only to display the individual activity name. Where an individual activity has direct access from

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the outside, a sign not exceeding four square feet identifying the name of the activity may also be attached to the building at the entrance to the activity. High-Rise buildings developed in the North Wildwood Marina Zoning District may have one primary sign not to exceed 70 feet in height and 50 feet in width, and shall not exceed an area of 3,500 square feet, the details of such sign are required to be provided during site plan review.

(2) Bars and taverns in an individual building may have one primary sign attached to the building not exceeding an area equivalent to 10% of the first-floor portion of the front facade or 100 square feet, whichever is smaller. Each individual use may have one freestanding sign along each road on which the tract in question abuts. Such sign shall not exceed a height of 30 feet, shall be set back from the street rights-of-way and driveways at least five feet, or shall be set back from any property line a minimum of five feet, shall not exceed an area of 300 square feet, and shall be used only to display the individual activity name. Where an individual activity has direct access from the outside, a sign not exceeding eight square feet identifying the name of the activity may also be attached to the building at the entrance to the activity. Eating and drinking establishments, including restaurants and specialty food outlets, and bars and taverns shall have a total maximum of 1,000 square feet of signage on the property.

(3) "Open for business" window signs, if located in a storefront window, shall be excluded from the overall sign calculations as long as the sign does not exceed 10 square feet in area. Signs, typically the A-frame/sandwich-board style, ancillary to the permitted use shall be permitted on the sidewalk area, at the curb or against the building wall. The sign shall not exceed four square feet, identifying the name of the location, exclusive of the cumulative sign square feet requirement. No operation of a business in the North Wildwood Marina Zoning District shall be located in such a way that less than five feet of paved sidewalk remains for the exclusive use of the traveled way for pedestrians, nor shall any such operation of the business or outside tables and seats project or protrude into, on or above the required five-foot-wide pedestrian passageway. Signs in this style shall be a maximum of eight square feet. All signs as permitted by this subsection must be removed when the business is closed for operation. On corner properties/street intersections, no handicapped sidewalk curbs ramps shall be blocked by said signs.

(4) Temporary sign banners, such as "clearance", "sale", "end of year", etc., are permitted to be attached to the building facade so long as the banner is not posted for more than 10 calendar days.

(5) All signs on one property shall conform in character with all other signs in the complex and shall blend with the overall architectural scheme of the property.

(6) All exterior signs shall identify uses, activities or functions of the development on which the sign is located. No advertising of any product, use or activity outside of the development is permitted.

(7) Signage for similar project elements on one property shall be coordinated and similarly themed to provide a unifying style. All signs for individual uses shall conform in character with all other signs on the property. This regulation shall not be construed to mean that all signs must be identical or to prohibit unique sign designs where necessary and appropriate, but rather that, absent specific

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justification (i.e., branding/theme-ing requirements for themed retail outlets or food and beverage outlets), sign design shall be complementary and consistent.

(8) No vacant signs or sign boxes shall be permitted. Where vacancies occur, corresponding signage shall be immediately replaced with general development or other appropriate signage. Similarly, any sign which falls into a state of disrepair shall immediately be repaired or replaced.

(9) All signs must be professionally designed and constructed. Homemade-type plywood, coroplast or cardboard signs or home-computer-generated-type signs are expressly prohibited.

(10) Sign lighting shall be appropriate for the type and style of sign proposed and may include LED, neon or other illumination. Similarly, the use of neon lighting or similar material to create sculptural logo or iconographic images is encouraged.

(11) See § 276-40 for additional standards.

I. Minimum off-street loading; trash and garbage locations.

(1) The need for, location and design of off-street loading and unloading areas shall be considered and determined at the time of site plan review. Off-street loading and unloading areas shall take place on site but not in the public street right-of-way, except for multi-family and hotel high-rises, for which off-street loading and unloading shall be permitted, and the details of the loading and unloading areas shall be provided as part of site plan review.

(2) The need for, location and design of trash and garbage locations shall be considered and determined at the time of site plan review. Recycling, trash and garbage loading and unloading areas shall take place on site but not in the public street right-of-way, except for multi-family or hotel high-rises which shall be permitted to have loading and unloading of trash, garbage and recyclables in the public street right-of-way provided storage area(s) are screened or located inside of a building and shall be designed for truck access for pickup of materials, and the details of the trash and garbage locations shall be provided as part of site plan review.

(3) Each use must include provisions for the collection, disposition and recycling of recyclable materials, including newspapers, leaves, white high-grade paper, glass bottles and jars, aluminum, corrugated cardboard, and tin and bimetal cans. The amount of recyclable material generated weekly by each use shall be quantified and reviewed during site plan review to determine whether the storage area to contain a week's accumulation of recyclable material is adequate in size and location. The storage area shall be designed for truck access for pickup of materials and be suitably screened from view if located outside a building.

(4) Recycling, trash and garbage loading and unloading areas shall be marked with yellow cross-striping pavement markings and marked with signage and as "No Parking or Standing Zones" if adjacent to automobile traffic or parking areas.

**CITY OF NORTH WILDWOOD
COUNTY OF CAPE MAY, NEW JERSEY**

ORDINANCE NO. _____

**VACATING PORTIONS OF 5th 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**

WHEREAS, N.J.S.A. 40:67-1b confers upon municipalities the authority to “vacate any public street, highway, lane, alley, or any part thereof...,” and

WHEREAS, in furtherance of, and implementation of, the dispositions of Superior Court of New Jersey Cape May Count Chancery Division’s litigation entitled *Manufacturers and Traders Trust Company v. Marina Bay et al.* docketed as CPM-F-049229-14, the Final Order of which issued on January ___, 2020, and as required by the “Final Restructuring Plan” pursuant to the foregoing Final Order, the City has agreed to vacate portions of 5th 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

WHEREAS, it has been determined by the Mayor and Council of the City of North Wildwood that it is in the best interests of the City of North Wildwood that the public’s right, title and interest in, along, upon and over the lands hereinafter described be vacated, surrendered and extinguished, and the public interest will be better served by releasing those vacated areas;

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and City Council of the City of North Wildwood in the County of Cape May and State of New Jersey as follows:

Section 1. The public right, title and interest in, along and over the portions of 5th Avenue and over the portions of New York Avenue, as defined by the metes and bounds description incorporated herein as Exhibit “A” and as further shown in the exhibit entitled “Block 152 Redevelopment Partial Street Vacancies” prepared by Geoffrey R. Lanza, N.J.P.L.S., of Bowman Consulting Group, Ltd., dated _____, annexed hereto and incorporated herein as Exhibit “B”. In the event of any inconsistencies between Exhibit A and Exhibit B, the metes and bounds in Exhibit A shall control.

Section 2. Upon this Ordinance becoming effective, the City shall promptly satisfy the obligations pursuant to Section 2.D. of that certain Settlement Agreement dated _____ by and between the City of North Wildwood and the Block 152 Ownership Interests, and do all things necessary and appropriate to effectuate the consolidation of the street areas vacated hereby and vest the vacated areas into the Block 152 landowner.

Section 3. Nothing contained herein shall be deemed to vacate, surrender or extinguish any right or privilege of the City of North Wildwood or of any public utility, telecommunications provider or cable television company to maintain, repair or replace any of their existing poles, wires, pipes, conduits, sewer mains, water mains or other existing facilities in, adjacent to, over or under the streets herein vacated or any part or parts thereof.

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Section 4. If any portion of this Ordinance is determined to be invalid by a court of competent jurisdiction, that determination shall have no effect upon the remainder of this Ordinance, which shall remain valid and operable.

Section 5. All Ordinances or parts of Ordinances inconsistent with this Ordinance, to the extent of such inconsistencies only, be and the same hereby are repealed.

Section 6. This Ordinance shall take effect immediately upon final passage and publication as provided by law.

Section 7. As required by N.J.S.A. 40:67-21, upon this Ordinance becoming effective, the City Clerk shall promptly file with the Cape May County Clerk for recording a certified copy of this Ordinance, under seal of the City of North Wildwood, together with a copy of the proof of publication of this Ordinance.

TAKE NOTICE that the foregoing Ordinance was introduced and passed on first reading at a regular meeting of the Mayor and Council of the City of North Wildwood, County of Cape May on the _____ day of _____ 2020. A second reading, hearing and final consideration of the above ordinance will be held in the Council Chambers, City Hall, Tenth and Atlantic Avenues at _____ o'clock in the _____ on the _____ day of _____ 2020.



Patrick Rosenello, Mayor

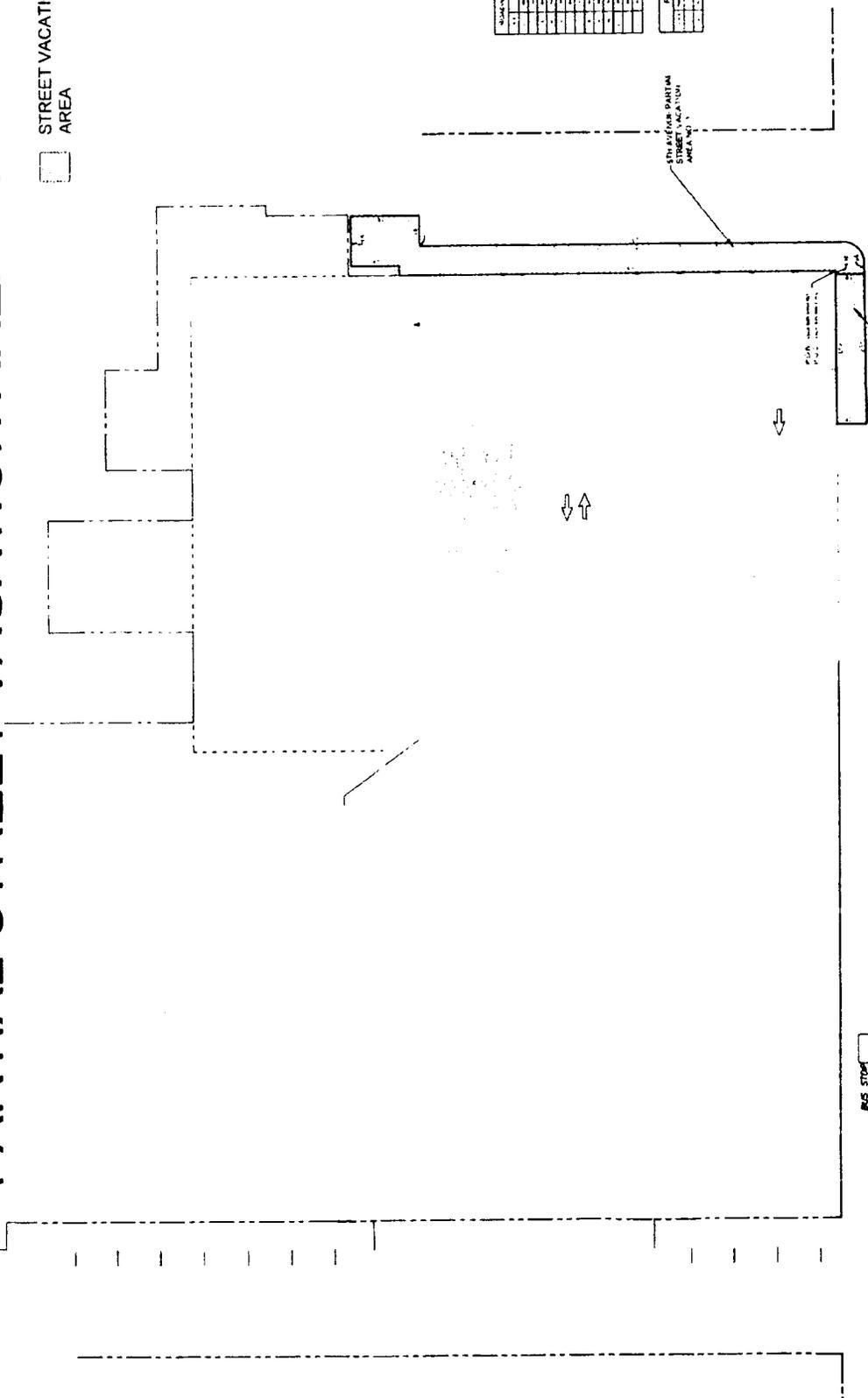
W. Scott Jett, R.M.C. City Clerk

	Aye	Nay	Abstain	Absent		Aye	Nay	Abstain	Absent
Tolomeo					Koehler				
Rullo					Bishop				
Kane					Zampirri				
Del Conte									

ORDINANCE # _____

5TH AND NEW YORK AVENUES PARTIAL STREET VACATION AREA - 0.12 AC

STREET VACATION
AREA



PARCEL NO.	AREA (SQ. FT.)	AREA (SQ. YD.)
1	100	11.11
2	200	22.22
3	300	33.33
4	400	44.44
5	500	55.56
6	600	66.67
7	700	77.78
8	800	88.89
9	900	100.00
10	1000	111.11
11	1100	122.22
12	1200	133.33
13	1300	144.44
14	1400	155.56
15	1500	166.67
16	1600	177.78
17	1700	188.89
18	1800	200.00
19	1900	211.11
20	2000	222.22
21	2100	233.33
22	2200	244.44
23	2300	255.56
24	2400	266.67
25	2500	277.78
26	2600	288.89
27	2700	300.00
28	2800	311.11
29	2900	322.22
30	3000	333.33
31	3100	344.44
32	3200	355.56
33	3300	366.67
34	3400	377.78
35	3500	388.89
36	3600	400.00
37	3700	411.11
38	3800	422.22
39	3900	433.33
40	4000	444.44
41	4100	455.56
42	4200	466.67
43	4300	477.78
44	4400	488.89
45	4500	500.00
46	4600	511.11
47	4700	522.22
48	4800	533.33
49	4900	544.44
50	5000	555.56

ROW	NO.	AREA (SQ. FT.)	AREA (SQ. YD.)
1	1	100	11.11
2	2	200	22.22
3	3	300	33.33
4	4	400	44.44
5	5	500	55.56
6	6	600	66.67
7	7	700	77.78
8	8	800	88.89
9	9	900	100.00
10	10	1000	111.11
11	11	1100	122.22
12	12	1200	133.33
13	13	1300	144.44
14	14	1400	155.56
15	15	1500	166.67
16	16	1600	177.78
17	17	1700	188.89
18	18	1800	200.00
19	19	1900	211.11
20	20	2000	222.22
21	21	2100	233.33
22	22	2200	244.44
23	23	2300	255.56
24	24	2400	266.67
25	25	2500	277.78
26	26	2600	288.89
27	27	2700	300.00
28	28	2800	311.11
29	29	2900	322.22
30	30	3000	333.33
31	31	3100	344.44
32	32	3200	355.56
33	33	3300	366.67
34	34	3400	377.78
35	35	3500	388.89
36	36	3600	400.00
37	37	3700	411.11
38	38	3800	422.22
39	39	3900	433.33
40	40	4000	444.44
41	41	4100	455.56
42	42	4200	466.67
43	43	4300	477.78
44	44	4400	488.89
45	45	4500	500.00
46	46	4600	511.11
47	47	4700	522.22
48	48	4800	533.33
49	49	4900	544.44
50	50	5000	555.56

5TH AVENUE PARTIAL
STREET VACATION
AREA NO. 1

NEW YORK AVENUE
PARTIAL STREET
VACATION AREA NO. 2



THESE PLANS ARE NOT
TO BE USED FOR BID
OR CONSTRUCTION.

11

BLOCK 152 REDEVELOPMENT
PARTIAL STREET VACANCIES

Bowman
CONSULTING

4.9

1.10



January 16, 2020

**DESCRIPTION OF PARTIAL STREET VACANCIES
FOR BLOCK 152 REDEVELOPMENT**

ALL THAT CERTAIN portions of Fifth Avenue and New York Avenue in the City of North Wildwood, Cape May County, New Jersey as shown on a plan entitled, "Block 152 Redevelopment, Partial Street Vacancies, Block 152, City of North Wildwood, Cape May County, New Jersey," as prepared by Bowman Consulting Group, Ltd., dated 01/13/2020, being bound and described as follows:

PARTIAL STREET VACATION AREA NO. 1 – FIFTH AVENUE

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

1. Along said southwesterly sideline of Fifth Avenue, North 45° 00' 00" West, a distance of 222.04 feet to a point in same; Thence through the Right of Way of said Fifth Avenue the following 5 courses:
2. North 44° 41' 12" East, a distance of 4.50 feet to an angle point in same; Thence
3. North 45° 00' 00" West, a distance of 24.44 feet to an angle point in same; Thence
4. North 45° 00' 00" East, a distance of 25.00 feet to an angle point in same; Thence
5. South 45° 00' 00" East, a distance of 34.63 feet to an angle point in same; Thence
6. South 45° 00' 00" West, a distance of 15.11 feet to a point of cusp in the existing southwesterly curb line of Fifth Avenue; Thence along said existing southwesterly curb line of Fifth Avenue the following 3 courses:
7. Along the arc of a curve to the right having a radius of 11.84 feet, an arc length of 1.41 feet and a chord bearing of South 45° 28' 56" East, a distance of 1.41 feet to a point of tangency in same; Thence
8. South 44° 55' 05" East, a distance of 215.68 feet to a point of curvature in same; Thence

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303 West Main Street • Freehold, NJ 07728
Phone: 732 665 5500 • www.bowmanconsulting.com

bowmanconsulting.com

9. Along the arc of a curve to the right having a radius of 10.25 feet, an arc length of 15.09 feet and a chord bearing of South 02° 45' 10" West, a distance of 13.76 feet to a point of tangency in the existing northwesterly curb line of New York Avenue; Thence
10. Along said existing northwesterly curb line of New York Avenue, South 44° 39' 49" West, a distance of 5.51 feet to a point in same; Thence
11. Through the Right of Way of said New York Avenue, North 44° 59' 49" West, a distance of 14.50 feet to a point in the northwesterly sideline of said New York Avenue; Thence
12. North 45° 00' 00" East, a distance of 1.61 feet to the aforesaid point of BEGINNING.

Vacation Area No. 1 Containing 4,136 square feet or 0.0949, acres more or less.

PARTIAL STREET VACATION AREA NO. 2 – NEW YORK AVENUE

BEGINNING at a point on the northwesterly sideline of New York Avenue (70 feet wide), said point being 1.61 feet at a bearing of South 45° 00' 00" West from where same is intersected by the southwesterly sideline of Fifth Avenue (70 feet wide), and running; thence

1. Through the Right of Way of New York Avenue, South 44° 59' 49" East, a distance of 14.50 feet to a point in the existing northwesterly curb line of said New York Avenue; Thence
2. Along said existing northwesterly curb line of New York Avenue, South 44° 51' 25" West, a distance of 73.58 feet to a point in same; Thence
3. Through the Right of Way of New York Avenue, North 45° 00' 00" West, a distance of 14.68 feet to a point in said northwesterly sideline of New York Avenue; Thence
4. Along said northwesterly sideline of New York Avenue, North 45° 00' 00" East, a distance of 73.58 feet to the aforesaid point of BEGINNING.

Vacation Area No. 2 Containing 1,074 square feet or 0.0247 acres, more or less.

Block 152 Redevelopment
Partial Street Vacations
January 16, 2020

Total Combined Area of Partial Street Vacations is 5,210 square feet OR 0.1196 acres,
more or less. Subject to easements and restrictions of record.

This description was prepared by:

Martin F. Tirella, PLS Lic. 27477
Bowman Consulting Group, Ltd.

Robert Beckelman, Esq., Attorney ID No. 028462000
WILENTZ, GOLDMAN & SPITZER P.A.
Attorneys at Law
90 Woodbridge Center Drive
Post Office Box 10
Woodbridge, New Jersey 07095
732.636.8000
Attorneys for Defendant, City of North Wildwood

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

Plaintiff,

v.

CITY OF NORTH WILDWOOD,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: CAPE MAY COUNTY
DOCKET NO.: CPM-L-759-08

Civil Action

**RELEASE AND WARRANT TO
SATISFY JUDGMENT**

WHEREAS, Judgment was entered in the above entitled action in favor of Plaintiff, Marina Bay Towers Urban Renewal II, LP, against Defendant, City of North Wildwood, on April 12, 2017, by the record thereof in Docket Number L-759-08; and

WHEREAS, such Judgment specified that Plaintiff could take no action to levy or attempt to collect upon such Judgment pending resolution or further litigation of outstanding obligations as between the parties; and

WHEREAS, accordingly, Plaintiff has taken no such action and has not docketed or recorded such Judgment; and

WHEREAS, Defendant appealed the Judgment to the Superior Court- Appellate Division; and

WHEREAS, the parties have resolved the issues between them in the appeal of the Judgment and Plaintiff agrees that no sums are due from Defendant pursuant to the Judgment; and

WHEREAS, in consideration for the settlement of the appeal Plaintiff hereby releases Defendant from liability for any sums due under the Judgment and acknowledges that such Judgment is hereby deemed satisfied as a result of the appeal settlement.

NOW THEREFORE, this is your warrant and authority to enter on the aforesaid record, this satisfaction of Judgment.

GOLDENBERG, MACKLER, SAYEGH,
MINTZ, PFEFFER, BONCHI & GILL
Attorneys for Plaintiff

Dated: March , 2020

BY: _____
KEITH A. BONCHI, ESQ.

**WRITTEN CONSENT
OF THE SOLE MEMBER OF
PAC CAPITAL, LLC**

March 31, 2020

The undersigned, being the sole member (the "Sole Member") of PAC Capital, LLC, a New Jersey limited liability company (the "Company"), hereby adopts the following recitals and resolutions by signing this written consent ("Written Consent").

WHEREAS, the Sole Member or the Managing Member of the Company (the "Manager") has concluded that it is in the best interests of the Company to approve the authorization of the Manager or Sole Member to execute the Settlement Agreement;

NOW THEREFORE, BE IT RESOLVED, that the Manager hereby authorizes the Manager or Sole Member to execute the Settlement Agreement on behalf of PAC Capital, LLC and to bind PAC Capital, LLC to the terms, conditions and provisions of the Settlement Agreement; and

RESOLVED, that the authorized officers and/or members of the Company be, and hereby are, authorized and directed to execute and deliver any and all documents, agreements, and/or instruments, and to take any and all actions he may deem necessary and appropriate to effectuate the Settlement Agreement, including without limitation any amendments to PAC Capital, LLC's Operating Agreement; and further

RESOLVED, that the documents, instruments and agreements contemplated by these resolutions shall be in such form as the Manager shall approve, with such approval to be evidenced by the Manager's execution thereof; and further

RESOLVED, that this Written Consent may be executed in counterparts, each of which will be deemed an original and all of which, taken together, shall constitute one and the same instrument; and further

RESOLVED, that all the actions heretofore taken by the Manager, the Members and/or officers of the Company in connection with the transactions contemplated by any of the foregoing resolutions shall be, and hereby are, approved, ratified and confirmed in all respects.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned Sole Member has executed this Written Consent as of the date first above written.

A handwritten signature in black ink, appearing to read "Paul A. Cocozello", written over a horizontal line.

Paul A. Cocozello
Managing Member

**UNANIMOUS WRITTEN CONSENT
OF THE SHAREHOLDERS
OF
BEACH CREEK MARINA, INC.**

March 31, 2020

The undersigned, being all of the shareholders of Beach Creek Marina, Inc., a New Jersey corporation (the "Corporation"), acting pursuant to the Business Corporation Law of the State of New Jersey, the New Jersey Business Corporation Act consisting of N.J.S.A. §§ 14A:1-1 - 14A:18-11, and the Bylaws of the Corporation, have adopted, by this written consent ("Written Consent") as of the date set forth above, the following resolutions with the same force and effect as if adopted at a duly convened meeting of the Shareholders of the Corporation (the "Shareholders").

SETTLEMENT AGREEMENT AUTHORIZATION

RESOLVED, that the individual set forth below be, and hereby is, authorized to execute the Settlement Agreement on behalf of Beach Creek Marina, Inc. and to bind Beach Creek Marina, Inc. to the terms, conditions and provisions of the Settlement Agreement:

Paul A. Cocozziello

GENERAL RATIFICATION

RESOLVED, that this Written Consent may be executed in counterparts, each of which will be deemed an original and all of which, taken together, shall constitute one and the same instrument; and

RESOLVED, that any action heretofore or hereafter taken by the officers of the Corporation with respect to the matters contemplated by the foregoing resolutions are hereby ratified, confirmed and approved in all respects.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have executed this Unanimous Written Consent as of the date first above written.

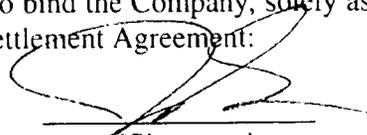


Paul A. Cocozziello
President

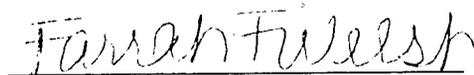
CERTIFICATE OF AUTHORIZATION TO EXECUTE SETTLEMENT
February 26, 2020

The undersigned, Farrah F. Welsh, the duly elected, qualified and acting Assistant Secretary of M&T Bank dba Manufacturers and Traders Trust Company (the "**Company**"), hereby certifies that the person named below does hold the position set forth opposite his name with the Company, that the signature appearing opposite each such person's name is the true signature of such person, and that they are duly authorized to authorized to execute the Settlement Agreement by and among PAC Capital LLC, the Company, solely as Indenture Trustee for certain Essex County Improvement Authority Multifamily Housing Revenue Bonds (Marina Bay Project) Series 2005 A and 2005 B, Beach Creek Marina, Inc. and the City of North Wildwood, New Jersey on behalf of the Company and to bind the Company, solely as Indenture Trustee, to the terms, conditions and provisions of the Settlement Agreement:

Jay H Smith IV Vice President


[Signature]

IN WITNESS WHEREOF, the undersigned has executed this Authorization on the date first above written.



Assistant Secretary

**WRITTEN CONSENT OF
THE PARTNERS OF
MARINA BAY TOWERS URBAN RENEWAL II, L.P.**

March ____, 2020

In accordance with the New Jersey Revised Uniform Limited Partnership Act consisting of N.J.S.A. §§ 42:2A-1-42:2A-73, as amended (the “Act”), and under the authority of the Amended and Restated Agreement of Limited Partnership of Marina Bay Towers Urban Renewal II, L.P. (“MBT II”), the undersigned, constituting the General Partner of MBT II, First Community Development Corporation (the “General Partner”), hereby adopts the following recitals and resolutions by written consent (this “Written Consent”), which shall be effective as of the date set forth above.

WHEREAS, the General Partner determines it to be in the best interests of MBT II to execute the Settlement Agreement by, among and between MBTII, PAC Capital, LLC, Beach Creek Marina, Inc., Manufacturers and Traders Trust Company and the City of North Wildwood, attached hereto as **Exhibit A** (the “Settlement Agreement”); and

WHEREAS, Paul A. Coccoziello, as authorized representative of MBTII, has been engaged in negotiation of the Settlement Agreement and has discussed the Settlement Agreement with Rocco J. Meola, the President of the General Partner; and

WHEREAS, the General Partner has determined that MBT II should, in connection with approving the Settlement Agreement, authorize Rocco J. Meola, the President of the General Partner, to execute the Settlement Agreement on behalf of MBT II and to bind MBT II to the terms, conditions and provisions of the Settlement Agreement;

NOW, THEREFORE, BE IT RESOLVED, that pursuant to this Written Consent, the General Partner hereby authorizes and approves the execution of the Settlement Agreement by the General Partner; and

RESOLVED, that Rocco J. Meola, the President of the General Partner, be, and hereby is authorized to execute the Settlement Agreement on behalf of MBT II and to bind MBT II to the terms, conditions and provisions of the Settlement Agreement, as a representative of the General Partner; and further

RESOLVED, that the General Partner be, and hereby is, authorized and directed to take all actions and execute all documents as it shall deem appropriate, necessary or convenient to effect the foregoing resolutions; and further

RESOLVED, that the documents, instruments and agreements contemplated by these resolutions shall be in such form as the General Partner shall approve, with such approval to be evidenced by the General Partner’s execution thereof; and further

RESOLVED, that this Written Consent may be executed in counterparts, each of which

will be deemed an original and all of which, taken together, shall constitute one and the same instrument.

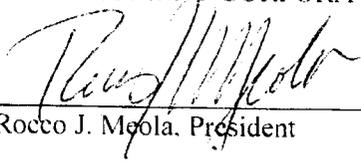
[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the General Partner has executed this Written Consent as of the date first written above.

“General Partner”

FIRST COMMUNITY DEVELOPMENT CORPORATION

By:

A handwritten signature in black ink, appearing to read "Rocco J. Meola", written over a horizontal line.

Rocco J. Meola, President

SIGNATURE PAGE TO THE WRITTEN CONSENT OF
THE GENERAL PARTNER OF MARINA BAY TOWERS URBAN RENEWAL II, L.P.

1.7 - EXHIBIT "H" to SA.

EXECUTION COPY

CITY OF NORTH WILDWOOD

Cape May County, New Jersey

RESOLUTION

AUTHORIZING THE MAYOR TO EXECUTE A SETTLEMENT AGREEMENT IN CONNECTION WITH VARIOUS LITIGATION MATTERS CONCERNING MARINA BAY TOWERS AND RELATED LITIGATION WITH OWNERSHIP INTERESTS IN AND AROUND THE MARINA BAY TOWERS PROJECT AND OTHER PROPERTY WITHIN BLOCK 152.

WHEREAS, on August 30, 2002, the City and Marina Bay Towers Urban Renewal, L.P. ("*Marina Bay I*"), executed a Financial Agreement Between The City of North 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. (the "*Financial Agreement*") in connection with the senior citizen low- and moderate-income rental housing units contained in Marina Bay Project (as such term is defined in the Financial Agreement) (hereinafter "*Marina Bay Project*" or "*Project*"); and

WHEREAS, on August 16, 2005, the City and Marina Bay I executed and entered into that certain Assignment, Consent to Assignment, and Acknowledgment of Continuing Liability agreeing to and acknowledging, *inter alia*, the assignment of the Financial Agreement from Marina Bay I to Marina Bay Towers Urban Renewal II, L.P. ("*Marina Bay II*");

WHEREAS, there have been disputes between the City and Marina Bay II with respect to the Financial Agreement and annual service charges and sewer service charges, which were the subject of a municipal lien sale and foreclosure matter captioned as *Royal Tax Lien v. Marina Bay Towers Urban Renewal II, LP, et al.*, docketed as CPM-F-010203-11 (the "*Tax Lien Foreclosure Matter*"), as well as a Law Division action captioned as *Marina Bay v. City of North Wildwood* and docketed as CPM-L-759-08 (hereinafter, the "*Financial Agreement Matter*"); and

WHEREAS, the Tax Lien Foreclosure Matter was litigated to conclusion, pursuant to the decision of the Appellate Division in *Royal Tax Lien Services, L.L.C. v. Marina Bay Towers Urban Renewal II, L.P.*, No. A-1638-13 (App. Div. Aug. 14, 2015), certif. denied, 224 N.J. 528 (2016) (the "*Final Tax Lien Decision*"), with the exception of (1) a cross-claim for alleged civil rights violations against the City by PAC Capital, LLC ("*PAC*"), the sole and majority owner of the Essex County Improvement Authority ("*ECLA*") mortgage revenue Series A and B Bonds ("*ECLA Bond Mortgage*"), which was severed and assigned to the Law Division under docket No., CPM-L-444-14, now pending before the Appellate Division, Docket No. A-771-17 (the "*PAC Claims Appeal*"), and (2) a limited remand concerning the identification and tax mapping of specific non tax-exempt property owned by Beach Creek Marina, Inc. ("*Beach Creek*"), the ground lessor and fee simple owner of the land upon which the Marina Bay Project is situated,

which remand determined the portions of the property that are not subject to an exemption from ad valorem taxation pursuant to the Financial Agreement and the portions which are exempt; and

WHEREAS, on June 6, 2016, the Superior Court of New Jersey Cape May County Chancery Division entered a Final Order in the Tax Lien Foreclosure Matter (hereinafter, the “**Final Exemption Order**”) clarifying and establishing, *inter alia*, the “Applicable Condominium Areas, Common Elements, Site Infrastructure, Easements and Rights-Of-Way Schedule for The Marina Bay Towers Condominium” situated on the Block 152 property which condominium property description was recorded on the title of the subject property on July 12, 2016 in the Cape May County Clerk’s Office, Book D3685 Pages 768, in accordance with the Final Exemption Order and as may be amended pursuant the Final Restructuring Plan and Judgment (see below) and attendant modifications to the condominium master deed of Marina Bay Towers Condominium Association, Inc. (“**Exempted Property**” or “**Condominium Ground Lease Area**”); and

WHEREAS, Anglesea Properties, LLC, an entity 100% owned and controlled by Paul Coccoziello (“**Anglesea**”), filed a Mount Laurel builder’s remedy suit against the City concerning the Ownership Interests’ properties, pending before the Law Division and captioned as Anglesea Properties, LLC v. City of North Wildwood, Docket No. CPM-L-359-15 (the “**Anglesea Matter**”);

WHEREAS, in addition to the above, the City, the Marina Bay II, PAC and Beach Creek (the latter three entities referred to collectively hereinafter as the “Ownership Interests”) and other parties, including the State of New Jersey’s Department of Community Affairs (“**DCA**”) and Housing and Mortgage Finance Agency (“**HMFA**”), are parties to an ECIA Bond Mortgage foreclosure matter filed by Trustee for the ECIA Bonds, Manufacturers and Traders Trust Company (“**Trustee**”) in the Superior Court of New Jersey Cape May County, Chancery Division known as Manufacturers and Traders Trust Company v. Marina Bay et al. docketed as CPM-F-049229-14 (“**Mortgage Foreclosure Matter**”) in which matter the Honorable Mark H. Sandson, P.J.Ch., filed an Order on May 22, 2018 (“**Restructuring Order**”), approving the sale of the Marina Bay Project to a “New Owner” (see below) and a financial “Restructuring Plan” providing for the reconfiguration, reconstruction and renovation of the Marina Bay Project; and

WHEREAS, also on May 22, 2018, the Honorable Julio L. Mendez, A.J.S.C., signed and filed an Order appointing a Special Master which was subsequently amended by the Amended Order entered on July 2, 2018 (the “**Special Master Order**”); and

WHEREAS, pursuant to the Restructuring Order and the Special Master Order, the final number and income mix of dwelling units provided by the Restructured Marina Bay Project (as defined below) shall be in accordance with the final, updated and/or modified Restructuring Plan approved by the Court and as may be further ordered by the Court as part of a final judgment in the Foreclosure Matter pursuant to Paragraph 5 of the Special Master Order (hereinafter, the “**Final Restructuring Plan and Judgment**”);

WHEREAS, on April 12, 2017, the Superior Court of New Jersey Cape May County Law Division, the Honorable Christopher Gibson, J.S.C. presiding, entered a Final Judgment in the Financial Agreement Matter (hereinafter, the “**Final Financial Agreement Order**”); and

WHEREAS, the City filed an appeal of the Final Financial Agreement Order in October 2017 and Marina Bay responded and filed a cross-appeal in the Superior Court of New Jersey Appellate Division in connection therewith bearing Appellate Court Docket Court No. A-004089-16T4 (“*Financial Agreement Appeal*”) which is currently pending (the Financial; Agreement Appeal and the PAC Claims Appeal collectively referred to herein as the “*Appeals*”); and

WHEREAS, on June 26, 2018, the DCA and HMFA jointly filed a motion for leave, and were subsequently granted the right, to file an interlocutory appeal in the Appellate Division in the Mortgage Foreclosure Matter with respect to the Restructuring Order, bearing Appellate Court Docket No. A-005879-17 (“*Interlocutory Appeal*”); and

WHEREAS, the Appellate Division issued a decision on October 22, 2019 (“*Appellate Foreclosure and Restructuring Opinion*”) substantially affirming Judge Sandson’s decision in relevant part, including Paragraph 6 of the Restructuring Order, as may be amended in remand proceedings pending in the Mortgage Foreclosure Matter, which provides that the Financial Agreement shall be amended and assigned consistent with the Restructuring Order; and

WHEREAS, the Parties are desirous of cooperating and complying with the Restructuring Order and Appellate Foreclosure and Restructuring Opinion; and

WHEREAS, in furtherance of the Parties’ compliance with the Restructuring Order and Final Restructuring Plan and Judgment once entered, the City and Marina Bay desire to amend and supplement the Financial Agreement by executing and entering into a First Amendment and take further land use legislative actions in furtherance of the Final Restructuring Plan and Judgment, as set forth in more detail herein; and

WHEREAS, Tax Lien Foreclosure Matter, Financial Agreement Matter, Financial Agreement Appeal, PAC Claims Appeal, Mortgage Foreclosure Matter, and Anglesea Matter (hereinafter, collectively, the “*Block 152 Litigation*”) have been and continue to be cost-generative and a delaying factor and impediment to the implementation of various plans presented during the course of the Block 152 Litigation to restore and provide affordable housing on Block 152 damaged by various hardships including SuperStorm Sandy. The Honorable Mark H. Sandson, J.S.C., found that “The record clearly shows that [the Trustee] and PAC Capital made numerous revisions to the proposed [Sandy Recovery and Redevelopment] plan to attempt to accommodate the various interested parties. The numerous hardships the project was forced to undergo, including Super Storm Sandy . . . have hobbled this important public resource” and Ordered that “time is of the essence in terms of preserving the ability of current tenants to remain in the building and minimizing expenses”;

WHEREAS, the parties are desirous of implementing a prompt and efficient resolution of all Block 152 Litigation in furtherance of the public interest since it will provide a realistic opportunity to provide for, and assist the effort to more cost effectively and speedily facilitate, the rehabilitation and provision of this important affordable housing public resource found by the Courts;

WHEREAS, in furtherance of a restructuring and rehabilitation plan for the Redevelopment Project approved by the New Jersey Super Court, Chancery Division in Mortgage Foreclosure and the attendant public purposes, interests and benefits discussed by the Court in that Matter, which include, among other things, the restoration of the maximum number of affordable dwelling units determined by the Court to be feasible pursuant to the Restructuring Plan, the City is desirous of entering into the Settlement Agreement and take the legislative action provided therein to facilitate the Restructuring Plan and resolve litigation between the City and property ownership interests.

WHEREAS, in addition, the City is desirous of causing the more flexible and efficient implementation of the Restructuring Plan in manner to enhance the new district's ability to be more flexibly and efficiently developed.

WHEREAS, the City recognizes and accepts the public purpose found by the Chancery Division and affirmed by the Appellate Division in the Foreclosure Matter in restoring and maximizing the number of affordable housing units in the Restructuring Plan which is now final; and

WHEREAS, in furtherance of and in consideration for reaching a full and final settlement of the Block 152 Litigation.

NOW, THEREFORE, BE IT RESOLVED, by the Members of City Council of the City of North Wildwood, in the County of Cape May and State of New Jersey, as follows:

1) On behalf of the City of North Wildwood, the Mayor and City Clerk be, and they are, hereby authorized to execute the Settlement Agreement in the form attached hereto as Exhibit A.

2) The City Administrator, City Clerk and City Solicitor are authorized to take such actions as are necessary and proper to effectuate the purpose and intent of this Resolution.

OFFERED BY:

SECONDED BY:

I, W. Scott Jett, City Clerk of the City of North Wildwood, in the County of Cape May, State of New Jersey, do hereby certify that the foregoing is a correct and true copy of a Resolution adopted by the Council of the City of North Wildwood at a meeting duly held on the _____ day of March, 2020.

Dated: March _____, 2020

Signed:

W Scott Jett, City Clerk

EXECUTION COPY

MEMORANDUM OF UNDERSTANDING

The parties have met and conferred numerous times most recently on February 20, 2020, as the culmination of a series of mediation sessions conducted by the Retired Appellate Division Judge Robert A. Fall as authorized by the Court. As a result of the mediation process the parties are entering into this Memorandum of Understanding with regard to the draft Settlement Agreement with respect to multiple pending litigations, annexed hereto as Exhibit "A," which itself has annexed to it a number of documents that have been prepared and are necessary to implement the Settlement Agreement.

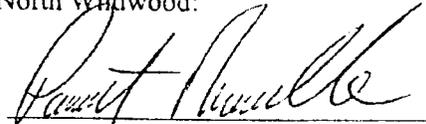
The Mayor and the Special Counsel agree to recommend to the members of the Governing Body and the members of the Planning and Land Use Board the approval of the necessary legislation to implement the Settlement Agreement, including but not limited to the ordinances in the form annexed thereto, and to use their good faith efforts to facilitate the implementation of the Settlement Agreement.

PAC Capital LLC and its counsel agree to direct the Indenture Trustee and its counsel to recommend to the Special Master and the Court in the pending foreclosure matter, *Manufacturers and Traders Trust Co. v. Marina Bay Towers Urban Renewal II, L.P., et al.* (Docket No. CPM-F-049229-14), the approval of the revised Restructuring Plan ("Plan") and to use its good faith efforts to facilitate the implementation of the Plan.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, this Memorandum of Understanding has been duly executed and delivered on behalf of the parties as of the date first above written.

For the Mayor of the City of North Wildwood:



Name: Patrick Rosenello

Title: Mayor

PAC Capital LLC:



Name: Paul A. Coccoziello

Title: Managing Member