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SSH BOULEVARD URBAN RENEWAL
LLC, SEASIDE HEIGHTS BOULEVARD
URBAN RENEWAL LLC, and DANCO
GENERAL CONTRACTING, INC.

Plaintiffs,

v.

BOROUGH OF SEASIDE HEIGHTS, NEW
JERSEY; and MAYOR AND COUNCIL OF
BOROUGH OF SEASIDE HEIGHTS, NEW
JERSEY,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: OCEAN COUNTY

DOCKET NO.

Civil Action

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS FOR
SPECIFIC PERFORMANCE AND
FOR OTHER RELIEF**

Plaintiffs SSH Boulevard Urban Renewal LLC (“SSH”), Seaside Heights Boulevard Urban
Renewal LLC (“Seaside Heights Boulevard”), and Danco General Contracting, Inc. (“Danco” and

collectively with SSH and Seaside Heights Boulevard, “Plaintiffs”), by way of Complaint against Defendants Borough of Seaside Heights, New Jersey and the Mayor and Township Council of Seaside Heights, New Jersey, (collectively “Defendants” or “Seaside Heights”), allege as follows:

NATURE OF THE ACTION

1. Plaintiffs bring this action in lieu of prerogative writs seeking specific performance, declaratory judgment, damages, and other relief because Defendants have illegally attempted to de-designate SSH as the redeveloper of property situated at 406 Boulevard (Block 5.01 Lot 59), 418 Boulevard (Block 5.01 Lot 63) and 58 Hamilton (Block 5.01 Lot 58) (collectively, the “Property”), terminate a purchase and sale agreement and redevelopment agreement with SSH, and have refused to comply with Plaintiffs’ contractual right to close title on the Property located in Seaside Heights in breach of both agreements.

2. Throughout the course of this matter, Defendants have materially delayed and frustrated SSH from obtaining all approvals required to finance and construct the redevelopment project at issue, all while simultaneously alleging that SSH is in default for not having obtained all approvals and financing.

3. Plaintiffs, however, have diligently done what they can to have the redevelopment project shovel-ready and financed, and repeatedly offered the Borough good-faith updates and demonstrated that SSH had met or exceeded every deadline it possibly could despite Seaside Heights’ obstructive conduct and mishandling of SSH’s applications for approvals.

4. In fact, the only outstanding approvals needed to finalize and finance the redevelopment project had been applied for and had been sitting within Defendants’ own offices for months prior to Defendants’ illegal actions that gave rise to this matter.

5. Defendants have also repeatedly insisted that Plaintiffs comply with demands that

have no basis in either of the agreements governing the redevelopment project at issue in this case.

6. After months of Defendants' own delays and arbitrary demands, Defendants told SSH that Defendants were no longer in favor of the redevelopment project, notwithstanding that the project was fully compliant with Seaside Heights' own redevelopment plan, and that SSH had obtained municipal site plan approval for the redevelopment project, vesting SSH with the right to proceed with the approved development.

7. Defendants' violation of the governing agreements, together with their own inaction and material delays leading to this litigation culminated in Defendants adopting a resolution and first reading of an ordinance purporting to take the referenced illegal measures on November 25, 2025 (collectively, the "Actions").

8. The meeting occurred without notice to SSH, pursuant to a consent agenda with no public discussion about either Action, without the meeting being livestreamed or recorded in stark contrast with how Seaside Heights typically conducts its council meetings, and with the meeting's agenda having been posted online less than an hour before the meeting started.

9. As of the date of this Complaint, upon information and belief, a first or second reading of the ordinance purporting to terminate the Purchase and Sale Agreement has not yet occurred during the 2026 session.

10. Defendants undertook the Actions without providing notice to SSH or SSH's attorney as required by the governing agreements.

11. Plaintiffs have been left with no option but to commence this lawsuit against Defendants, and ask the Court to declare the Actions illegal, *ultra vires*, null, void and of no further force or effect since the Actions breach both the Redevelopment Agreement and Purchase and Sale Agreement, and to require Defendants to specifically perform their obligation to close title to the

Property under the Purchase and Sale Agreement together with the other relief requested in this complaint.

THE PARTIES

12. Plaintiff SSH is a New Jersey urban renewal limited liability company, contract purchaser of the Property, and designated redeveloper of the Project.

13. Plaintiff Seaside Heights Boulevard is a New Jersey urban renewal company formed as a successor in interest to SSH.

14. Plaintiff Danco is a New Jersey corporation that is owned and operated by the sole member of SSH and Seaside Heights Boulevard.

15. Defendant Borough of Seaside Heights, New Jersey is a municipal corporation of the State of New Jersey and located in Ocean County.

16. Defendants Mayor and Council are elected officials that constitute the governing body of the Borough of Seaside Heights.

17. Pursuant to N.J.S.A. 40A:60-5, the Mayor of the Borough of Seaside Heights is the head of the municipal government.

18. Pursuant to N.J.S.A. 40A:60-6, the Borough Council of the Borough of Seaside Heights is the governing and legislative body of Seaside Heights and is accountable for performing all the governmental functions of Seaside Heights not specially otherwise reserved to another office or officer by law.

JURISDICTION AND VENUE

19. This Court has jurisdiction because Defendants either reside or have offices located in New Jersey, and because this action arises out of and relates to Defendants' contacts with New Jersey, including the discharge of their official duties.

20. Venue is proper in Ocean County pursuant to Rule 4:3-2(a)(2) because this action arises from actions occurring in and affecting real property situated in Ocean County.

FACTS COMMON TO ALL COUNTS

21. The Property is located in the Amended Boulevard Redevelopment Plan Area and is governed by the Amended Boulevard Redevelopment Plan dated January, 2023 (the “Redevelopment Plan”).

22. For decades, an unsightly, rusted steel structure loomed on the Property, with the Property being otherwise unimproved and undeveloped, with no commercial or other activity being conducted.

23. Defendants eventually deemed the Property as an area in need of redevelopment pursuant to New Jersey’s Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq, and adopted the Redevelopment Plan in furtherance of having the Property redeveloped.

24. Defendants acquired the Property through condemnation from the prior owner of the Property on or about August 1, 2021.

25. Defendants initially tried to condemn the Property at a Borough-appraised value of approximately \$1.8 million. The prior owner of the Property successfully challenged that value and obtained judgment that Seaside Heights was required to pay an additional approximate \$720,000 for the condemnation of the Property.

26. Danco demolished the steel structure on the Property on or about August 16, 2021.

27. That demolition cost Danco approximately \$300,000.00. While the cost was intended to be credited against the purchase price of the Property, Defendants have not paid or credited any of the Plaintiffs for the demolition.

28. Danco also removed the foundation pilings located at the site on or about July 2024.

29. The removal of the foundation pilings cost Danco approximately \$125,000.00. While the cost was intended to be credited against the purchase price of the Property, Defendants have not paid or credited any of the Plaintiffs for the removal of the foundation pilings.

30. In or about 2021, SSH proposed to redevelop the Property.

31. The redevelopment project at issue in this matter (the “Project”) consists of a ten-story, mixed-use building. A three-level, onsite parking garage containing 153 parking spaces is proposed on the lower floors. The ground level will contain a retail unit, behind which the garage will be located. The second and third stories will also contain garage parking. A restaurant is proposed on the fourth floor. The upper levels will consist of 77 residential units. The roof top will contain resident amenities, including a pool. Landscaping, sidewalks, planters, and benches are also proposed.

32. The Project is entirely consistent with the Redevelopment Plan and did not require any variances in order to obtain municipal land use approval.

33. Defendants conditionally designated SSH as the redeveloper of the Project pursuant to resolution 2021-168, adopted on May 5, 2021, subject to the execution of a redevelopment agreement. **Exhibit A.**

34. Defendants approved the execution of a redevelopment agreement (the “Redevelopment Agreement”) with SSH and unconditionally designated SSH as redeveloper of the Project with the adoption of resolution 22-212 on August 3, 2022. **Exhibit B.**

35. Defendants also approved the execution of a purchase and sale agreement (the “Purchase and Sale Agreement”) with SSH pursuant to ordinance 2022-20. **Exhibit B.**

36. The Redevelopment Agreement and Purchase and Sale Agreement were both executed on May 2, 2023. **Exhibit C.** (Redevelopment Agreement); **Exhibit D.** (Purchase and Sale

Agreement).

37. Section 3.3 of the Redevelopment Agreement acknowledged that SSH would need to obtain “Approvals” from governmental authorities in order to finance and construct the Project.

38. Section 1.1 of the Redevelopment Agreement defines “Governmental Approvals or Approvals” as “any approvals, authorizations, permits, licenses or certificates required and issued or granted by any governmental authority(ies) having jurisdiction, whether federal, state, county, or local, to the extent necessary to implement the Project in accordance with the Redevelopment Plan, Applicable Law and this Agreement.”

39. Section 3.3 of the Redevelopment Agreement required SSH to apply for all Approvals within 180 days of the Effective Date of the agreement, i.e., by October 23, 2023.

40. Section 8(e) of the Purchase and Sale Agreement provides that SSH had until 14 months from the Effective Date of the agreement to obtain all Governmental Approvals, i.e., by July 2, 2024.

41. Section 8(e) of the Purchase and Sale Agreement further states that if SSH had not obtained all Approvals by July 2, 2024, then, (i) SSH or Defendants could terminate the Purchase and Sale Agreement; (ii) Defendants could extend the deadline; or (iii) SSH could waive receipt of Approvals and proceed to close title to the Property with a representation that SSH would thereafter obtain all Approvals.

42. Section 3.3 of the Redevelopment Agreement also requires Defendants to “provide reasonable assistance . . . which may be required of it to enable [SSH] to properly apply for and obtain such permits or Approvals in a timely fashion” and that Defendants would “support and endorse any applications for any Governmental Approvals required for the Project.”

43. Section 12.1(A) of the Redevelopment Agreement provides that SSH was required

to submit a financial plan to Defendants within six months of SSH's receipt of all Approvals.

44. SSH diligently began its pursuit of the Approvals following the execution of the Redevelopment Agreement and Purchase and Sale Agreement.

45. SSH obtained a Coastal Area Facility Review Act ("CAFRA") permit for the Project on May 12, 2023. **Exhibit E**.

46. SSH applied to the Seaside Heights Planning Board for preliminary and final site plan approval for the Project on or about June 30, 2023.

47. The Seaside Heights Planning Board unanimously voted to grant the Project preliminary and final site plan approval at a public meeting held on August 28, 2023, and memorialized that approval with the adoption of resolution 2023-31 at a public meeting held on September 25, 2023 (the "Resolution"). **Exhibit F**.

48. SSH thereafter obtained the following Approvals:

- i. Ocean County Planning Board approval on July 2, 2024; **Exhibit G**.
- ii. Ocean County Soil Conservation approval on August 26, 2024; **Exhibit H**.
- iii. Ocean County Utilities Authority approval on March 12, 2025; **Exhibit I**.
- iv. New Jersey Department of Environmental Protection Treatment Works Approval ("TWA") on June 26, 2025. **Exhibit J**.

49. SSH obtained the foregoing Approvals despite significant mishandling or delay from Defendants where Borough action was required, particularly with respect to the County Utilities and TWA Approvals as more particularly detailed below.

50. All other Approvals had been applied for and obtained in advance of the relevant deadlines, except for the County Soil Conservation Approval, which had been applied for on time, but the County failed to issue until a few weeks after the July 2, 2024 outside date through no fault

of SSH.

51. On February 26, 2024, Defendants' counsel wrote a letter to SSH threatening to de-designate SSH as redeveloper of the Project if SSH did not provide "firm evidence of [SSH's] ability to finance and complete the Project in a timely fashion" or propose "amendments to the Project to make it viable" by no later than March 15, 2024, while also demanding that SSH post a \$50,000.00 escrow. **Exhibit K**.

52. The only outstanding approvals at that time were: (a) the TWA Approval, which required Defendants' signature, (b) utilities approval required from the Defendants themselves, and (c) Ocean County Utilities Approval, which could not be obtained until after Defendants approved the utilities application and endorsed the TWA Approval application.

53. SSH also paid Ocean County \$31,875.00 for an off-tract traffic impact fee in order to obtain Ocean County Approval.

54. Given that the outstanding Approvals at the time of the Defendants' wrongful demands either required Defendants to take action or were required to be issued by Defendants themselves, SSH requested a short four month extension of the July 2, 2024 outside date pursuant to Section 8(a) of the Purchase and Sale Agreement so that Defendants could process the applications, and SSH could complete the applications that were subject to the Defendants' necessary approval.

55. Defendants never responded to SSH's letter in writing.

56. SSH wrote to Defendants' counsel on November 20, 2024, and re-notified counsel that Defendants still had not acted on the TWA Approval application and Seaside Heights utility application, both of which SSH delivered to Defendants approximately six months earlier. **Exhibit L**. Defendants' extreme delay and mishandling of these applications prevented SSH from

obtaining all Approvals and financing.

57. Defendants' counsel responded on December 18, 2024, accusing SSH of being in default of the Redevelopment Agreement for not delivering final sewer and water applications.

Exhibit M.

58. To the contrary, SSH had delivered final sewer and water applications on December 16, 2024 – prior to the date of counsel's accusation that the applications were not received.

59. Defendants' counsel also demanded that SSH submit its final sewer and water application (which SSH had already submitted) and provide a financial plan no later than January 31, 2025.

60. SSH responded that the final sewer and water application was delivered to Borough offices on December 16, 2024; yet as of January 8, 2025, the Seaside Heights engineer claimed he did not receive the application package. However, Defendants had quickly cashed the checks for application fees that accompanied the application despite the fact that Defendants claimed to have not received the application package.

61. SSH also noted that Defendants had still not acted on the TWA Approval application that was delivered nearly half a year prior.

62. Defendants acknowledged that SSH could not obtain the TWA Approval, or the County Utility Approval until the Borough processed the final water and sewer application.

63. Defendants finally processed SSH's final sewer and water applications following more than a six-month delay.

64. SSH applied for Ocean County Utilities Approval on or about February 11, 2025, and received same on March 12, 2025.

65. SSH thereafter applied for TWA Approval on or about April 8, 2025, and received

same on June 26, 2025.

66. On or about August 1, 2025, SSH's counsel delivered to Defendants' counsel a draft construction commitment letter and Long-Term Tax Exemption Application as a good faith gesture even though the obligation to do so had not yet been triggered under the Redevelopment Agreement. **Exhibit N**.

67. On or about May 15, 2025, SSH's engineer delivered to the Seaside Heights Zoning and Construction office a site plan package for final approval and signatures.

68. In the cover letter for such Approval, SSH's engineer explained that two administrative changes were reflected on the revised site plan: (i) all electric vehicle (EV) parking spaces were situated on the ground floor for insurance and fire-safety purposes, since it is hazardously difficult to extinguish an EV fire on the upper-floors of a building, which also resulted in the creation of one (1) additional space, and which revised site plan now provides for two (2) parking spaces for each Unit; and (ii) a separate elevator was provided for the restaurant patrons only for safety purposes so that residents would not need to use the same elevator available to the general public when patronizing the restaurant.

69. The process for this Approval was clearly outlined in Section 10 of the Resolution, which permitted "de minimis" changes to be made to the Project without requiring an amended site plan application or additional appearances before the Seaside Heights Planning Board.

70. Here, the two requested amendments are obviously *de minimis*. They are minor changes made for safety purposes while the Project remains substantially the same as the earlier approval by the Planning Board.

71. Defendants never responded to this application for Approval despite repeated requests from SSH's engineer.

72. Instead, Defendants' counsel wrote a letter to SSH on October 6, 2025 and claimed SSH would be in default if it did not provide a financial plan by December 26, 2025, which Defendants claimed was six months from the date that SSH received the TWA Approval, apparently unaware that Defendants were sitting on SSH's final site plan package. **Exhibit O.**

73. SSH responded to Defendants on October 31, 2025, reminding Defendants that they had not yet processed SSH's site plan package and that, accordingly, SSH had not received all of its Approvals, yet again due to Defendants' own delay and mishandling of SSH's application for Approval.

74. SSH further advised Defendants that without these Approvals, SSH was unable to finance or construct the Project despite diligent efforts to do so as a direct result of Defendants' own inaction and mishandling of SSH's Approval applications.

75. SSH also was forced to explain other delays it was experiencing from Seaside Heights officials in connection with SSH's attempt to have the Project shovel and finance ready as soon as Defendants processed the site plan package.

76. For example, SSH had been pursuing MEP/construction drawings at significant, six-figure expense. SSH's engineers made multiple requests to Seaside Heights officials regarding transformer sizes, metering, and other utility matters beginning in June 2025. Seaside Heights has yet to provide answers to these requests following a site meeting in July 2025.

77. SSH also provided Defendants with a pre-approval letter for a construction loan in the full amount of \$80,000,000.00 consistent with a previously submitted construction cost projection.

78. SSH also updated Defendants on the status of SSH as an active limited liability company.

79. Unbeknownst to SSH, and without the consent of SSH, a law firm that had previously represented SSH dissolved and terminated the “SSH Boulevard Urban Renewal LLC” entity on August 19, 2024. At the conclusion of that law firm’s representation of SSH, the law firm advised SSH’s sole remaining member in writing that he could use whatever documents and agreements had been prepared during the time that the law firm had represented SSH.

80. SSH became aware that the law firm had filed the certificate of dissolution and termination when determining if its annual reports were up to date.

81. Despite SSH’s immediate efforts to reinstate the entity, SSH was informed by multiple agencies that the certificate of dissolution and termination is final and cannot be undone.

82. The dissolution and termination occurred entirely outside of SSH’s control. Although the certificate of dissolution and termination contains a representation that it was confirmed that the entity had no ongoing affairs and ceased business operations, SSH was never contacted by the previous law firm to confirm whether this was true prior to its filing of the certificate.

83. SSH’s member formed a new entity, “Seaside Heights Boulevard LLC”, and The New Jersey Department of Community Affairs approved that entity as an urban renewal entity on October 17, 2025. Seaside Heights Boulevard Urban Renewal LLC was formed thereafter.

84. In a letter dated October 31, 2025, SSH requested that, under the circumstances, Defendants consent to an assignment to the new entity the Project, Redevelopment Agreement, Purchase and Sale Agreement, and all other pertinent documents.

85. Sections 2.6 and 13 of the Redevelopment Agreement permit SSH to assign its rights and obligations to a “Qualified Entity,” which includes Seaside Heights Boulevard pursuant to Section 2.6 of the Redevelopment Agreement.

86. SSH closed its October 31, 2025 letter by offering to waive receipt of any remaining Approvals and to proceed to close title to the Property pursuant to Section 8 of the Purchase and Sale Agreement.

87. Defendants never responded to this correspondence.

88. Instead, on November 25, 2025, Defendants moved forward with the illegal Actions referenced in Paragraph 7 above without notice to SSH, pursuant to a consent agenda with no public discussion about either Action, without the meeting being livestreamed or recorded, in stark contrast with how Seaside Heights typically conducts its council meetings, and with the meeting's agenda having been posted online less than an hour before the meeting started.

89. At no point did Defendants send a sixty-day notice of default to SSH or SSH's counsel as required by paragraph 7 of the Redevelopment Agreement and paragraph 14 of the Purchase and Sale Agreement.

90. Specifically, Resolution No. 25-306 purported to terminate SSH as redeveloper of the Project. **Exhibit P.**

91. Ordinance No. 2025-34 purported to terminate the Purchase and Sale Agreement. **Exhibit P.**

92. A second reading of Ordinance 2025-34 was scheduled for December 16, 2025. However, the second reading never occurred prior to December 31, 2025. As of the date of this Complaint, upon information and belief, neither a first nor second reading of an ordinance attempting to terminate the Purchase and Sale Agreement has occurred.

93. Because Defendants failed to send the notice required by the Redevelopment Agreement and Purchase and Sale Agreement, the Actions are *ultra vires*, null, void, and of no further effect.

94. Defendants also materially breached the Redevelopment Agreement and Purchase and Sale Agreement by failing to reasonably act on SSH's Approval applications so that SSH can timely construct and finance the Project.

95. Defendants also materially breached the Redevelopment Agreement and Purchase and Sale Agreement by failing to consent to an assignment of both Agreements to Seaside Heights Boulevard.

96. Defendants also materially breached the Purchase and Sale Agreement by refusing to close title to the Property after SSH had elected to do so pursuant to Section 8(a) by letter dated October 31, 2025. **Exhibit Q**.

97. Defendants also materially breached their agreement to either credit the site work that Danco performed against the purchase price for the Property or to otherwise reimburse Danco or any of the other Plaintiffs for the cost of that work.

98. Defendants have continued to breach both the Redevelopment Agreement and Purchase and Sale Agreement, and disparage the Project, SSH, and SSH's member.

99. On April 1, 2026, Defendants adopted Ordinance No. 2026-09, titled "Adopting Fourth Amended Boulevard Redevelopment Plan for Delineated Redevelopment and Rehabilitation Areas" without notice to or conversation with any Plaintiff. **Exhibit R**.

100. Moreover, The Lavalette-Seaside Shorebeat published an article on April 2, 2026, quoting Seaside Heights Administrator Anthony Vaz as saying: "I don't think we'll ever see a ten story building proposed in Seaside ever again" and that Defendants were actively engaged in soliciting new bids for redevelopment from new redevelopers. **Exhibit S**.

101. Evidently, Defendants have expressly stated their intention of continuing to breach both the Redevelopment Agreement and Purchase and Sale Agreement and violating Plaintiffs'

rights.

COUNT ONE

(Specific Performance)

102. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 101 of the Complaint as if fully set forth herein.

103. Defendants have breached both the Redevelopment Agreement and Purchase and Sale Agreement by the following actions:

a. Mishandling and/or intentionally delaying the processing and approval of SSH's Approvals applications;

b. Expressing disapproval of the Project notwithstanding that Defendants adopted the Redevelopment Plan that governs the Project, appointed SSH as the redeveloper of the Project, with the Seaside Heights Planning Board having approved the Project, and taking actions consistent with attempting to delay and cause the Project to not be developed;

c. Failing to provide required default notices and opportunities to cure under both the Redevelopment Agreement and Purchase and Sale Agreement;

d. Refusing to close title to the Property as required under the Purchase and Sale Agreement;

e. Refusing to consent to the assignment of the Redevelopment Agreement and Purchase and Sale Agreement to Seaside Heights Boulevard; and

f. Attempting to de-designate SSH as the redeveloper of the Project.

104. Paragraph 8(a) of the Purchase and Sale Agreement provides that SSH may elect to purchase the Property if all Approvals were not obtained by a certain date.

105. That date has come and gone without SSH having obtained all Approvals due to Defendants' illegal actions.

106. SSH has diligently complied with its obligations under the Purchase and Sale Agreement and has sought to satisfy all of the contractual contingencies set forth in the Purchase and Sale Agreement in a timely and efficient manner despite the wrongful conduct of the Defendants.

107. SSH has expended substantial sums of money on legal fees and professional fees associated with its attempt to design, obtain approval for, and finance and construct the Project, and for various other site-related tasks to prepare for the closing on the purchase of the Property.

108. In bad faith, Defendants have attempted to terminate the Redevelopment Agreement and Purchase and Sale Agreement without having followed the required notice and cure periods under either Agreement.

109. The Property is a unique piece of property since it has been specifically zoned to support the Project with Defendants' own approval, and there is no viable alternative property that could replace the Property and support the Project.

110. Money damages from Defendants alone would not be an adequate source of compensation to Plaintiffs.

111. Plaintiffs now seek an order compelling Defendants to convey title to the Property to Seaside Heights Boulevard on the terms negotiated by the parties and as codified in the Purchase and Sale Agreement.

WHEREFORE, Plaintiffs SSH and Seaside Heights Boulevard demand judgment against Defendants as follows:

- A. Specific Performance of the Purchase and Sale Agreement;
- B. An order requiring Defendants to convey title to the Property to Seaside Heights Boulevard;

C. A temporary restraining order and a preliminary and final injunction restraining the Defendants from taking any further action in violation of the Redevelopment Agreement and Purchase and Sale Agreement;

D. Compensatory and Punitive Damages;

E. Attorneys' fees and costs; and

F. Granting Plaintiffs such other relief as the Court may at its discretion deem equitable and just.

COUNT TWO

(Unjust Enrichment)

114. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 111 of the Complaint as if fully set forth herein.

115. As a result of Defendants' breach of the Redevelopment Agreement and Purchase and Sale Agreement, Danco is owed significant sums of money for the demolition of the steel structure, removal of the foundation pilings, and with SSH being owed the deposit tendered under the Purchase and Sale Agreement, and the deposit tendered under the Funding Agreement.

116. Defendants have been unjustly enriched by Danco's uncompensated demolition of the steel structure and removal of the foundation pilings because this work has eliminated an unsightly and dilapidated structure from the Property and has prepared the Property for future development without requiring the additional, significant expense of this work.

WHEREFORE, Danco demands judgment against Defendants as follows:

A. Awarding Danco damages for uncompensated work at the Property and the return of any monies being held by Defendants together with costs expended by Plaintiffs in pursuit of the Project;

B. Awarding Danco attorneys' fees and costs of suit; and

C. Granting Danco such other relief as the Court may at its discretion deem equitable and just.

COUNT THREE

(Violation of the Duty to “Turn Square Corners”)

117. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 116 of the Complaint as if set forth fully herein.

118. A municipality owes a duty to the public, including Plaintiffs, to “turn square corners” as articulated by the New Jersey Supreme Court in F.M.C. Stores Co. v. Borough of Morris Plains, 11 N.J. 418 (1985).

119. The actions and inaction of Defendants violate fundamental concepts of fairness. These actions and inaction on the part of Defendants include, but are not limited to:

- a. Mishandling and/or intentionally delaying the processing and approval of SSH’s Approvals applications;
- b. Expressing disapproval of the Project notwithstanding that Defendants adopted the Redevelopment Plan that governs the Project, appointed SSH as the redeveloper of the Project, with the Seaside Heights Planning Board having approved the Project, and taking actions consistent with attempting to delay and cause the Project to not be developed;
- c. Failing to provide required default notices and opportunities to cure under both the Redevelopment Agreement and Purchase and Sale Agreement; and
- d. Continuing to take actions in violation of both the Redevelopment Agreement and Purchase and Sale Agreement and making disparaging comments about the Project and SSH.

120. As a result of Defendants’ actions and inaction, including their failure to “turn

square corners,” SSH has been, and continues to be, damaged and deprived of its rights as redeveloper of the Property and as a contractual party to the Redevelopment Agreement and Purchase and Sale Agreement.

121. Plaintiffs, whose interests and rights are affected and prejudiced by Defendants’ conduct, are entitled to relief from this Court.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Declaring Defendants’ actions and inaction as violating the duty to Plaintiffs to “turn square corners”;

B. Restraining Defendants from taking further action in violation of Redevelopment Agreement and Purchase and Sale Agreement, including its attempts to de-designate SSH as the redeveloper of the Project;

C. Awarding Plaintiffs attorneys’ fees and costs of suit;

D. Compensatory and Punitive Damages;

E. Specific Performance of the Purchase and Sale Agreement;

F. Requiring Defendants to convey title to the Property to Seaside Heights Boulevard;

and

G. Granting Plaintiffs such other relief as the Court may at its discretion deem equitable and just.

COUNT FOUR

(Breach of Covenant of Good Faith and Fair Dealing)

122. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1 through 121 of the Complaint as if set forth fully herein.

123. All contracts in New Jersey, including the Redevelopment Agreement and Purchase

and Sale Agreement, impose an implied covenant of good faith and fair dealing upon the parties thereto. This covenant requires the parties to cooperate so that they may obtain the full benefit of under the terms of the agreement of the performance of the other party.

124. Defendants' aforementioned actions and inaction, including, without limitation, failing to process SSH's Approvals applications and refusing to consent to an assignment to Seaside Heights Boulevard, constitute a breach of the implied covenant of good faith and fair dealing and are the proximate cause of the damage sustained by Plaintiffs.

125. Plaintiffs have been damaged and continue to be damaged by Defendants' actions and inaction.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

A. Declaring that Defendants' actions and inaction violated the implied covenant of good faith and fair dealing Defendants owed to Plaintiffs, the result of which deprived Plaintiffs of the ability to finance and construction the Project and otherwise obtain the benefit of what Plaintiffs bargained for in the Redevelopment Agreement and Purchase and Sale Agreement;

B. Restraining Defendants from taking further action in violation of Redevelopment Agreement and Purchase and Sale Agreement, including its attempts to de-designate SSH as redeveloper of the Project;

C. Awarding Plaintiffs attorneys' fees and costs of suit together with costs expended by Plaintiffs in pursuit of the Project;

D. Compensatory and Punitive Damages;

E. Specific Performance of the Purchase and Sale Agreement;

F. Requiring Defendants to convey title to the Property to Seaside Heights Boulevard;

G. Granting Plaintiffs such other relief as the Court may at its discretion deem

equitable and just.

COUNT FIVE
(Declaratory Judgment)

126. Plaintiffs repeat and re-allege the allegations contained in Paragraphs 1 through 125 of the Complaint as if fully set forth herein.

127. The New Jersey Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes the Courts to settle and afford parties relief from uncertainty and insecurity with respect to rights, status and other legal relations.

128. As set forth above, there is uncertainty in the status of rights impacting Plaintiffs' rights as redeveloper of the Project, including but not limited to, the status of the Redevelopment Agreement and Purchase and Sale Agreement; the assignment of the Redevelopment Agreement and Purchase and Sale Agreement to Seaside Heights Boulevard; the status of Defendant's obligation to timely process and approve SSH's Approvals applications, and the obligation of Defendants to close and convey title to the Property to Seaside Heights Boulevard.

129. An actual and justiciable controversy exists between Plaintiffs and Defendants.

WHEREFORE, Plaintiffs demand judgment against Defendants as follows:

- A. Declaring Defendants' actions and inaction, as alleged herein, to be unlawful;
- B. Ordering Defendants to refrain from terminating the Redevelopment Agreement and Purchase and Sale Agreement; requiring Defendants to assign the Redevelopment Agreement and Purchase and Sale Agreement to Seaside Heights Boulevard; declaring Seaside Heights Boulevard as the Redeveloper of the Project; requiring Defendants to convey title to the Property to Seaside Heights Boulevard; and requiring Defendants to reasonably cooperate with Plaintiffs in finalizing Plaintiffs' Approvals so that Plaintiffs may finance and construct the Project;
- C. Awarding Plaintiffs their attorneys' fees and costs of suit; and

D. Granting Plaintiffs such other relief as the Court may at its discretion deem equitable and just.

SAIBER LLC

Attorneys for Plaintiffs

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Seaside Heights Boulevard Urban Renewal LLC

Danco General Contracting, Inc.

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Madison, New Jersey 07940

(973) 622-3333

Dated: April 14, 2026

TRIAL COUNSEL DESIGNATION

Pursuant to Rule 4:5-1(c), Robert L. Ritter is hereby designated as trial counsel on behalf of Plaintiff.

SAIBER LLC

Attorneys for Plaintiffs

SSH Boulevard Urban Renewal LLC

Seaside Heights Boulevard Urban Renewal LLC

Danco General Contracting, Inc.

By: /s/ Robert L. Ritter, Esq.

Robert L. Ritter, Esq.

7 Giralda Farms, Suite 360

Madison, New Jersey 07940

(973) 622-3333

Dated: April 14, 2026

CERTIFICATION PURSUANT TO RULE 4:69-4

I hereby certify that I have caused to be ordered all necessary transcripts of local agency proceedings relative to the above matter.

SAIBER LLC

Attorneys for Plaintiffs

SSH Boulevard Urban Renewal LLC

Seaside Heights Boulevard Urban Renewal LLC

Danco General Contracting, Inc.

By: /s/ Robert L. Ritter, Esq.

Robert L. Ritter, Esq.

7 Giralda Farms, Suite 360

Madison, New Jersey 07940

(973) 622-3333

Dated: April 14, 2026

CERTIFICATION PURSUANT TO RULE 4:5-1

I certify that, to the best of my knowledge, the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration proceeding, and no other action or arbitration proceeding is contemplated. I further certify that, to the best of my knowledge at the present time and subject to continuing investigation and discovery, I do not know the names of any other non-party who should be joined in this action pursuant to Rule 4:28 or who is subject to joinder pursuant to Rule 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.

SAIBER LLC

Attorneys for Plaintiffs

SSH Boulevard Urban Renewal LLC

Seaside Heights Boulevard Urban Renewal LLC

Danco General Contracting, Inc.

By: /s/ Robert L. Ritter, Esq.

Robert L. Ritter, Esq.

7 Giralda Farms, Suite 360

Madison, New Jersey 07940

(973) 622-3333

Dated: April 14, 2026

CERTIFICATION OF COMPLIANCE WITH RULES 4:5-1(b)(3) & 1:38-7

I hereby certify that confidential personal identifiers have been redacted from documents now submitted to the Court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

SAIBER LLC

Attorneys for Plaintiffs

SSH Boulevard Urban Renewal LLC

Seaside Heights Boulevard Urban Renewal LLC

Danco General Contracting, Inc.

By: /s/ Robert L. Ritter, Esq.

Robert L. Ritter, Esq.

7 Giralda Farms, Suite 360

Madison, New Jersey 07940

(973) 622-3333

Dated: April 14, 2026

EXHIBIT A

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room Annex
May 5, 2021
Caucus Meeting 4:00 p.m.

Open Public Meetings Act Statement

Roll Call

PUBLIC “OPEN” SESSION:

1. Review regular meeting agenda.
2. Discuss COVID-19 response.
3. Redeveloper applications (presentations by two applicants).
4. Borough Council discussion items, if any.

EXECUTIVE “CLOSED” SESSION:

Resolution No. 21-153: Authorizing an executive session.

Motion:* _____ *Second:* _____ *Roll Call

Personnel: Nothing pending.

Contracts: Discuss redeveloper applications/designation of redeveloper/redeveloper agreement.

Pending/Ongoing/Anticipated Litigation: 404 Boulevard LLC vs. Seaside Heights; and Seaside Heights ads. Block 5.01, Lots 58, 59 & 63.

Motion to close Executive Session:* _____ *Second:* _____ *Roll Call

Public comments, if any.

Motion to close the Caucus Meeting:* _____ *Second:* _____ *Roll Call

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room Annex
May 5, 2021
Regular Meeting 5:00 p.m.

Open Public Meetings Act Statement
Serenity Prayer
Pledge of Allegiance

Roll Call

Appointment of Council Member to fill vacancy

Resolution No. 21-154: Appointing Borough Council member.

Motion: _____ Second: _____ Roll Call

Administration of Oath of Office

Meeting minutes

Approve meeting minutes re: April 21, 2021. (New Borough Council member abstention/all others were present for the meeting).

Motion: _____ Second: _____ Roll Call

Resolutions and ordinances for approval by consent

Resolution No. 21-155: Payment of bills.

Resolution No. 21-156: Approving amusement games application(s).

Resolution No. 21-157: Adopting temporary emergency operating budget (#7).

Resolution No. 21-158: Approving a shared services agreement with Borough of Lavallette for Animal Control Services.

Resolution No. 21-159: Appointment of Planning Board members.

Resolution No. 21-160: Approving a property tax appeal settlement.

Resolution No. 21-161: Change Order #1 re: raised viewing platform (Hiering Ave & Boardwalk).

Resolution No. 21-162: Approving contract for office cleaning and sanitizing services.

Resolution No. 21-163: Approving entertainment related deposits.

Resolution No. 21-164: Awarding contract purchase of SCBA for Seaside Heights Fire Department (re: AFG funded purchase).

Resolution No. 21-165: Novation agreement with Colliers Engineering & Design, Inc.

Ordinance NO. 2021-17: Excessive consumption of municipal services.

Public comments, if any, concerning consent agenda

Motion: _____ Second: _____ Roll Call

Individual Consideration Items (The following items are motions, resolutions and ordinances that will be considered and voted on individually.)

Resolution No. 21-166: Appointing aeronautical consulting service for Planning Board.

Public comments, if any, concerning Resolution No. 21-166

Motion _____ Second _____ Roll Call

Resolution No. 21-167: Appointing special counsel for Planning Board.

Public comments, if any, concerning Resolution No. 21-167

Motion _____ Second _____ Roll Call

Resolution No. 21-168: Conditionally designating redeveloper for Block 5.01, Lots 58, 59 & 63.

Public comments, if any, concerning Resolution No. 21-168

Motion _____ Second _____ Roll Call

Resolution No. 21-169: Acquisition of Block 5.01, Lots 58, 59 & 63.

Public comments, if any, concerning Resolution No. 21-169

Motion _____ Second _____ Roll Call _____

Ordinances Second Reading & Public Hearing

Ordinance No. 2021-11: Amending Chapter 146 of the Borough Code re: prohibiting mercantile licensees from using annual parking permit for purposes of advertising that business from a vehicle or mobile trailer.

Public comments, if any, concerning Ordinance No. 2021-11

Motion _____ Second _____ Roll Call _____

Presentation by Municipal Engineer

Will Groff, P.E., of O’Donnell & Stanton Engineers, will update Borough Council concerning projects they are overseeing.

Approvals

1. Senior Class Beach Day, Central Regional High School, 6/21/21, Hiering Avenue beach.
2. RV Rally, Family Motor Coach Association, 9/8/21-9/13/21, North Bayfront.
3. Antique Care Show, Vintage Auto Club of Ocean County, 9/12/21, Bay Boulevard (Grant Ave. to Carteret Ave.).
4. Car Show, BringEmOut Promotions, 10/2/21, Bay Boulevard, HJB School.
5. 4 x 4 Beach Take Over, 10/9/21, Hiering Ave. parking lot and beach.

Public comments, if any, concerning general approvals

Motion: _____ Second: _____ Roll Call _____

Public comments

Citizens and interested parties are invited to address the Mayor & Borough Council. Please walk to the microphone in front of the dais when recognized by the Mayor. Please state your name and address before beginning your comments so that the Borough Clerk may accurately include your comments in the meeting minutes.

Council comments

Adjourn

EXHIBIT B

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room Annex
August 3, 2022
Caucus Meeting 4:00 p.m.

Open Public Meetings Act Statement

Roll Call

Proclamation: Ocean County Columbus Parade Grand Marshal Dr. Gilda Rorro Baldassari

EXECUTIVE “CLOSED” SESSION:

Resolution No. 22-208: Authorizing an executive session.

Motion: _____ *Second:* _____ *Roll Call*

Personnel: Municipal Court employee matters.

Contracts: Nothing pending.

Pending/Ongoing/Anticipated Litigation: Nothing pending.

Motion to close Executive Session: _____ *Second:* _____ *Roll Call*

PUBLIC “OPEN” SESSION:

1. Review regular meeting agenda.
2. Discuss amendments to American Rescue Plan funding.
3. Borough Council discussion items, if any.

Public comments, if any.

Motion to close the Caucus Meeting: _____ *Second:* _____ *Roll Call*

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room Annex
August 3, 2022
Regular Meeting 5:00 p.m.

Open Public Meetings Act Statement
Serenity Prayer
Pledge of Allegiance

Roll Call

Meeting minutes

Approve meeting minutes re: July 20, 2022. (All Borough Council members were present.)

Motion: _____ *Second:* _____ *Roll Call*

Resolutions and ordinances for consideration by consent

Resolution No. 22-209: Payment of bills.

Resolution No. 22-210: Authorizing NJDOT road improvement grant application for Sherman Avenue.

Resolution No. 22-211: Authorizing NJDOT road improvement grant application for Barnegat Avenue and Franklin Avenue.

Resolution No. 22-212: Designating redeveloper and authorizing redevelopment agreement (re: Block 5.01, Lots 58, 59 & 63).

Resolution No. 22-213: Authorizing attendance of Special Law Enforcement Officer II candidates in the September class at Ocean County Police Academy.

Resolution No. 22-214: Appointing Special Law Enforcement Officer(s) Class II.

Resolution No. 22-215: Appointing temporary/seasonal employees.

Resolution No. 22-216: Resolving electric meter/bill issue re: Block 51, Lot 81.02, 1108 Barnegat Avenue.

Resolution No. 22-217: Awarding Police Department vehicle maintenance and repair contract.

Resolution No. 22-218: Appointing Tara Caffarelli as Deputy Municipal Court Administrator and authorizing employment agreement.

Resolution No. 22-219: Amending emergency temporary budget.

Resolution No. 22-220: Confirming mercantile license revocation settlement.

Resolution No. 22-221: Amending American Rescue Plan spending plan.

Resolution No. 22-222: Designating partner for homelessness prevention and mitigation.

Ordinance No. 2022-21: Authorizing capital project re: acquisition of 229 Franklin Avenue.

Public comments, if any, concerning Consent Agenda

Motion_____Second_____Roll Call

Resolutions and ordinances for separate vote

Resolution No. 22-223: Renewing Alcoholic Beverage License No. 1526-33-013-015 (Bennett pocket license).

Resolution No. 22-224: Approving a person-to-person transfer of Alcoholic Beverage License No. 1526-33-013-015 (Bennett pocket license).

Ordinance No. 2022-17: Amending Chapter 246, entitled “Zoning and Land Use” (re: side-yard setbacks and building heights).

Public comments, if any, concerning ordinance 2022-17

Motion_____Second_____Roll Call

Ordinance No. 2022-18: Amending Chapter 219, entitled “Utilities” (re: installation of transfer switch).

Public comments, if any, concerning ordinance 2022-18

Motion_____Second_____Roll Call

Ordinance No. 2022-19: Adopting Second Amended Boulevard Redevelopment Plan.

Public comments, if any, concerning ordinance 2022-19

Motion_____Second_____Roll Call

Ordinance No. 2022-20: Purchase and Sale Agreement (re: Block 5.01, Lots 58, 59 & 63).

Public comments, if any, concerning ordinance 2022-20

Motion _____ Second _____ Roll Call

Approvals

Aug. 21st, Jersey Shore Mermaids “End of Summer Splash” - paddleboard race, Sunset Beach.

Aug. 26th, Berkeley Striper Club Youth Fishing and Crabbing Day, south bayfront.

Sept. 10th, Seaside Heights Pizza Crawl, Boardwalk.

Oct. 1st & 2nd, American Angler Classic Fishing Tournament, Beachfront & Sunset Beach.

Public comments, if any, concerning general approvals

Motion: _____ Second: _____ Roll Call

Public comments

Citizens and interested parties are invited to address the Mayor & Borough Council. Please walk to the microphone in front of the dais when recognized by the Mayor. Please state your name and address before beginning your comments so that the Borough Clerk may accurately include your comments in the meeting minutes.

Council comments

Adjourn

EXHIBIT C

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (the "**Agreement**" or "**Redevelopment Agreement**") is entered this 2 day of May 2023 (the "**Effective Date**")

by and between the

BOROUGH OF SEASIDE HEIGHTS ("**Borough**"), a municipal corporation and body politic of the State of New Jersey, having its principal office at 100 Grant Avenue, Seaside Heights, New Jersey 08751;

and

SSH BOULEVARD URBAN RENEWAL, LLC ("**Redeveloper**"), a New Jersey limited liability company and duly organized urban renewal entity established, operated and authorized to do business within the State of New Jersey, having a business office located at 235 Broubalow Way, Philipsburg, New Jersey 08865.

Hereinafter each a "**Party**" and collectively referred to as the "**Parties**".

RECITALS

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

WHEREAS, the governing body serves as an instrumentality and agency of the Borough pursuant to the LRHL for the purpose of implementing redevelopment plans and carrying out redevelopment projects within the Borough ("**Redevelopment Entity**"); and

WHEREAS, N.J.S.A. 40A:12A-8 authorizes the Borough to enter into contracts or agreements for the planning, construction or undertaking of any development project or redevelopment work in an area in need of redevelopment; and

WHEREAS, on April 20, 2016, pursuant to Resolution No. 16-131, the governing body of the Borough directed the Planning Board to conduct a preliminary investigation to determine whether an area including Block 5.01, Lots 58, 59 and 60 ("**Project Site**" or "**Property**") is an area in need of redevelopment according to the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, on February 27, 2018, the Planning Board held a properly noticed public hearing at which the planner presented the findings of his preliminary investigation report resulting in a determination to recommend that the Project Site be designated as an area in need of redevelopment; and

WHEREAS, on April 18, 2018, pursuant to Resolution No. 2018-107, the governing body determined that the Project Site is an area in need of redevelopment; and

WHEREAS, on August 5, 2020, pursuant to Ordinance No. 20-06, the governing body adopted the Boulevard Redevelopment Plan, as last amended by Ordinance No. 2022-04, adopted on May 4, 2002 ("**Redevelopment Plan**"); and

WHEREAS, consistent with the Redevelopment Plan, the Redeveloper intends to redevelop the Project Site into a 10-story mixed use building with approximately 79 for sale or for lease residential units, 12,000 square feet of retail/restaurant space, and associated amenities, including rooftop amenities, which shall consist of a pool and enclosed refreshment and relaxation areas ("**Project**"); and

WHEREAS, the Borough recognizes the credentials, experience and financial capability of the Redeveloper to design and construct the Project; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-9, it is the intention of the Parties to enter into a Redevelopment Agreement, which shall further define and memorialize the respective obligations of the Parties hereto with regard to proceeding with the redevelopment of the Property in the manner prescribed herein.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1. Defined Terms.

The Parties hereto agree that, unless the context otherwise specifies or requires, the capitalized terms used herein shall have the respective meanings specified below or in the recitals and such definitions shall be applicable equally to the singular and plural forms of such terms.

“Applicable Law” means any and all federal, state, county and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, approvals, and similarly binding authority, applicable to the Project or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

“Application” has the meaning set forth in Section 3.2(a).

“Certificate of Completion” means a written certificate issued by the Borough in accordance with Section 4.3 of this Agreement, which shall acknowledge that Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to a certain unit or aspect of the Project, if applicable, whose issuance shall serve to release the relevant unit or aspect of the Project and Redeveloper from all terms, obligations and conditions contained in this Agreement and in the Applicable Law.

“Certificate of Occupancy” means as defined in the Uniform Construction Code at N.J.A.C. 5:23-1.4, and as may be issued by the Borough relative to a particular unit or aspect of the Project indicating that such unit or aspect of the Project has been completed in accordance with the construction permit, the Uniform Construction Code and any Applicable Law.

“Commencement Date” means, subject to the terms herein, the first day of the calendar month coinciding or next following the date of receipt by Redeveloper from the Borough of a building permit authorizing physical construction of new development upon the Property.

“Completion”, “Complete” or “Completed” means: (i) that all work related to the Project in its entirety, has been completed, acquired and installed in accordance with the terms of this Agreement, the Redevelopment Plan, and in compliance with all Applicable Laws so that the developed Property may be used and operated under the applicable provisions of this Agreement, and (ii) that all permits, licenses and approvals required for the Property are in full force and effect. Completion shall be evidenced by the issuance of a Certificate of Completion. Subject to the Borough’s reasonable discretion, the Project may be deemed “Complete” notwithstanding that certain immaterial portions of the work remain to be completed, as long as (a) Redeveloper has prepared and delivered to the Borough a list of items requiring completion or correction (“punch list”) by Redeveloper in order for Redeveloper to fully comply with the terms of this Agreement, (b) such “punch list” items have been reasonably agreed to by the Borough, and (c) such “punch list” items are reasonably capable of being completed within 90 days of the date of Completion. Punch List items shall not prohibit the issuance of a temporary Certificate of Occupancy.

“Construction Phase” means the sequence in the Project from the issuance of a building permit for the construction of the Project until the issuance of a Certificate of Occupancy.

“Effective Date” means the date upon which this Agreement has been executed by the Redeveloper or the Borough, whichever is last.

“Environmental Law(s)” means any and all federal, State, regional and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, memoranda of understanding, directives or judgments relating to pollution, damage to or protection of environment, environmental conditions, or the use handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to: the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”) (42 U.S.C. 9601-9675); the Resource Conservation and Recovery Act of 1976 (“**RCRA**”) (42 U.S.C. 6901 et seq.); the Clean Water Act (33 U.S.C. 1251 et seq.); the New Jersey Spill Compensation and Control Act (“**Spill Act**”) (N.J.S.A. 58:10-23.11 et seq.); the Industrial Site Recovery Act, as amended, (“**ISRA**”) (N.J.S.A. 13:1k-6 et seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.); the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 et seq.); and the rules and regulations promulgated thereunder.

“Final Approval” shall have the meaning set forth in N.J.S.A. 40:55D-4.

“Governmental Approvals” or “Approvals” means any approvals, authorizations, permits, licenses or certificates required and issued or granted by any governmental authority(ies) having jurisdiction, whether federal, state, county or local, to the extent necessary to implement the Project in accordance with the Redevelopment Plan, Applicable Law and this Agreement.

“Impositions” means all taxes, payments in lieu of taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, connection fees, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Property or on any of the Improvements constructed thereon, if duly negotiated in the Redevelopment Agreement, properly imposed by Borough Ordinance or State Law. Unless otherwise specified herein, any Impositions established by Ordinance shall only be at the rates set at the time of the entry of this Redevelopment Agreement.

“Improvements” means all buildings, structures and appurtenances including, without limitation, facilities and amenities, telecommunications equipment, surface parking or a structured parking facility, infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatments and all other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Property and the streets immediately abutting the Property.

“Performance or Maintenance Guarantees” means the performance or maintenance guarantees required for the Project as defined by the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

“Planning Board” refers to the Borough of Seaside Heights Planning Board.

“Project” means the development of the Improvements as depicted in the Redeveloper’s approved final site plan filed with the Planning Board in, on and around the Property pursuant to the terms set forth in this Agreement.

“Project Schedule” means the schedule attached hereto as **Exhibit A**, which designates the order of and timeframes for the permitting and construction of the Improvements on the Property.

“Project Site” or **“Property”** means Block 5.01, Lots 58, 59 and 60.

“Remediation” means the performance and completion of all investigations and clean-up, wetlands mitigation, and any and all other activities necessary or required for the clean-up or containment of all substances including, without limitation, Hazardous Substances, known or unknown, on, under or migrating to or from the Property, and the construction of remedial systems, all in compliance with Applicable Laws, Environmental Laws and Government Approvals to address any environmental contamination or condition or damage to any natural resource, including but not limited to air, groundwater, surface water or soil required to be addressed by the responsible party.

“Site Plan” means the preliminary and final site plan approved by the Planning Board as set forth in the resolution adopted by the Planning Board.

“Termination Date” shall have the meaning set forth in Section 14.1.

ARTICLE 2 DESCRIPTION OF THE PROJECT

2.1. Purpose; Designation as Redeveloper. The purpose of this Redevelopment Agreement is to set forth the respective rights, obligations, conditions and agreements of the Borough and Redeveloper in connection with the development of the Property by Redeveloper. The Borough hereby affirms and agrees that Redeveloper is designated and appointed as the exclusive redeveloper of the Property. In connection with such designation and appointment, Redeveloper has the exclusive right to perform and to have others perform any and all redevelopment activities on and about the Property as permitted in the Redevelopment Plan. Each of the Parties agrees that all redevelopment on and about the Property will only be authorized and may only be undertaken by Redeveloper under the framework and in accordance with the terms of this Agreement and the Redevelopment Plan. Further, the Borough agrees that, absent a Default by Redeveloper, it will not negotiate or entertain for the provision of another redeveloper or developer for the Property or any portion thereof.

2.2. The Project. The Project shall consist of the construction of approximately 79 for sale or for lease residential units, 12,000 square feet of retail/restaurant space, and associated amenities to be set forth in the Site Plan. The Project will be developed in accordance with the Project Schedule attached hereto as **Exhibit A**. The Redeveloper shall have the right to accelerate the time frames set forth in the Project Schedule at its option. The Parties agree that the Project may be modified by the Redeveloper and the Planning Board as part of the site plan approval process and in accordance with paragraph 2.3 hereinafter.

2.3. Project Development. The Project shall be designed in accordance with the Redevelopment Plan and Site Plan. Any modifications that would trigger a "d" variance pursuant to N.J.S.A. 40:55D-70(d) shall require the Redeveloper to seek an amendment to the Redevelopment Plan. Any modifications from the Redevelopment Plan that would be deemed a "design waiver", which shall be considered as the equivalent of and akin to the provisions of a "c" variance pursuant to N.J.S.A. 40:55D-70(c), shall be submitted to the Planning Board for consideration as part of the site plan application by Redeveloper, subject to prior review and approval of the Borough. In the event that the Project unit count or density becomes impractical to complete as planned, the Borough and the Redeveloper agree to work together in good faith on a project design that may include a larger unit count subject to the existing land use regulations of the Borough.

2.4. Amendment of Development and Design Concepts. Design concepts for the Project may be modified by Redeveloper from time to time, as approved by the Parties, to reflect additional detail and information, as such detail and information becomes available, or to reflect or accommodate the requirements of any Applicable Law, or to consider engineering/construction considerations which render the then-existing design concepts impractical. Such modifications shall be subject to the review and approval of the Borough. Any modification which triggers the need to amend any

site plan and/or subdivision approval secured by Redeveloper shall be reviewed by the Borough for consistency with the Redevelopment Plan and approved by the Borough prior to filing for same before the Planning Board.

It is acknowledged by the Parties that certain specific elements of the Project as shall be approved by the Borough and its consultants as part of the site plan approval process, including but not limited to exterior building materials, quality of exterior finishes and designs, exterior architectural elements, and landscaping features, are material consideration for the Borough's approval of the Project, and Redeveloper is obligated under this Agreement to construct the Project in accordance with such specific exterior elements and/or materials as have been approved. The Redeveloper shall be permitted to substitute materials, equipment and fixtures included in and to be used in constructing the Project so long as of the same or similar quality to those described in the plans and specifications for the Project.

2.5. Development Milestones. The Redeveloper shall construct the Project or cause the Project to be constructed in accordance with the Project Schedule attached hereto as **Exhibit A** subject to delay caused by an Uncontrollable Circumstance, as defined in Article 10 of this Agreement. If the Redeveloper intends to claim reliance upon an Uncontrollable Circumstance as a basis for its failure to commence physical work on any portion of the Project or to commence or complete performance of any of the milestones set forth on the Project Schedule on or prior to the required date or deadline set forth on the Project Schedule, the Redeveloper shall give written notice to the Borough pursuant to Section 10.2 herein, setting forth in detail the reasons for delay and requesting an extension of such date, which extension the Borough shall not unreasonably deny if the alleged Uncontrollable Circumstance exists in accordance with Article 10.

2.6. Qualified Entities.

A. The Project will, at Redeveloper's option, be developed, in whole or in part, by (i) Redeveloper, (ii) any partnership, corporation, limited liability company or other legal entity to which Redeveloper and/or any affiliate or member (provided they are a qualified entity) of Redeveloper is the sole beneficial owner, or (iii) any partnership, corporation, limited liability company or other legal entity to which Redeveloper and/or any affiliate or member (provided they are a qualified entity) of Redeveloper are collectively the sole beneficial owners, subject to the review of the Borough.

B. A "Qualified Entity" is a partnership, corporation, limited liability company or other legal entity which has demonstrated to the satisfaction of the Borough that:

- (i) It has the financial capacity to undertake the development, construction and operation of the Property in question, including,

without limitation, the capacity to obtain financing, to provide appropriate security (such as performance and completion bonds) and to otherwise satisfy its obligations with respect to the development of the Property;

- (ii) It is able to comply with and conform to all of the provisions of this Agreement as they relate to the development of the Property in the Redevelopment Area and expressly assumes all such obligations;
- (iii) No petition under federal bankruptcy laws or any state insolvency law has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such entity, or any partnership in which such entity was or is a general partner or any entity in which such entity was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of 10% (and, in the case of an involuntary proceeding, such proceeding has not been terminated within 60 days of its commencement) within ten full calendar years preceding the date of submission of such entity's application for consideration as a Qualified Entity;
- (iv) Such entity and/or its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them is a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such entity, none is a target of a criminal investigation;
- (v) Such entity and/or its principals, directors, officers, partners, shareholders, and/or members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the Borough or Redeveloper which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which the Borough or Redeveloper alleges a default, nor is such individual, partnership or entity an adverse party in any currently pending litigation involving the Borough or Redeveloper;
- (vi) Such entity and/or its principals, directors, officers, partners, shareholders, and/or members, individually, have not been found

in any civil or criminal action in or by a court or entity of competent jurisdiction to have violated any Federal or State law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision;

- (vii) Such entity and/or its principals, directors, officers, partners, shareholders, and/or members, individually, have not violated any Borough, State, or Federal ethics law, and entering into the proposed transaction with Redeveloper and the Borough will not cause any such violation or result in violation of such laws; and
- (viii) It shall comply with any other conditions that the Borough may find reasonably necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

C. Redeveloper as Qualified Entity. Redeveloper has presented evidence of its credentials as a Qualified Entity and further represents and warrants herein that it meets the above criteria for a Qualified Entity and, based upon such evidence and representation, Redeveloper is hereby deemed a Qualified Entity.

D. Qualified Entity Approval Process. The Redeveloper shall provide written notice to the Borough of any entity which Redeveloper desires be approved by the Borough as a Qualified Entity. Within 30 days after the date of such notice from Redeveloper, the Borough shall provide written notice to Redeveloper either: 1) requesting additional information concerning the proposed entity, 2) approving such entity as a Qualified Entity, or 3) refusing to approve of such entity as a Qualified Entity, setting forth the basis for such denial, with reference to the conditions set forth in Section B(i) through (viii) above. Approval by the Borough of an entity as a Qualified Entity shall authorize such entity to be considered a Redeveloper or hold a beneficial interest in Redeveloper. In the event of a denial by the Borough of an entity as a Qualified Entity as provided above, or in the event the Borough requests additional information, Redeveloper may resubmit its request to the Borough that the subject entity be approved as a Qualified Entity, and Redeveloper shall in such resubmitted request set forth additional information and/or such reasons that demonstrate why Redeveloper believes the subject entity to be a Qualified Entity. Within 30 days after the date of such further request from Redeveloper, the Borough shall provide written notice to Redeveloper stating whether the Borough approves of such entity as a Qualified Entity and, if the Borough does not approve of such entity as a Qualified Entity, the basis for such denial, with reference to the conditions set forth in Section B(i) through (viii) above.

ARTICLE 3
PROCEDURES GOVERNING REVIEW AND APPROVAL
OF APPLICATION FOR REDEVELOPMENT PROJECT

3.1. Procedures; General. In order to facilitate the development and implementation of a mutually acceptable design, site plan and technical approach for the Project, the Parties have established the procedures set forth in this Article 3 for the following review and approval process. The process shall consist of an Application to be approved first by the Borough as the Redevelopment Entity prior to submission to the Planning Board for review and approval of a site plan for the Project. Subsequent to Borough approval, the development process shall be in accordance with the LRHL and the MLUL. Nothing herein is intended to restrict the exercise of the Planning Board's governmental authority with respect to applications for site plan approval under duly adopted rules and regulations or to in any way alter the procedures established for challenging the exercise of such authority pursuant to the MLUL. This procedure shall be used for all development applications by the Redeveloper.

3.2. Application for the Project.

A. Application. The Redeveloper shall submit to the Borough, prior to submission of its site plan to the Planning Board, an Application for approval of a proposed redevelopment project pursuant to this Agreement, which consists of submission of a report and required architectural and civil engineering plans and also include information sufficient to determine compliance with applicable provisions of the Redevelopment Plan encompassing the following:

- (i) Plans depicting existing rights-of-way and easements in the portions of the Redevelopment Area that are the subject of the Application.
- (ii) Architectural renderings of the proposed development.
- (iii) Plans noting the use, location, plan area, setbacks, height and bulk of all existing and proposed structures within the portions of the Redevelopment Area that are the subject of the Application and their consistency with the Redevelopment Plan.
- (iv) Plans showing vehicular parking and loading areas and a layout of pedestrian and vehicular circulation patterns in relation to the buildings that are the subject of the Application.
- (v) Landscape plans sufficient to show general design concepts, including but not limited to lighting and signage design.

- (vi) A schedule that generally reflects the phasing of construction, as necessary and within the time period(s) set forth in the Project Schedule attached as **Exhibit A** hereto.
- (vii) A list of any requirements in the Redevelopment Plan from which Redeveloper seeks design waiver relief and the basis upon which such relief is requested.
- (viii) Such other information as may be reasonably required by the professionals employed by the Borough.

B. Concept Review. Prior to making Application to the Borough or filing a formal site plan application to the Planning Board, Redeveloper shall submit to the Borough, in concept form, items “i” through “viii” above, and the Borough shall confirm that the same are consistent with the Redevelopment Plan unless otherwise relieved.

C. Cooperative Technical Review. In order to proceed with the Project as expeditiously as possible, and to minimize the costs to both Parties, as well as avoid duplication in the review process and unnecessary delay, there was a technical review performed by the Borough and its professional staff.

3.3. Other Governmental Approvals. It is acknowledged by both Parties that it may be necessary for the Redeveloper to obtain Approvals or permits from other governmental agencies in order to undertake development of the Project. Along with Borough Approvals, such Approvals shall be applied for within 180 days of the Effective Date of this Agreement. The Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to obtain any needed permits and Approvals for the Project in a timely fashion and utilizing commercially reasonable efforts. The Borough agrees to provide any pertinent information in its possession and to provide any reasonable assistance, without cost or expense to the Borough, which may be required of it to enable Redeveloper to properly apply for and obtain such permits or Approvals in a timely fashion, including making applications in the name of the Borough if requested by Redeveloper or if required by law to do so. The Borough agrees to support and endorse any applications for any Governmental Approvals required for the Project. Redeveloper shall report to the Borough on a monthly basis the status of such applications and Approvals.

ARTICLE 4 CONSTRUCTION OF PROJECT

4.1. Reports on Progress. The Redeveloper shall submit to the Borough a quarterly report in writing concerning the actual progress of the Redeveloper with

respect to construction of the Project. The work and construction activities of the Redeveloper shall be subject to inspection by the Borough at reasonable times and upon reasonable notice to the Redeveloper.

4.2. Suspension of Construction. The Redeveloper shall not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project or Property, except in the event of an occurrence of an Uncontrollable Circumstance, as set forth in Article 10 herein.

If the Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of 90 days for reasons other than an Uncontrollable Circumstance, and the suspension or abandonment is not cured, remedied or adequately explained in writing within 45 days after written demand by the Borough to do so, then such shall constitute an Event of Default by the Redeveloper under this Agreement, and the Borough shall have the right to seek any remedies pursuant to this Agreement and all other remedies available to the Borough at law or in equity.

4.3. Certificates of Occupancy and Certificate of Completion.

A. Upon Completion of the construction of the Improvements and/or each unit, as may be applicable, in accordance with the Governmental Approvals, the Redeveloper may apply to the Borough for a Certificate of Occupancy for the Project or completed unit(s).

B. Upon Completion of the overall Project, for purposes of releasing the restrictions referenced in this Agreement, and under the Applicable Law(s), the Borough shall issue a Certificate of Completion in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project in accordance with the requirements of the Applicable Law(s), the Redevelopment Plan and this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to the Redeveloper's construction of the Project, including, without limitation, those Covenants and Restrictions set forth in Section 6B(iv) and (v). Upon issuance of a Certificate of Completion: (a) the agreements, restrictions and covenants set forth in Section 6 hereof shall cease and terminate, except for those covenants and restrictions set forth in Section 6 hereof which shall survive in accordance with the terms of Section 6, (b) the conditions determined to exist at the time the Property was determined to be in need of redevelopment shall be deemed to no longer exist, and (c) the land and Improvements

constituting the Project and the Property shall no longer be subject to eminent domain based upon such conditions. If the Borough shall fail or refuse to provide the Certificate of Completion within 30 days after written request by the Redeveloper, the Borough shall provide to the Redeveloper a written statement setting forth in detail the respects in which it reasonably believes that the Redeveloper has failed to complete the Project, or portion thereof, in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for the Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, the Redeveloper may record it in the County Clerk's office.

C. The Borough acknowledges that to facilitate leases of completed units, if any, the Redeveloper may need issuance of Certificates of Occupancy, when possible, on a unit-by-unit basis. Accordingly, if requested by the Redeveloper, the Borough agrees to issue Certificates of Completion, as deemed appropriate and proper by the Borough, on a unit-by-unit basis for those units for which a lease has been entered into.

4.4. Design Elements.

A. **Utility services and electrical lines.** The cost for on-site and off-site utility upgrades and installations, if required directly in relation to the Project, shall be the sole responsibility of the Redeveloper.

B. **Streetscape Improvements.** All costs for required streetscape improvements are the responsibility of the Redeveloper. If required by the Site Plan, such streetscape improvements may include: landscaping, lighting, public furniture and all other on-site improvements located between the curb and the Improvements.

4.5. **First Source Employment.** The Redeveloper shall make a good faith effort to employ and provide in its contracts with its contractors and subcontractors that they must make good faith efforts to employ residents of the Borough and the county in the construction of the Project Improvements at market wages. The Redeveloper agrees to cooperate with the Borough, or its designee, in developing a plan to coordinate employment recruiting efforts for Borough residents.

4.6. Contribution to Costs and Financial Obligations.

A. **Escrow Fees.** It is acknowledged that the Redeveloper posted escrow held by the Borough to cover the Borough's professional fees associated with the Project.

- i. **Borough Costs.** Borough Costs shall include, but not be limited to any fees and costs of any professional consultant, contractor or vendor retained by the Borough to complete due diligence with respect to

the terms of the Redevelopment Agreement or other ancillary agreements between the Parties and for legal and other fees in completing oversight and assistance in the implementation of the Project and in preparing documentation necessary to memorialize the agreements of the Parties including attorneys, planners and financial consultants, among others, and all other out-of-pocket costs and expenses of the Borough incurred in its assistance in implementation, facilitation or defense of the Project, pursuant to the LRHL (N.J.S.A. 40A:12A-8). Upon request, the Borough shall provide the Redeveloper with invoices setting forth Borough Costs incurred. Within 30 days of the receipt by the Redeveloper of written notice from the Borough that the amount in the escrow account has decreased to \$5,000, the Redeveloper shall replenish the escrow account with the Borough to the amount of \$10,000. If the Borough Costs incurred exceed the amount in the escrow account, the Redeveloper will pay such costs upon 30 days written notice from Borough that such costs are due.

- ii. **Planning Board Costs.** The Redeveloper shall post with the Planning Board such escrow fees as necessary to reimburse the Planning Board for its professional, expert, engineering and legal costs incurred in the application review and determination process in accordance with the provisions of the MLUL.

4.7. Reserved.

4.8 Neighborhood Impacts. The Redeveloper acknowledges that the construction and completion of the Project will have certain impacts on the neighborhoods in the vicinity of the Property, which may result in some temporary inconveniences during the time that construction takes place and for a short time thereafter. Therefore, the Redeveloper, in concert with the Borough, shall take all steps reasonably necessary to minimize any potential negative effects that the construction or Completion of the Project may produce. This includes, but may not necessarily be limited to, requirements for monitoring vibrations affecting adjacent properties or structures for pile driving operations taking place on the Project Site.

4.9. Maintenance of the Redevelopment Area. Following commencement of physical construction of the Project Improvements, the Redeveloper will maintain all areas of the Redevelopment Area including the buildings, parking areas, landscaping, and all such issues identified in the property maintenance code of the Borough until such time as Redeveloper no longer owns or leases the Redevelopment Area or part thereof.

4.10. Traffic Control. The Redeveloper and the Borough agree that the direction, flow and amount of traffic in and around the Redevelopment Area is an issue to be addressed during the construction of the Project Improvements, as well as after its completion. The Redeveloper will exert reasonable efforts to minimize the traffic effects of the Project Improvements upon the surrounding neighborhoods and will coordinate with the Borough's designated traffic officer regarding traffic control measures necessitated by the project.

4.11. Access to the Property. During the course of construction of the Project Improvements, upon reasonable written notice to the Redeveloper, no less than 48 hours prior to the proposed access, except in the case of an emergency, the Borough and its authorized representatives shall have the right to enter the Redevelopment Area during regular business hours to inspect the Project Improvements and any and all work in progress for the purpose of furthering its interest in this Agreement. In no event shall the Borough's inspection of the Project Improvements (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Borough has under this Agreement, nor shall it create any hardship upon the Redeveloper and/or interfere with or cause delay to construction.

ARTICLE 5 PARKING

5.1. Parking. Pursuant to the Redeveloper's Application, no parking space deficiency exists under the Redevelopment Plan.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1. Redeveloper's Representations and Warranties. The Redeveloper hereby represents, warrants to and covenants with the Borough that:

A. Organization. The Redeveloper is a limited liability company duly formed under the laws of the State of New Jersey and validly existing and in good standing under the laws of the State of New Jersey with all requisite power and authority to enter into this Agreement.

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

C. Valid and Binding Obligations. The person executing this Agreement on behalf of the Redeveloper has been duly authorized and empowered, and this Agreement has been duly executed and delivered by the Redeveloper and constitutes the valid and binding obligation of the Redeveloper.

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

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

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

G. Qualifications of the Redeveloper. The Redeveloper, its members and affiliates, are fully experienced and properly qualified to undertake the responsibilities and perform the work provided for in, or contemplated under, this Agreement and it is properly equipped, organized and in good financial standing so as to perform all such work and undertake all such responsibilities hereunder.

H. No Speculation. The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the sole purpose of redevelopment of the Property and not for speculation in land holding.

6.2. Borough's Representations and Warranties. The Borough hereby represents and warrants to, and covenants with, the Redeveloper that:

A. Organization. The Borough is a public body corporate and politic and a political subdivision of the State of New Jersey. The Borough has all requisite power and authority to enter into this Agreement and the instruments and documents referenced

herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform their obligations hereunder.

B. Authorization; No Violation. The execution, delivery and performance by the Borough of this Agreement are within the authority of the Borough under, and will not violate, the statutes, rules and regulations establishing the Borough and governing its activities; have been duly authorized by all necessary Resolution(s) and/or Ordinances; and will not result in the breach of any material agreement to which the Borough is a party or, to the best of its knowledge and belief, any other material agreement by which the Borough or its material assets may be bound or affected.

C. Valid and Binding Obligations. The person executing this Agreement on behalf of the Borough has been duly authorized by Resolution to execute this Agreement, the Agreement has been duly executed and delivered by the Borough and it constitutes a valid and binding obligation of the Borough. All of the properties in the Project Site have been designated as areas in need of redevelopment in accordance with the LRHL and a duly adopted resolution of the Borough. The Redevelopment Plan for the Project Site has been approved by a duly adopted ordinance of the Borough.

D. Litigation. No suit is pending against or affects the Borough which could have a materially adverse effect upon the Borough's performance under this Agreement or the financial condition or business of the Borough or with respect to the designation of the Project Site or the adoption of the Redevelopment Plan. There are no outstanding judgments against the Borough that would have a materially adverse effect upon the Borough or which would materially impair or limit of the ability of the Borough to enter into or carry out the transactions contemplated by this Agreement. The Redeveloper is aware of the Borough's ongoing valuation litigation relating to the acquisition of the Project Site through eminent domain.

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

F. No Violation of Laws. As of the Effective Date, the Borough has not received any notices asserting any noncompliance in any material respect by the Borough with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement which would have a material adverse effect on the Borough's ability to perform its obligations under this Agreement. The Borough is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority, which is in any respect material to the transactions contemplated hereby.

6.3. Redeveloper Declaration of Covenants.

A. The Redeveloper agrees to record, and provide a recorded copy to the Borough, a Declaration of Covenants and Restrictions (hereinafter referred to as the "Declaration"), with respect to the Property that shall run with the land to all subsequent holders of title, imposing upon said lands the agreements, covenants and restrictions required to be inserted in the Deeds. All provisions hereinafter with respect to the insertion in or the application to the Deeds of any covenants, restrictions and agreements shall apply equally to the Declaration, and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

B. Description of Covenants and Restrictions. The Covenants and Restrictions to be imposed upon the Redeveloper, its successors and assigns, herein and recorded in the Deeds and the Declaration, shall set forth that the Redeveloper and its successors, transferees and assigns shall:

- (i) Devote the Property to the uses specified in the Redevelopment Plan, as may be amended, and as agreed herein, and shall not devote the Property to any other uses;
- (ii) Pursuant to the Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, disability, military service, familial status, or marital status in the sale, lease, rental, use or occupancy of the Property or any buildings or structures erected or to be erected thereon, or any part thereof;
- (iii) In the sale, lease or occupancy of the Property or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, disability, military service, familial status, or marital status, and the Redeveloper, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, gender identity or expression, disability, military service, familial status, or marital status to the extent required by the Applicable Law;
- (iv) Commence Construction of the Improvements within the Project Schedule as set forth in **Exhibit A**; and

- (v) Not sell, lease or otherwise transfer the Property, or any part thereof, without the written consent of the Borough, except for permitted transfers to a Qualified Entity as set forth in Section 2.6(B) hereof.

C. Effect and Term of the Covenants and Restrictions. Subject to the provisions of Section 6 hereof, it is intended and agreed, and the Deeds and the Declaration shall so expressly provide to the extent permitted by Applicable Law, that the Covenants and Restrictions set forth in Section 6 hereof shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in Section 6 hereof shall remain in effect until the issuance by the Borough of a Certificate of Completion, as provided in Section 4.3, hereof, (at which time all agreements, obligations, Covenants and Restrictions (including, without limitation, those provided for in Section 6B(iv) and (iv)) shall cease and terminate), except, however, that the Covenants and Restrictions provided in Section 6B(i) shall remain in effect for 30 years and the Covenants and Restrictions provided in Sections 6B(ii) and (iii), hereof shall remain in effect without limitation as to time; provided that such Covenants and Restrictions shall be binding on the Redeveloper itself, each successor in interest to the Project, the Property, or any part thereof, and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successors, transferees or party shall have title to, or an interest in, or possession or occupancy of the Property, and the Improvements constructed thereon or any part thereof.

D. Enforcement by Borough. In amplification, and not in restriction of the provisions of this Article 6, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the Covenants and Restrictions set forth in Section 6B hereof both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough for the entire period during which such Covenants and Restrictions shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The Borough shall have the right, in the event of any breach of any such Covenants and Restrictions, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.

**ARTICLE 7
DEFAULT**

7.1. Events of Default. Each of the following shall constitute an event of default (hereinafter referred to as an "Event of Default") by the applicable party, respectively:

- A. Any Party fails to make payment of any sum payable to the other party hereunder, as the same shall become due and payable, or fails to fulfill any obligation hereunder within the time prescribed, and such failure shall have continued for a period of 60 days after receipt of written notice specifying such failure, and demanding that same be remedied;
- B. Any Party or its successor in interest shall violate any of its Covenants, Representations, Declarations, or obligations to perform under the terms of this Agreement and failure shall have continued for a period of 60 days after receipt of written notice specifying such default (or such longer or shorter time as may be specified herein), and demanding that same be remedied, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion, However, if, the default cannot be cured within 60 days using reasonable diligence, the non-defaulting party will extend the time to cure, provided the corrective action is instituted within 60 days and diligently pursued to completion;
- C. The Redeveloper shall (i) fail to construct the Project pursuant to the Project Schedule in **Exhibit A**, subject to the occurrence of an Uncontrollable Circumstance and the provisions of this Agreement, or (ii) shall abandon or substantially suspend construction of the Project for a continuous period in excess of 90 days, unless such suspension arises out of an Uncontrollable Circumstance as set forth in this Agreement, and any such default, violation, abandonment, or suspension set forth in this Section 7.1(C)(i) or (ii) shall not be cured within 60 days after written demand by the Borough to do so, or such longer period if incapable of cure within such 60 day period and Borough agrees to extend such time to cure, provided that the Redeveloper has commenced and is diligently prosecuting such cure; or
- D. The Redeveloper or its successor in interest shall fail to pay any Impositions when due, or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such Imposition shall not have been paid, or the encumbrance or lien removed, bonded over or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within 45 days after written

demand by the Borough to do so, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion; or

- E. There is, in violation of this Agreement, any transfer of the fee title to the Property or a portion thereof, except for Permitted Transfers as provided in Section 13.2, and such violation shall not be cured within 45 days after written demand served upon the Redeveloper by the Borough; or
- F. The Redeveloper is dissolved, or files a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or the Redeveloper consents to the appointment of a receiver, or an answer proposing the adjudication of the Redeveloper as bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, is filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within 45 days from entry thereof, or the Redeveloper consents to the filing of such petition or answer.

7.2. Right to Cure Upon Event of Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by any party hereto or any successor to such party, such party (or successor) shall, within 45 days (or such longer, or shorter, period to the extent expressly provided above) of receiving written notice from another, proceed to cure or remedy such default or breach, or such longer period if incapable of cure within such 45 day period and Borough agrees to extend such time to cure, provided that the Redeveloper has commenced and is diligently prosecuting such cure. In no case shall such period be more than 120 days without approval by resolution of the Borough Council. In case such action is not taken or diligently pursued, or the default or breach shall not be cured or remedied within such proscribed time, or any extension of such time granted at the discretion of the non-breaching party, the non-breaching party may pursue its remedies in accordance with this Agreement.

7.3 Borough's Remedies. If the Redeveloper shall fail to timely cure any Event of Default by the Redeveloper as set forth in Section 7.1, the Borough shall be entitled, in its sole and absolute discretion, to:

- A. Withhold the issuance of any approval, permit or certificate in connection with the Project.
- B. Terminate this Agreement and seek reimbursement of all actual monetary damages resulting directly and solely from such failure to cure the Event of

Default. Notwithstanding anything to the contrary contained in this Agreement, in the event of a default by Redeveloper, or for any other reason, Redeveloper shall not be liable for any punitive, special, or consequential damages whatsoever.

- C. Call any performance or maintenance bond posted as part of Site Plan approval, in accordance with the terms of this Agreement or as otherwise available as a matter of law.
- D. Retain any payments made by the Redeveloper hereunder and any monetary and in-kind contributions for infrastructure improvements as payment towards the Borough's damages, if any.
- E. Seek to exercise any rights of reversion to the Property conveyed to the Redeveloper from the Borough for the purposes of the Project under this Agreement. Specifically, upon the occurrence of any Event of Default subsequent to the conveyance of the Property to the Redeveloper, subject to the rights of any mortgage holder, the Borough shall have the right at its sole and absolute option, upon 45 days' notice to Redeveloper, and any mortgagee of the Redeveloper, to re-enter and take possession of the Property. This reversionary interest shall re-vest in the Borough all title, rights and interests in and to the Property back to the Borough. At the same time that the Borough enters onto and takes possession of the Property, Redeveloper shall execute and deliver a deed to the Borough for the Property subject to the rights of any mortgage holder. If the Redeveloper fails to deliver an executed deed to the Borough within 15 days after written demand by the Borough, the Borough shall have the right to seek a court order through a summary proceeding to retake possession of the Property, along with any other remedies permitted under law. Upon the occurrence of any such conveyance, this Agreement shall be deemed terminated and there shall be no further rights or obligations of the Parties except for those rights reserved to a mortgage holder. This right of reversion set forth in this Section 7.3E shall terminate and be of no further force and effect upon the date of the last of the Certificates of Completion being issued for the project and Property pursuant to this Agreement.
 - 1. Upon the vesting in the Borough of the title to the Property, it shall use its best efforts to resell the Property (subject to such permitted mortgage liens as may exist). Such sale shall be made, as soon and in such manner as the Borough shall find feasible and consistent with the objectives of the Redevelopment Plan, to a qualified and responsible party, as determined by the Borough, who will assume the obligation of completing the Project or such

other Improvements as shall be satisfactory to the Borough and in accordance with the uses specified for the Property in this Agreement and the Redevelopment Plan. Upon any resale of the Property, the proceeds thereof shall be applied:

- a. First, to all reasonable costs and expenses incurred by the Borough, including but not limited to reasonable legal fees, salaries of personnel, and related expenses incurred in connection with the possession, management and resale of Property; all taxes, assessments, and water and sewer charges with respect to the Property; any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property at the time of the vesting of title thereto in the Property or to discharge or prevent from attaching, or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of Redeveloper, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Property; and any amounts otherwise owed to the Borough by Redeveloper and its successors or transferees in accordance with the terms of this Agreement.
- b. Second, to reimburse the Redeveloper, its successor or transferee, up to the amount equal to the Redeveloper's actual costs associated with the Property, including land acquisition, engineering, planning, site improvement, marketing and other project development costs, plus the reasonable value of all improvements constructed and paid for by the Redeveloper. Any balance remaining after such reimbursements shall be retained by the Borough.

F. Exercise any other remedies available at law or equity.

Upon termination of this Agreement based upon an Event of Default, the Redeveloper's status as the designated redeveloper for the Project and the Property shall automatically be terminated and deemed null and void. The de-designation of the Redeveloper shall be limited to the extent the Project has not been substantially

Completed by the Redeveloper, it being understood and agreed that if the Redeveloper shall fail to cure any such default in accordance with Section 7.2 before substantial Completion the Project, the Borough may terminate this Agreement and de-designate the Redeveloper for that portion of the Project that is not substantially Completed by Redeveloper at that time and for which no Certificate of Occupancy or Certificate of Completion was issued. Such remedy shall not defeat, render invalid or limit in any way the lien or rights or interests of holders of institutional financing as authorized and pursuant to Article 12.

7.4. Redeveloper's Remedies. If the Borough shall fail to timely cure any Event of Default by Borough as set forth in Section 7.1, the Redeveloper shall be entitled, in its sole and absolute discretion, to all rights and remedies available at law or in equity.

7.5. Limitation of Liability. The Parties agree that in the event of any Default or breach under this Agreement, the Parties shall look solely to the Parties hereto and their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, representative or other person affiliated with such party shall be personally liable for any such judgment or damages.

7.6. No Waiver of Rights and Remedies by Delay. Any delay by the aggrieved party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved party of or limit the aggrieved party's rights in any way (it being the intent of this provision that the aggrieved party should not be constrained so as to avoid the risk of being deprived or limited in the exercise of the remedies provided herein by those concepts of waiver, laches, or otherwise) to exercise such rights at a time when, the aggrieved party may still resolve the problems by the default involved; nor shall any waiver in fact made by the aggrieved party with respect to any specific default by the other party under this Agreement be considered or treated as a waiver of the rights of the aggrieved party with respect to any other defaults by the other party under this Agreement or with respect to the particular default except to the extent specifically waived in writing.

7.7. Rights and Remedies Cumulative. The rights and remedies of the Parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative and, except as otherwise specifically provided by this Agreement, the exercise by either Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to

the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

ARTICLE 8 INSURANCE

8.1. During the term of this Agreement, the Redeveloper shall provide and maintain the following insurance in connection with the work to be performed under this Agreement until such work has been Completed, name the Borough as an additional insured under such policies (other than the Compensation Insurance), and furnish the Borough, within 30 days of the Effective Date, with a copy of certificates of insurance evidencing that the Redeveloper has obtained such insurance:

- A. **Contractor's Comprehensive General Liability and Property Damage Insurance** - with combined single limits of not less than \$2,000,000 per occurrence with respect to comprehensive general liability, bodily/personal injury and property damage and shall include broad-form contractual coverage and indemnification and hold harmless provisions.
- B. **Excess Liability Insurance** - in the amount of \$5,000,000 is to be provided in addition to the above requirements.
- C. **Worker's Compensation Insurance** - coverage as required by state law for all employees who will be engaged in the work associated with this Agreement. The Redeveloper shall require all subcontractors to provide similar worker's compensation insurance for all of their employees, unless those employees are covered under the Redeveloper's insurance.
- D. **Certificates.** All insurance certificates provided by the Redeveloper under this Agreement shall stipulate that the insurance will not be changed or canceled without giving at least 60 days' written notice to the Borough by certified mail.
- E. **Performance and Maintenance Bonds.** The Redeveloper shall, as required pursuant to Resolution of the Planning Board for preliminary and final site plan approval, post the appropriate performance and maintenance bonds in amounts to be determined by the Planning Board and its professionals pursuant to the MLUL.

ARTICLE 9

INDEMNITY

9.1. Obligation to Indemnify. The Redeveloper agrees to indemnify and hold the Borough and its officials, agents, servants, employees and consultants (collectively, the "**Indemnified Parties**") harmless from and against any and all claims, demands, suits, actions, recoveries, judgments, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable attorneys' fees and expenses and experts' fees and expenses) (collectively, "**Claims**") which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage to property, arising from or in connection with the implementation, construction or maintenance of the Project, or any activities of or on behalf of the Redeveloper within the Property, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions, or grossly negligent acts or omissions of the Indemnified Parties. The Borough shall provide notice to the Redeveloper of the subject Claims as soon as reasonably possible after their occurrence but in any case, within 10 days of the Borough receiving actual or constructive notice of the subject Claims, provided, however, that in the event such notice is not timely received, the Redeveloper shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice. The obligation to indemnify the Indemnified Parties shall survive the termination or expiration of this Agreement with respect to any Claims arising from any activities occurring prior to the issuance of a Certificate of Completion.

ARTICLE 10
UNCONTROLLABLE CIRCUMSTANCES

10.1. Definition of Uncontrollable Circumstances. For purposes of this Article and as otherwise used in this Agreement, “**Uncontrollable Circumstances**” shall mean any of the events or conditions set forth below, or any combination thereof, that has had or may reasonably be expected to have a material and adverse effect on the ability of a party to perform its obligations (an “**Affected Party**”) under this Agreement:

- A. An act of God including severe natural conditions such as landslide, lightning, earthquake, fire, explosion, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of public enemy, terrorism, war, blockade, insurrection, riot, general arrest or general restraint of government and people, or any other similar act or event outside the control of the Affected Party; provided however, that any question as to whether any such conditions should be deemed to constitute an Uncontrollable Circumstance shall be considered in light of good engineering practice and industry standards to protect against reasonably foreseeable severe natural weather conditions, taking into account the geographic location and topographic and geotechnical conditions of the Project.
- B. The condemnation, taking, seizure, involuntary conversion or acquisition of title to or use of the Property, or any portion or part thereof, by the action of any federal, state or local government or governmental agency or authority.
- C. Delays incurred in obtaining Governmental Approvals caused solely by the approving agency after the Affected Party has taken all required action in obtaining such Approval and the continued delay is outside and beyond the control of the Affected Party.
- D. Delays resulting from legal challenges brought to challenge any permit and/or Approval related to this Project by third-parties over whom the Affected Party has no control that have a material and adverse effect upon the Affected Party’s ability to perform its obligations under this Agreement.
- E. Labor union strikes or similar labor union action by equipment manufacturers, suppliers of materials, employees or transporters of same, to the extent that such labor union strikes relate to general labor disputes that are non-specific to the Project of the Redeveloper and have a material and adverse effect upon the Affected Party’s ability to perform its obligations under this Agreement.

- F. The unavailability of suitable fill or materials required for performance of the work related to the Project due to fluctuations in the historically reasonable commercial rates for fill or materials, shortages of same in the marketplace and/or the inability to obtain transportation services for transporting fill or materials to the Property or the Project area as a result of a public or private labor dispute.

10.2. Notice of Uncontrollable Circumstance. If an Uncontrollable Circumstance has occurred and is continuing, the Affected Party wishing to suspend its performance as a result of such Uncontrollable Circumstance shall provide written notice thereof to the other party as promptly as is reasonably possible under the circumstances and in all events within 30 days following such party's knowledge of the occurrence of such Uncontrollable Circumstance, provided, however, that a party's failure to give timely notice under this Section 10.2 shall not be a waiver of the rights provided for in this Section 10, unless the other Party has suffered a material and adverse effect as a result of such failure.

10.3. Effect on Obligations.

- A. In the event of an Uncontrollable Circumstance, the applicable deadline, obligation or term affected by such Uncontrollable Circumstance shall be extended for a period of time equal to the delay caused by the Uncontrollable Circumstance, provided that timely notice was provided by the Affected Party.
- B. The performance, non-performance or delay in performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default where such performance, failure of performance or delay in performance is/are the result of an Uncontrollable Circumstance, provided, however, that the Uncontrollable Circumstance (a) was not invoked in bad faith by a Party (b) was not the result of any unlawful action or non-action of the Affected Party as justification for the performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility, and (c) the Affected Party takes all reasonable efforts within its power to timely mitigate the Uncontrollable Circumstance.
- C. Each party shall diligently and in good faith seek to mitigate the effect of such Uncontrollable Circumstance and to perform its obligations to the extent practicable notwithstanding the occurrence of an Uncontrollable Circumstance and to overcome such Uncontrollable Circumstance as soon as is possible or practicable.

- D. **Reinstatement of Performance Obligations.** The performance by the Parties of any obligation under this Agreement excused as aforesaid shall be recommenced as promptly as is legally and reasonably practicable after the occurrence of an Uncontrollable Circumstance and, in the case of the party not seeking to delay its performance based upon such Uncontrollable Circumstance, after receipt by such party from the Affected Party of written notice that the Uncontrollable Circumstance is no longer occurring and that such party can resume performance of its obligations under this Agreement.

10.4. Defense of Approvals. Notwithstanding any of the above, the Redeveloper shall assume the defense to any challenge to any permit and/or Approval it requires to proceed with the Project without cost to the Borough so as to continue to move forward with the Project.

ARTICLE 11 NOTICES AND DEMANDS

11.1. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or by electronic mail, or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses or electronic mail:

If to the Borough, to:

ATTN: Borough Administrator
Christopher J. Vaz
100 Grant Avenue
Seaside Heights, New Jersey 08751

With a copy to:

Brian M. Nelson, Esq.
Archer & Greiner PC
10 Highway 35
Red Bank, New Jersey 07701

and if to Redeveloper, to:

SSH Boulevard Urban Renewal, LLC
235 Broubalow Way
Philipsburg, New Jersey 08865

With a copy to:

Seth R. Tipton, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, New Jersey 08865

Either party may from time to time by written notice given to the other pursuant to the terms of this Section 11.1 change the street address, electronic mail address or persons to which notices shall be sent.

**ARTICLE 12
CONSTRUCTION AND PROJECT FINANCING**

12.1. Redeveloper's Commitment to Finance Project

- A. The Redeveloper represents and warrants that it has obtained or can obtain and will commit the requisite equity and debt financing in an amount necessary to implement and complete the Project. Within six months of the Redeveloper obtaining all Governmental Approvals and, in any case, at least 30 days prior to Commencement of Construction of the Project, the Redeveloper shall submit to the Borough a financial plan that the Redeveloper believes to be complete, describing the anticipated sources of funding for the Project, including, but not limited to, a commitment or a "term sheet" for construction financing required for the Project and a representation regarding any equity capital necessary for the Commencement of Construction of the Project.
- B. It is anticipated that the Redeveloper will be filing an Application for a Long-Term Tax Exemption, the specific terms of which will be determined through approval of a Financial Agreement by the governing body.

12.2. Rights of Institutional Mortgagee. Any financial institution lending money on the security of the real Property in the Project shall be entitled to the protection of N.J.S.A. 55:17 providing for notification, right to cure, right to possession, right to assume control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with foreclosure, right to proceed to foreclosure, separately from or together with suit on the underlying obligation, and such other rights all as specifically provided in N.J.S.A. 55:17-8.

- A. This Agreement as a financial arrangement made by a governmental body or agency of the State of New Jersey pursuant to statutes in connection with a

project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any default in or foreclosure of any mortgage loan made to finance the project, as though such default or foreclosure had not occurred, subject to the provisions of N.J.S.A. 55:17.

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

12.3. Rights of Mortgagees. Notwithstanding any other provision of this Agreement, the holder of any mortgage (including any such holder who obtains title to the Property or any part thereof), or any other party who thereafter obtains title to the Property or such part from or through such holder or any purchaser at foreclosure sale or through other court proceedings or action in lieu thereof shall in no way be obligated by the provisions of this Agreement to construct or complete the Project except to secure and make the Project site and Property safe, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any deeds conveying the Property to Redeveloper be construed to so obligate such holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided, or permitted under the Redevelopment Plan or otherwise approved by the Borough.

12.4. Notice to Mortgagee. Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any breach or Default by Redeveloper of its obligations or covenants under this Agreement, the Borough shall at the same time forward a copy of such notice or demand to each holder of any mortgage at the last known address of such holder shown in the land records of the County. Notice that such breach or Default subsequently has been cured shall also be provided by the Borough to each such holder of any mortgage.

12.5. Mortgagee's Right to Cure Redeveloper's Default. After any breach or Default referred to in Section 7, and the expiration of any applicable cure period, each holder shall have the right, at its option, to cure or remedy such breach or Default (if the holder shall opt to cure or remedy the breach or Default, the times to cure provided herein shall be extended for such a period of time equal to the time otherwise applicable to Redeveloper for cure) and to add the cost thereof to its mortgage. If the breach or Default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to require the holder to obtain the Borough's approval, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or Completion of the Project. Any such holder who shall properly Complete the Project or applicable part thereof shall be entitled, upon written request

made to the Borough, to receive the Certificate of Occupancy for the units or buildings within the Project and the Certificates of Completion as set forth in Section 4.3 hereof, and such Certificate shall mean and provide that any remedies or rights that Borough shall have or to be entitled to due to the failure of Redeveloper or any successor in interest to the Property, or any part thereof, to cure or remedy any Default with regard to construction of the Project or applicable part thereof, or due to any other Default in or breach of this Agreement by Redeveloper or such successor, shall not apply to the part or unit of the Property to which such Certificate relates.

ARTICLE 13 RESTRICTIONS ON TRANSFERS

13.1. Restrictions on Transfer. Prior to the issuance of a Certificate of Completion for the Project or any part thereof (including any unit), pursuant to N.J.S.A. 40A:12A-9(a), except as otherwise permitted by this Agreement, Redeveloper shall be without power to sell, lease or otherwise transfer the Project or any such part, without the written consent of the Borough, which consent shall not be unreasonably withheld, delayed or conditioned, except that Redeveloper may sell or lease one or more individual condo units, to third parties. The prohibition in this Section 13.1 shall apply to any sale, transfer, pledge, or hypothecation by Redeveloper of all or substantially all of its assets "in bulk" (but not to sales in the ordinary course of business) or all or substantially all of its stock, or the sale, transfer, pledge, or hypothecation of 50% or more of the stock of Redeveloper if Redeveloper's stock is not publicly traded; or the sale, transfer, pledge, or hypothecation of 50% or more of the beneficial ownership interest in Redeveloper if Redeveloper is a partnership, except in the event of the death of a partner or member. Any of the foregoing cases whether or not accomplished by one or more related or unrelated transactions, constitute a prohibited assignment. The foregoing shall not apply, however, to a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of Redeveloper, which is prohibited by the third sentence of this Section. The restrictions in this Section 13.1 shall not apply to conveyances set forth in Section 13.2 and these restrictions shall no longer apply to any individual unit for which a Certificate of Occupancy or Certificate of Completion has been issued.

13.2. Permitted Transfers. Notwithstanding the foregoing, the Borough hereby consents, without the necessity of any further approval, but subject to ten days prior notice to the Borough (except as to conveyances in Sections (A) and (B)), to the following conveyances:

- A. A conveyance of driveways, roads, infrastructure, open space and other common property to a property owners' association or similar entity.

- B. Deeds to purchasers of individual condominium units, if any, or leases to tenants of individual units.
- C. Utility and other necessary easements.
- D. A mortgage or mortgages or leases or leasehold or other financing and other liens and encumbrances solely for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project.
- E. A conveyance of the Property or any portion thereof to the holder of any mortgage authorized under this Agreement, whether through foreclosure, deed-in-lieu of foreclosure, or otherwise.
- F. A transfer of any interest in the Project Site to any partner or family member of any of the members of the Redeveloper or to any entity owned or controlled by the Redeveloper.
- G. A transfer to a Qualified Entity in accordance with this Agreement.

13.3. Conveyance to a Qualified Entity. Upon a conveyance of all rights and obligations hereunder to a Qualified Entity, pursuant to Section 2.6, which shall not be unreasonably delayed or denied, the Redeveloper shall be relieved of its right and obligations hereunder.

13.4. Subsequent Conveyance by Redeveloper. Upon issuance of a Certificate of Completion for any portion of the Project, the Redeveloper shall have the right to sell, lease or otherwise transfer, convey or encumber any such portion of the Project without the consent of the Borough and free of any restrictions imposed by this Agreement, except the Declarations that expressly survive such transfer or conveyance.

ARTICLE 14 CONVEYANCE OF BOROUGH PROPERTY

14.1. Purchase and Sale Agreement for Conveyance. The Borough holds title to the Property, which is required to be conveyed to the Redeveloper for the Project. The Borough agrees to convey the Property to the Redeveloper for and in consideration of the purchase price and other considerations set forth in the Purchase and Sale Agreement between the Borough and the Redeveloper attached hereto as **Exhibit B** and upon satisfaction of the covenants, contingencies and agreements herein contained to be performed by the Redeveloper and Borough prior to closing.

a. Deed. Pursuant to the terms and conditions of the Purchase and Sale Agreement, the Borough will convey the Property to the Redeveloper by Quitclaim Deed. The Deed shall contain such restrictions, covenants and conditions as may be required under the terms of the Purchase and Sale Agreement, Redevelopment Plan, and this Agreement, including the reversionary interests set forth under Section 7.3.E.

b. Contingencies. In addition to any contingencies stated elsewhere in this Agreement or the Purchase and Sale Agreement, the obligation of the Borough to convey the Property to the Redeveloper shall be subject to all of the following conditions:

1. The Redeveloper shall have satisfied the requirements of this Agreement by documenting its ability to finance the construction of the Project.
2. The Redeveloper shall have received the Governmental Approvals required by this Agreement for the construction of the Project.
3. The Redeveloper shall have paid all escrows, administrative fees and costs attendant to the acquisition of the Property and required under this Agreement.
4. The Redeveloper shall have performed and complied in all material respects with the covenants and conditions required under this Agreement to be performed or complied with prior to the conveyance of the Property.
5. All of the representations and warranties of the Redeveloper contained in this Agreement and its application to the Borough, shall have been true and correct in all material respects when made, and shall be true and correct in all material respects as of the date of the conveyance of the Property as if made at and of that date.
6. There shall not exist on the date of conveyance of the Property, any temporary restraining order, preliminary or final injunction, writ, decree, final order, ruling or decision of a court of competent jurisdiction or governmental authority restraining or preventing the closing of the conveyance of the Property to the Redeveloper.

c. Condition of the Property. Redeveloper acknowledges and agrees that neither the Borough, nor any agent or representatives, have made, and the Borough is not liable or responsible for or bound in any manner by any express or implied representations, warranties, covenants, agreements, obligations, guarantees, statements, information or inducements pertaining to the Condition of the Property (as hereinafter defined) or any

part thereof. Redeveloper acknowledges, agrees, represents and warrants that Redeveloper has had, and/or shall have had an opportunity to conduct all investigations of the Property that Redeveloper deems necessary to determine, in Redeveloper's sole and absolute discretion, the suitability and availability of the Property for Redeveloper's intended use and further acknowledges and agrees that it is accepting the Condition of the Property in its AS-IS, WHERE-IS CONDITION, with all faults. As used herein, "**Condition of the Property**" shall mean the title and physical condition thereof, including all environmental matters, the quantity, character, fitness and quality thereof, merchantability, fitness for particular purpose, the income, expenses or operation thereof, the value and profitability thereof, the uses which can be made thereof, title to the Property, the structural and mechanical condition of the Property, the buildings, structures and improvements situate thereon, the plumbing, heating, electric and ventilating systems (if any) serving the Property and any other matter or thing whatsoever with respect thereto. In addition to, and without limiting the foregoing, Redeveloper further acknowledges and agrees that the Property is conveyed in its "as is" condition with respect to environmental matters, and Redeveloper hereby assumes the risk that adverse past, present or future conditions may not be revealed in its inspection or investigation.

d. Environmental Compliance. The Borough makes no representations and shall not be responsible for any environmental assessment or clean-up costs associated with the Property, all of which shall be the responsibility of the Redeveloper as the Property is being conveyed in "as is" condition. Upon acquisition of the Property, the Redeveloper will perform any necessary clean-up, remediation and mitigation, if necessary, at the Redeveloper's sole cost and expense in compliance with all applicable Environmental Laws. The Redeveloper acknowledges and agrees that the Borough shall be under no obligation to mitigate any environmental contamination on the Property. The Redeveloper acknowledges that the Borough has not made any statements, representations or other agreements about the condition of the Borough, including, without limitation, the environmental condition of the Borough. REDEVELOPER IS ACCEPTING THE BOROUGH IN AS-IS CONDITION, INCLUDING, WITHOUT LIMITATION, ANY AND ALL ENVIRONMENTAL CONDITIONS AND HAZARDOUS SUBSTANCES. Redeveloper hereby (A) releases and holds harmless and (B) agrees to defend and indemnify, the Borough with respect to all actions, causes of action, obligations, expenses, liabilities, losses, penalties, fines, fees (including reasonable paid counsel fees and reasonable costs of investigations and defense) or costs (including monitoring, clean-up, compliance and/or litigation costs), claims, suits and damages for personal injury (including death), property damage and violation of any Federal, State or local law, statute, rule, regulation or ordinance which the Borough may, at any time and from time to time, incur, pay out, be exposed to and/or be responsible for which arises from or is related to the Borough, including without limitation as a result of the presence of any Hazardous Substances and/or violation of any Environmental Law, regardless of whether the conduct or condition took place or existed prior to or after the conveyance

of the Property pursuant to this Agreement. Without limiting the generality of the foregoing, it is understood that Redeveloper is assuming all of the Borough's liabilities, if any, respecting the Property under all Environmental Laws. It is the intent of the Borough and Redeveloper that as between them Redeveloper shall be solely liable for compliance with all Environmental Laws affecting the Property or operations on the Property. Redeveloper hereby waives any and all rights of contribution and/or other claims Redeveloper might otherwise have against the Borough under applicable Environmental Laws and or at common law in connection with the environmental condition of the Property or claims now existing or hereafter arising as a result thereof.

ARTICLE 15 MISCELLANEOUS

15.1. Term. Except for those provisions expressly surviving termination, this Agreement shall terminate upon the earlier of: (i) Completion of the Project, or (ii) the expiration of the Planning Board approval for the Project, after any applicable extensions granted by the Planning Board.

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

15.3. Amendment; Waiver. No alteration, amendment or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement. The failure of the Borough or Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Borough or Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the Borough or Redeveloper.

15.4. Consents. Unless otherwise specifically provided herein, no consent or approval by the Borough or Redeveloper permitted or required under the terms of this Agreement shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the party by or on whose behalf such consent is given. Whenever this Agreement requires the consent or approval of the Borough or the Redeveloper, or any officers, agents or employees of either Party, such

approval or consent shall not be unreasonably withheld, delayed or conditioned and shall be given within a reasonable time if said time is not specifically set forth herein.

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

15.6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either Party to this Agreement shall be filed in either the Superior Court of New Jersey, Ocean County, or in the United States District Court for the District of New Jersey in accordance with their respective rules of court.

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

15.8. Binding Effect. Except as may otherwise be provided in this Agreement to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of Redeveloper, the Borough and their respective successors and assigns.

15.9. Relationship of Parties. Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Redeveloper and the Borough, their relationship being solely as contracting Parties under this Agreement.

15.10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute, in connection with each of such agreements, one and the same instrument.

15.11. Prior Agreements Superseded. This Agreement repeals and supersedes any prior understanding or written or oral agreements (express or implied)

between the Parties. This Agreement, together with any other documents executed by the Parties contemporaneously herewith or therewith, contains the entire understanding between the Parties with respect thereto.

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

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

15.14. Affirmative Action. Should Redeveloper use any public funding or financing for the Project, which requires compliance with affirmative action requirements set forth in P.L. 1975, C. 127 (N.J.S.A. 17:27), the Redeveloper agrees to comply with said requirements and cause its contractors and subcontractors to comply with same.

15.15. Reserved.

15.16. Non-Discrimination. The Redeveloper shall not discriminate against or segregate any person, a group of persons, on account of race, color, religion, creed, national origin, ancestry, disability, age, marital status, familial status, military status, sex, gender identity or expression, affectional or sexual orientation in the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Project Site; nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees or vendees on the Project Site.

15.17. Construction. Both of the Parties acknowledge that this Agreement has been extensively negotiated with the assistance of competent counsel for each party and agree that no provision of this Agreement shall be construed in favor of or against either party by virtue of the fact that such party or its counsel have provided an initial or any subsequent draft of this Agreement or of any portion of this Agreement.


IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date.

WITNESS:

SSH BOULEVARD URBAN RENEWAL, LLC



DANIELA VASILE



DON MATARESE
MANAGING MEMBER

ATTEST:

BOROUGH OF SEASIDE HEIGHTS

Anthony E. Vaz, Mayor

STATE OF NEW JERSEY)
)
) ss
)
COUNTY OF OCEAN)

BE IT REMEMBERED that on this ____ day of _____ 2023, before me, the subscriber, personally appeared, **ANTHONY E. VAZ**, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the **MAYOR of THE BOROUGH OF SEASIDE HEIGHTS**, a municipal corporation of the State of New Jersey named in the within instrument; that **ANTHONY E. VAZ** is the **MAYOR** of said municipal corporation, the entity named in the within instrument and that he signed, sealed and delivered the attached document as and for his act and deed of said entity, in his presence, who thereupon subscribed his name thereto as attesting witness.

Sworn and subscribed to before me this
____ day of _____ 2023

STATE OF NEW JERSEY)
)
) SS
)
COUNTY OF Monmouth)

BE IT REMEMBERED that on this 2 day of MAY 2023, before me, the subscriber, personally appeared, Daniel Matarrese, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the **MANAGING MEMBER** of **SSH BOULEVARD URBAN RENEWAL, LLC**, a limited liability corporation of the State of New Jersey named in the within instrument; that Daniel Matarrese is the **MANAGING MEMBER** of said limited liability corporation, the entity named in the within instrument and that he signed, sealed and delivered the attached document as and for his act and deed of said entity, in his presence, who thereupon subscribed his name thereto as attesting witness.

Sworn and subscribed to before me this
2 day of may 2023



BIAGIO VERGONE
Notary Public - State of New Jersey
My Commission Expires Jan 18, 2026

EXHIBIT D

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT made and entered into this 2 day of May
2023 ("**Effective Date**");

by and between

Borough of Seaside Heights
100 Central Avenue
Seaside Heights, New Jersey 08751
(the "**Seller**");

and

SSH Boulevard Urban Renewal, LLC
235 Broubalow Way
Philipsburg, New Jersey 08865
(the "**Buyer**")

RECITALS

WHEREAS, Seller is the owner of a certain parcels of land and property located in Borough of Seaside Heights, County of Ocean, State of New Jersey, designated as Block 5.01, Lots 58, 59 and 63 on the Tax Map of the Borough of Seaside Heights (the "**Property**"); and

WHEREAS, Buyer and Seller are parties to a Redevelopment Agreement authorized on August 3, 2022 (the "**Redevelopment Agreement**") whereby the Buyer has proposed the development of a 10-story mixed use building with approximately 79 for sale or for-lease residential units, 12,000 square feet of retail/restaurant space, and associated amenities, including rooftop amenities, which shall consist of a pool and enclosed refreshment and relaxation areas (the "**Project**"); and

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Seller and Buyer, Seller hereby agrees to sell and convey the Property to Buyer upon the terms and conditions hereinafter set forth.

1. PROPERTY.

The Property to be sold by the Seller and purchased by the Buyer is property located in the Borough of Seaside Heights, County of Ocean, State of New Jersey, designated as Block 5.01, Lots 58, 59 and 63 on the Tax Map of the Borough of Seaside Heights, being fully described on Schedule A attached hereto.

2. PURCHASE PRICE.

- a. The purchase price ("**Purchase Price**") for the Property is One Million Eight-Hundred Thousand Dollars (\$1,800,000).
- b. Subject to adjustments or pro-rations as hereinafter set forth, the Purchase Price is payable as follows:

- i. Purchase Price Payment Terms. The Buyer will pay the Purchase Price (subject to adjustment) as follows:

| | |
|--|--------------------|
| (A) Deposit having been made and acknowledged by completion of demolition | \$300,000 |
| (B) Balance of the Purchase Price by official bank check, wire transfer or attorney trust account check at Closing | \$1,500,000 |
| Total Purchase Price | \$1,800,000 |

- ii. Deposit Monies. The sum described in subsection 2(b)(i)(A) (the "**Deposit**") is acknowledged as having been made as a credit for the demolition of former improvements that were abandoned upon the Property. This deposit is non-refundable. The Buyer acknowledges that the Deposit shall represent liquidated damages to compensate the Seller for the costs associated with keeping the Property off the market.

3. TITLE CONTINGENCY.

- a. Buyer shall, at Buyer's expense, obtain a title insurance commitment issued by a title insurance company licensed to do business in New Jersey committing to insure good and marketable fee simple title to the Property, free and clear of all liens, encumbrances, restrictions, easements, and conditions not acceptable to Buyer, in its reasonable discretion, except as otherwise may be specified in this Agreement. Seller shall not create any liens or encumbrances against the Property from and after the Effective Date, however, any existing monetary obligations shall be discharged from the proceeds of the sale provided that the monetary obligations do not exceed 50% of the Purchase Price. If Buyer elects to obtain a survey, Buyer shall promptly place an order for a new or an updated as-built survey of the Property and all Improvements located thereon (the "**Survey**"). A copy of the Survey shall be provided to the Seller. Buyer may make title and survey objections based upon the

Survey pursuant to Section 3b. Seller shall adopt an ordinance with respect to the sale of the Property.

- b. In the event title is not found by Buyer's attorney to be good and marketable or Buyer has reasonable material survey objections, the Buyer's objections shall be specified in writing and delivered to Seller during the Inspection Period ("**Objection Notice**"). Seller shall notify Buyer, within 14 days after its receipt of the Objection Notice whether or not Seller will cure the objectionable matters specified therein ("**Seller's Cure Notice**"). If Seller fails to respond to the Objection Notice is unable or unwilling, in its sole discretion, to eliminate or cure all such objectionable matters, or to make arrangements satisfactory to Buyer, in its reasonable discretion, to have all such matters eliminated or cured prior to Closing, and provided that Buyer shall not thereafter waive such disapproved matters (in which case such matters shall then be deemed "**Permitted Exceptions**"), Buyer shall have the right, at its sole option, to terminate this Agreement, within seven days after Buyer's receipt of Seller's Cure Notice or if Seller does not issue a Seller's Cure Notice as required herein, by delivering written notice thereof to Seller, whereupon the Deposit shall be returned to Buyer and all liability by reason of this Agreement shall cease. If Buyer does not terminate this Agreement within seven days after Buyer's receipt of Seller's Cure Notice, such objections shall be deemed Permitted Exceptions. However, if the Seller notifies Buyer of its intention to cure and or remove defects but fails to do so on or before the Closing, Seller shall be in default, Buyer shall have the right to terminate this Agreement. Furthermore, if Buyer does not deliver the Objection Notice to Seller within the Inspection Period, then Buyer will be deemed to have approved the survey and Seller's title to the Property, and all title exceptions and matters shown on the survey shall be deemed Permitted Exceptions.

Notwithstanding anything set forth in this Agreement to the contrary, the Buyer acknowledges that the Borough shall not be liable, or in default of this Agreement in the event that the Buyer shall not be able to confirm or secure insurable title.

4. **PROPERTY INSPECTION.**

- a. Prior to the Effective Date, the Buyer, its employees, authorized agents, consultants and representatives, including without limitation attorneys, accountants, contractors and engineers had the right to perform inspections of the Property and records, reports and studies related to the Property in accordance with a Due Diligence and Access Agreement

(the "**Inspection Period**"). The Inspection Period has expired as of the Effective Date.

- b. Following the expiration of the Inspection Period, Buyer shall continue to have the right of entry to the Property upon providing written notice to the seller, and subject to terms, referenced above; provided that Buyer shall have no right to terminate this Agreement or seek a credit due to investigations conducted after the Effective Date.
- c. The parties acknowledge that the Due Diligence and Access Agreement is terminated and superseded by the Redevelopment Agreement and this Agreement.

5. AS IS CONDITION.

- a. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER HAS AGREED TO ACCEPT POSSESSION OF THE PROPERTY ON THE CLOSING DATE ON AN "AS-IS, WHERE-IS AND WITH ALL FAULTS" BASIS. ANY INFORMATION THAT MAY HAVE BEEN, OR MAY BE, SUPPLIED TO BUYER CONCERNING THE CONDITION OF THE PROPERTY IS FOR THE SOLE PURPOSE OF PERMITTING BUYER TO DETERMINE WHETHER THE PROPERTY IS OF SUCH TYPE AND GENERAL CHARACTER AS MIGHT INTEREST BUYER. SELLER HAS NOT WARRANTED AND DOES NOT WARRANT THE ACCURACY AND/OR COMPLETENESS OF ANY SUCH INFORMATION. BY ACCEPTING THE DEED AT CLOSING, BUYER SHALL BE DEEMED TO HAVE ACKNOWLEDGED TO SELLER THAT BUYER IS THOROUGHLY ACQUAINTED AND SATISFIED WITH ALL ASPECTS OF THE PROPERTY, AND IS ACQUIRING THE PROPERTY "AS-IS, WHERE-IS" AND WITHOUT ANY COVENANTS, WARRANTIES, REPRESENTATIONS OR AGREEMENTS AS TO THE PAST, PRESENT OR ANY FUTURE CONDITION, INCOME, EXPENSE, OPERATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR ANY OTHER MATTER OR THING AFFECTING OR RELATING TO THE PROPERTY, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, EXCEPT ANY REPRESENTATIONS AND WARRANTIES CONTAINED HEREIN. BUYER'S ACCEPTANCE OF TITLE TO THE PROPERTY AND POSSESSION OF THE PROPERTY AT THE CLOSING SHALL ALSO CONSTITUTE A WAIVER AND RELEASE BY BUYER OF SELLER OF ANY CLAIM OR LIABILITY PERTAINING TO THE CONDITION OF THE PROPERTY INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OF ANY HAZARDOUS SUBSTANCES AND/OR ANY OTHER ENVIRONMENTAL CONDITION IN, ON OR ABOUT THE PROPERTY, EXCEPT FOR ANY CLAIM OR LIABILITY ARISING OUT OF ANY FRAUD OR WILLFUL MISCONDUCT COMMITTED BY SELLER. BUYER ACKNOWLEDGES THAT THE INSPECTION**

PERIOD HAS PROVIDED BUYER AND ITS EXPERTS AND CONSULTANTS WITH AMPLE OPPORTUNITY TO INVESTIGATE THE PROPERTY.

- b. The provisions of this Section 5 shall survive Closing and the transfer of title.

6. BUYER'S CERTIFICATE. Buyer hereby makes the following representations to Seller:

- a. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New Jersey.
- b. Buyer has the full power, authority and legal right to execute and deliver this Agreement and to consummate the transactions and perform its obligations as contemplated hereby. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized by all necessary action, and this Agreement has been duly and validly executed and delivered by Buyer.

7. SELLER'S CERTIFICATE. Seller hereby makes the following representations to Buyer:

- a. Seller is a public body corporate and politic and a subdivision of the State of New Jersey. The Seller has the requisite power and authority to enter into this Agreement. The execution, delivery and performance by the Seller of this Agreement are within the authority of the Seller under, and will not violate, the statutes, rules and regulations establishing the Seller and governing its activities, have been duly authorized by all necessary Resolutions and/or Ordinances and will not result in the breach of any material agreement to which the Seller is a party or, to the best of its knowledge and belief, any other material agreement by which the Seller or its material assets may be bound or affected.
- b. The person executing this Agreement on behalf of the Seller has been duly authorized to execute this Agreement as a valid and binding obligation of the Seller.
- c. Seller is not a foreign person and is a "United States Person" as such term is defined in Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended.
- d. To the actual knowledge of Seller's Borough Administrator, Seller has not received written notice of any pending or threatened condemnation,

eminent domain or similar proceedings affecting the Property or any portion thereof.

- e. To the actual knowledge of Seller's Borough Administrator, there are no legal actions, suits, or other legal or administrative proceedings pending or threatened in writing against Seller regarding title to, or the condition of, the Property.
- f. To the actual knowledge of Seller's Borough, Seller has not received any written notice or other written information that the Property is in violation of any law regulating any Hazardous Substance or that there are Hazardous Substances under or emanating from the Property.
- g. At Closing, no service contracts, leasing agreements or any other similar agreement, shall affect the Property except for those which Buyer agrees to assume. In the event Buyer agrees to assume any of Seller's contracts it shall notify the Seller prior to the expiration of the Inspection Period.

The provisions of this Section 7 shall be merged into the Deed upon transfer of title.

8. GOVERNMENTAL APPROVALS.

- a. Buyer shall have 180 days from the Effective Date to apply for all Governmental Approvals (as defined in the Redevelopment Agreement) at Buyer's sole cost and expense. Buyer shall diligently pursue all Governmental Approvals. In the event that Buyer is not able to obtain all necessary approvals prior to the expiration of the Governmental Approval Period despite diligent prosecution of same: (i) Buyer or Seller may terminate this Agreement in the event that Buyer does not elect to waive the contingency to obtain Governmental Approvals as set forth in Section 8(a)(iii) in which case the Buyer will receive a full refund of its deposit; or (ii) Seller may extend the period of time for filing Governmental Approvals in its sole discretion; or (iii) Buyer may waive applying for the Governmental Approvals and close within 90 days of deliver of such waiver to the Seller including a representation that the Buyer shall apply for all Governmental Approvals necessary to comply with the Redevelopment Agreement at a later date.
- b. This Agreement and Buyer's obligations hereunder are expressly conditioned upon and subject to Buyer receiving all final Governmental Approvals as defined in the Redevelopment Agreement necessary to implement the Project. Buyer shall diligently pursue all Governmental Approvals as further set forth in this Section 8 at its sole cost and expense. Governmental Approvals shall include, but are not limited to, all

local, county, state and federal permits and approvals relating to the Project and/or:

- i. to the redevelopment of the Property and implementation of the Project, including without limitation, site plan approval in accordance with Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 to -163, and the Local Redevelopment and Housing Law ("LRHL"), N.J.S.A. 40A:12A-1 to -49; and
 - ii. public health or safety, pollution, damage to or protection of the environment, including without limitation all approvals necessary for wetlands and transition areas, threatened and endangered species, historic and archaeological resources, the Coastal Area Facility Review Act ("CAFRA") and all associated coastal zone management rules, water quality plans and wastewater management plans, sanitary sewer service, septic systems, treatment works approvals, stormwater discharge, water quality certificates, water allocation and diversion, stream encroachment, tidelands and waterfront development, soil conservation, dam safety, historic pesticide usage, solid waste, dam safety and the Private Well Testing Act.
- c. No less than five business days prior to submission of any application and plans and studies in support thereof so as to allow development of the Property, Buyer shall provide to Seller a draft of such application and supporting plans and studies. In addition, Buyer shall provide Seller with true and complete copies of all plans, reports and studies prepared by Buyer (other than those which may be prohibited or subject to confidentiality or attorney-client privilege). Buyer shall endeavor to provide Seller with reasonable advance notice of any meetings scheduled between Buyer and representatives of any applicable governmental entity relative to the development of the Property and satisfaction of this contingency. Similarly, Buyer will furnish Seller with reasonable advance notice of all public hearings of the Borough of Seaside Heights Planning Board.
 - d. Seller agrees to sign all documents and provide all consents, as fee owner of the Property, necessary to enable Buyer to prosecute Buyer's applications for the Government Approvals.
 - e. Buyer shall have a period of 14 months from and after the Effective Date (the "Governmental Approval Period"), within which to obtain all Government Approvals. In the event that Buyer is not able to obtain all necessary approvals prior to the expiration of the Governmental Approval Period despite diligent prosecution of same: (i) Buyer or Seller may

terminate this Agreement and the Buyer will receive a full refund of its deposit; or (ii) Seller may extend the Governmental Approval Period in its sole discretion; or (iii) Buyer may waive applying for the Governmental Approvals and close within 90 days of delivery of such waiver to the Seller including a representation that the Buyer shall obtain all Governmental Approvals necessary to comply with the Redevelopment Agreement at a later date. Attainment by Buyer of unappealable Governmental Approvals shall be subject to such conditions in form and substance as are acceptable to the Buyer in its sole discretion permitting the construction of the Project.

9. CLOSING OF TITLE.

The Closing shall take place within 60 days after the Buyer has obtained Governmental Approvals as defined in the Redevelopment Agreement. The closing shall take place at the law offices of Archer & Greiner PC, 10 Highway 35, Red Bank, New Jersey 07701.

10. DELIVERIES AT CLOSING OF TITLE.

- a. At closing, Seller will deliver to Buyer:
 - i. A Quitclaim Deed and incorporating the metes and bounds description prepared pursuant to a current survey, obtained at the Buyer's sole cost and expense;
 - ii. An affidavit of title in usual and customary form accompanying a Quitclaim Deed, and including representations as to the name and address of the Seller and the authority to execute documents on behalf of the Seller;
 - iii. An Affidavit pursuant to the Foreign Investment and Real Property Tax Act ("FIRPTA");
 - iv. An executed 1099-S; and
 - v. A completed Sellers Residency Certification/Exemption Form stating that Seller is not required to make an estimated gross income tax payment to the State of New Jersey or Non-Resident Seller's Tax Declaration and/or tax payment receipt whichever may be applicable in accordance with the requirements of Chapter 55 of Public Law 2004; and
 - vi. The Borough shall deliver an Ordinance approving the sale of the Property to the Buyer; and

- b. Seller shall deliver the Property vacant and free and clear of all tenants and tenancies.

11. ADJUSTMENTS.

All adjustments, including real property taxes, and water and sewer rents, are to be adjusted, apportioned and allowed as of the date of closing of title and delivery of the Deed to each portion of the Property, based upon a 365 day year. Upon Closing of title, Buyer shall be responsible for the payment of all Impositions as set forth in the Redevelopment Agreement.

12. ASSESSMENTS.

Seller represents that there are no assessments, special assessments or municipal fees impacting the Property except as set forth in the Redevelopment Agreement.

13. BROKER.

Seller and Buyer represents that neither party is represented by a real estate broker in this transaction. Should a claim arise on the part of any person, each party hereby agrees to indemnify and hold the other harmless against and from (i) any claim for such commission, fee or compensation based upon any action by such party and (ii) any damages or costs including reasonable attorney's fees incurred by the other as result of or relating to such claim. The provisions of this Paragraph will survive the closing and the delivery of the deed to the Property without further reference hereto or action by or documentation from either party.

14. DEFAULT.

An Event of Default pursuant to the terms and conditions of this Agreement shall be governed by the terms and conditions set forth in Article 7 of the Redevelopment Agreement.

15. NOTICES.

All notices required, permitted or appropriate hereunder must be in writing and served upon the respective parties by personal delivery, overnight courier, confirmed facsimile transmission ("fax") or by certified mail, return receipt requested, to the party being noticed as follows:

If to the Seller:

ATTN: Borough Administrator
Christopher J. Vaz
100 Grant Avenue

Seaside Heights, New Jersey 08751

With a copy to:

Brian M. Nelson, Esquire
Archer & Greiner, PC
10 Highway 35
Red Bank, New Jersey 07701

If to the Buyer:

SSH Boulevard Urban Renewal, LLC
235 Broubalow Way
Phillipsburg, New Jersey 08865

With a copy thereof to:

Seth R. Tipton, Esq.
Florio Perrucci Steinhardt Cappelli Tipton & Taylor LLC
235 Broubalow Way
Phillipsburg, New Jersey 08865

Such notice will be deemed to have been given, if mailed, upon deposit in the U.S. Mail, postage prepaid and if personally delivered or sent by overnight courier or email, upon delivery to the above addresses. The Parties also hereby expressly consent to receipt of service of process in the manner set forth in this paragraph in any litigation arising out of or in any way relating to this Agreement. The Parties may designate new addresses or parties to be notified hereunder by notice given in the aforesaid manner.

16. ASSIGNMENT.

Buyer's right to assign this Agreement shall be subject to the restrictions set forth in Article 13 of the Redevelopment Agreement.

17. MAINTENANCE PENDING CLOSING.

- a. Between the date of this Agreement and the Closing Date, Seller shall maintain the Property and land in the ordinary course, in substantially the same manner as the Property has heretofore been operated, managed and maintained.
- b. Between the date of this Agreement and the closing date or cancellation of this Agreement, Seller shall not, without Buyer's prior written consent:
 - i. Permit the handling, storage or discharge of any hazardous substance on the Property;

- ii. Permit the use or occupancy of the Property having a Standard Industrial Classification which will subject the Property to ISRA.

18. INTENTIONALLY OMITTED.

19. RISK OF LOSS.

All risk of loss to the Property shall remain with Seller prior to closing, unless the damage caused to the Property results from Buyer's negligence or intentional acts. If the improvements are damaged prior to closing and Seller is either unable or unwilling to restore the Property prior to closing to substantially the same condition it was as of the Effective Date, at the Buyer's sole option, Buyer may (i) elect to terminate this Agreement in which event the Deposit shall be returned to Buyer by Escrow Agent and thereupon this Agreement shall be null and void and of no further force or effect, and neither Buyer nor Seller shall have any further liabilities or obligations to the other, or (ii) elect to take the Property as it then is, in which event at closing all of the insurance proceeds, to the extent that the Property is covered by insurance, shall be assigned by Seller to Buyer and any monies theretofore received by Seller in connection with such casualty shall be paid over to Buyer, together with a credit, at closing, for the amount of Seller's insurable deductible.

20. MISCELLANEOUS.

- a. Governing Law/Jurisdiction. This Agreement is to be construed in accordance with the laws of the State of New Jersey, and all disputes between the parties will be decided by the Superior Court of New Jersey.
- b. Entire Agreement. This Agreement and the Redevelopment Agreement represent the entire Agreement and understanding between the parties hereto and no oral or written representations or promises have been made with respect thereto. This Agreement may not be altered or modified orally, but only by a written Agreement executed by the parties hereto.
- c. Date of Agreement. The date of this Agreement is the date on which it is executed by all parties or, if not executed simultaneously, the date on which it is executed by the last of the parties, which date will be inserted at the top of the first page hereof ("Effective Date").
- d. Date of Performance. In the event that any date or deadline under this Agreement falls on a Saturday, Sunday or a national holiday, such date or time for performance will automatically extend to the next business day.

- e. Captions and Headings. Captions and headings used herein are for reference only and are in no way to be deemed to define, limit, explain or amplify any provisions hereof.
- f. Construction. When the context of this Agreement so requires, nouns appearing in the singular are to have the same effect as if used in the plural and vice versa, and the proper gender is to be attributed to all pronouns. Capitalized terms utilized in this Agreement that have not been specifically defined herein shall be defined as set forth in the Redevelopment Agreement.
- g. Authority to Execute. The individuals executing this Agreement represent and warrant that they have full authority and have been duly authorized by their respective corporations to do so on behalf of such corporation.
- h. Preparation of Agreement. The parties acknowledge that this Agreement was prepared jointly and, therefore, this Agreement is to be construed on a parity basis as between the parties.
- i. Binding. This Agreement is binding upon the parties hereto and their respective heirs, executors, administrators, successors, and assigns. Buyer may assign its rights and obligations under this Agreement as set forth herein.
- j. No Silent Waivers. No waiver by either party or any failure of, or refusal by, the other party to comply with its obligations under this Agreement are to be deemed a waiver of any other or subsequent failure or refusal to so comply.
- k. Severability. In the event that any one or more of the provisions of this Agreement, or any parts thereof, shall be deemed invalid or unenforceable by any court of competent jurisdiction, or shall otherwise conflict with applicable law, such provisions, or parts thereof, shall be deemed deleted herefrom, and this Agreement shall be construed to give effect to the remaining provisions hereof, which shall be and remain in full force and effect.

[Continued on Next Page]

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals and/or have caused their corporate seal to be affixed hereto the day and year first above written.

WITNESS:

BOROUGH OF SEASIDE HEIGHTS

By: _____

Anthony E. Vaz, Mayor

WITNESS:

SSH BOULEVARD URBAN RENEWAL, LLC



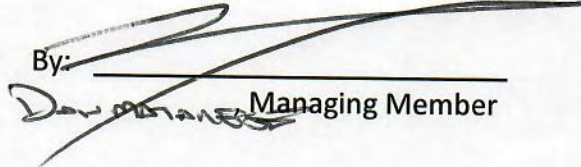

By: _____
Managing Member

EXHIBIT "A"

Description

To be attached.

EXHIBIT E



**STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
WATERSHED & LAND MANAGEMENT**

Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420
Telephone: (609) 777-0454 or Fax: (609) 777-3656
www.nj.gov/dep/landuse



PERMIT

| | | |
|--|--|--|
| In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants this permit to perform the activities described below. This permit is revocable with due cause and is subject to the terms, conditions, and limitations listed below and on the attached pages. For the purpose of this document, "permit" means "approval, certification, registration, authorization, waiver, etc." Violation of any term, condition, or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action. | | Approval Date May 12, 2023 |
| | | Expiration Date May 11, 2028 |
| Permit Number(s): 1526-22-0008.1 LUP220001 | Type of Approval(s): CAFRA IP- Residential and Commercial Development-not SFH/Duplex | Governing Rule(s): N.J.A.C. 7:7-1.1(a) |
| Permittee: SSH Boulevard Urban Renewal, LLC c/o Dan Matarese 60 West Broad Street Bethlehem, PA 18018 | Site Location: Block(s) & Lot(s): [5.01, 58] [5.01, 59] [5.01, 63] Municipality: Seaside Heights Borough County: Ocean | |
| Description of Authorized Activities: This document authorizes the construction of a ten (10) story mixed use building with 77 condos, a pool, a 7,500sf restaurant with a 2,400sf seating area, 6,000sf of retail space, and 153 parking spaces on the parcels referenced above. All work is in association with a residential and commercial development. This permit is authorized under and in compliance with the Coastal Zone Management Rules at N.J.A.C. 7:7-1.1 et seq., as amended through October 5, 2021, provided that all conditions to follow are met. <i>The Department has determined that the herein approved activities meet the requirements of the (FHACA/CZM) rules. This approval does not obviate the local Floodplain Administrator's responsibility to ensure all development occurring within their community's Special Flood Hazard Area is compliant with the local Flood Damage Prevention Ordinance, and minimum NFIP standards, regardless of any state-issued permits. FEMA requires communities to review and permit all proposed construction or other development within their SFHA in order to participate in the NFIP.</i> | | |
| Prepared by: Carlene Purzycki | Received and/or Recorded by County Clerk: | |
| If the permittee undertakes any regulated activity, project, or development authorized under this permit, such action shall constitute the permittee's acceptance of the permit in its entirety as well as the permittee's agreement to abide by the requirements of the permit and all conditions therein. | | |
| This permit is not valid unless authorizing signature appears on the last page. | | |

STATEMENT OF AUTHORIZED IMPACTS:

The authorized activities allow for the permittee to undertake impacts to regulated areas as described below. Additional impacts to regulated areas without prior Department approval shall constitute a violation of the rules under which this document is issued and may subject the permittee and/or property owner to enforcement action, pursuant to N.J.A.C. 7:7-29.

PRE-CONSTRUCTION CONDITIONS:

1. In accordance with N.J.A.C. 7:13-12.6(f), the deed for each lot on which the private roadway or parking area is constructed, as well as any lot served by the private roadway or parking area, and each lease or rental agreement for a unit within the multi-residence building served by a private roadway or parking area that lies below the flood hazard area design flood elevation shall be modified to:
 - a. Explain that the private roadway or parking area is likely to be inundated by floodwaters, which may result in damage and/or inconvenience; and
 - b. Disclose the depth of flooding that the private roadway or parking area would experience during the FEMA 100-year flood, if available, and the flood hazard area design flood; and
 - c. The modified deeds are recorded in the Office of the County Clerk or the registrar of deeds and mortgages of the county in which the building is located, and proof that the modified deed has been recorded is provided to the Department prior to the sooner of either:
 - i. The start of any site disturbance (including pre-construction earth movement, removal of vegetation or structures, or construction of the project); or
 - ii. The date that is 90 calendar days after the issuance of the permit.

SPECIAL CONDITIONS:

1. A minimum of 153 parking spaces shall be provided with at least one of those parking spaces being an electric vehicle charging station.
2. All debris, wood, trash, and other loose materials shall be discarded and legally disposed of offsite. The applicant shall take special care that no debris enters or remains in the water.
3. The use of plastic under landscape or gravel areas is prohibited. All sub gravel liners must be made of filter cloth or other permeable material.
4. All driveways shall be covered with a permeable material or pitched to drain all runoff onto permeable areas of the site.
5. The Department has determined that this project is not a Major Development as defined in the Stormwater Management rules at N.J.A.C. 7:8-1.2. Therefore, the Department did not review the proposed project for compliance with these rules.
6. The Department has approved this permit because the project satisfies the requirements of the Flood Hazard Area Control Act Rules and Coastal Rules. The Department has not reviewed the proposed structure/s to determine compliance with the International Building Code or any other local

construction codes or flood ordinances. The proposed building/s may therefore not fully comply with any such requirements. Please contact your municipal construction official for further information.

7. All foundations, slabs, footings and walls of the proposed structure/s shall be designed to resist uplift, flotation, collapse and displacement due to hydrostatic and hydrodynamic forces resulting from flooding up to an elevation 9.0 feet NAVD. Furthermore, all structural components shall be designed to resist the same forces.
8. The approved building must be dry flood-proofed to meet the requirements at N.J.A.C. 7:13-12.5(s) and shall be designed and constructed to be waterproof up to an elevation of 9.0 feet NAVD so that floodwaters cannot enter the structure during a flood. Specifically, the building's foundation, floor slab and walls shall be designed to resist hydrostatic pressure up to the flood hazard area design flood elevation. In addition, any exterior wall opening below the flood hazard area design flood elevation, such as a door or window, shall be equipped with waterproof seals and/or panels and shall also be designed to resist hydrostatic pressure up to the flood hazard area design flood elevation.
9. The non-habitable storage, parking and access areas located below the flood hazard area elevation of 8.0' shall remain open and accessible to the passage of floodwaters at all times. In order to relieve hydrostatic pressure on the proposed building/s during flooding, permanent flood vents shall be constructed to allow water to freely enter and exit during a flood as shown on the approved plan/s. These vents shall be maintained in good working order at all times and shall not be blocked under any circumstances.
10. In accordance with NJAC 7:13-12.5(p)3, the non-habitable areas shall have the proper number of flood vents shall be installed in conformance with the Uniform Construction Code at N.J.A.C. 5:23.
11. In accordance with N.J.A.C.7:13-12.5(p) the deed for the lot on which the enclosure below the flood hazard area design flood elevation of 8.0' is constructed must be modified to:
 - a. Explain that the enclosure is likely to be inundated by floodwaters, which may result in damage and/or inconvenience;
 - b. Disclose the depth of flooding that the enclosure would experience during the FEMA 100-year flood, if available, and the flood hazard area design flood;
 - c. Prohibit habitation of the enclosures; and
 - d. Explain that converting the enclosure into a habitable area may subject the property owner to enforcement under this chapter; and
 - e. Within 90 calendar days of the issuance of this permit for the enclosure, a copy of the modified deed as filed with the local county clerk is provided to the Department at the address set forth at N.J.A.C. 7:13-1.3
12. In accordance with N.J.A.C.7:13-12.6(e)4, the permittee must provide signs in the proposed roadways and parking areas indicating that the lot will be subject to inundation during flood events.

STANDARD CONDITIONS:

1. The issuance of a permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction or structure(s). Neither

the State nor the Department shall, in any way, be liable for any loss of life or property that may occur by virtue of the activity or project conducted as authorized under a permit.

2. The issuance of a permit does not convey any property rights or any exclusive privilege.
3. The permittee shall obtain all applicable Federal, State, and local approvals prior to commencement of regulated activities authorized under a permit.
4. A permittee conducting an activity involving soil disturbance, the creation of drainage structures, or changes in natural contours shall obtain any required approvals from the Soil Conservation District or designee having jurisdiction over the site.
5. The permittee shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit.
6. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of the permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit.
7. The permittee shall immediately inform the Department by telephone at (877) 927-6337 (WARN DEP hotline) of any noncompliance that may endanger public health, safety, and welfare, or the environment. The permittee shall inform the Watershed & Land Management by telephone at (609) 777-0454 of any other noncompliance within two working days of the time the permittee becomes aware of the noncompliance, and in writing within five working days of the time the permittee becomes aware of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter. The written notice shall include:
 - i. A description of the noncompliance and its cause;
 - ii. The period of noncompliance, including exact dates and times;
 - iii. If the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and
 - iv. The steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
8. Any noncompliance with a permit constitutes a violation of this chapter and is grounds for enforcement action, as well as, in the appropriate case, suspension and/or termination of the permit.
9. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the authorized activity in order to maintain compliance with the conditions of the permit.
10. The permittee shall employ appropriate measures to minimize noise where necessary during construction, as specified in N.J.S.A. 13:1G-1 et seq. and N.J.A.C. 7:29.
11. The issuance of a permit does not relinquish the State's tidelands ownership or claim to any portion of the subject property or adjacent properties.

12. The issuance of a permit does not relinquish public rights to access and use tidal waterways and their shores.
13. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:
 - i. Enter upon the permittee's premises where a regulated activity, project, or development is located or conducted, or where records must be kept under the conditions of the permit;
 - ii. Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit; and
 - iii. Inspect, at reasonable times, any facilities, equipment, practices, or operations regulated or required under the permit. Failure to allow reasonable access under this paragraph shall be considered a violation of this chapter and subject the permittee to enforcement action.
14. The permittee shall not cause or allow any unreasonable interference with the free flow of a regulated water by placing or dumping any materials, equipment, debris or structures within or adjacent to the channel while the regulated activity, project, or development is being undertaken. Upon completion of the regulated activity, project, or development, the permittee shall remove and dispose of in a lawful manner all excess materials, debris, equipment, and silt fences and other temporary soil erosion and sediment control devices from all regulated areas.
15. The permittee and its contractors and subcontractors shall comply with all conditions, site plans, and supporting documents approved by the permit.
16. All conditions, site plans, and supporting documents approved by a permit shall remain in full force and effect, so long as the regulated activity, project, or development, or any portion thereof, is in existence, unless the permit is modified pursuant to the rules governing the herein approved permits.
17. The permittee shall perform any mitigation required under the permit in accordance with the rules governing the herein approved permits.
18. If any condition or permit is determined to be legally unenforceable, modifications and additional conditions may be imposed by the Department as necessary to protect public health, safety, and welfare, or the environment.
19. Any permit condition that does not establish a specific timeframe within which the condition must be satisfied (for example, prior to commencement of construction) shall be satisfied within six months of the effective date of the permit.
20. A copy of the permit and all approved site plans and supporting documents shall be maintained at the site at all times and made available to Department representatives or their designated agents immediately upon request.
21. The permittee shall provide monitoring results to the Department at the intervals specified in the permit.
22. A permit shall be transferred to another person only in accordance with the rules governing the herein approved permits.

23. A permit can be modified, suspended, or terminated by the Department for cause.
24. The submittal of a request to modify a permit by the permittee, or a notification of planned changes or anticipated noncompliance, does not stay any condition of a permit.
25. Where the permittee becomes aware that it failed to submit any relevant facts in an application, or submitted incorrect information in an application or in any report to the Department, it shall promptly submit such facts or information.
26. The permittee shall submit email notification to the Bureau of Coastal & Land Use Compliance & Enforcement at CLU_tomsriver@dep.nj.gov at least 3 days prior to commencement of site preparation and/or regulated activities, whichever comes first. The notification shall include proof of completion of all pre-construction conditions, including proof of recording of permits, approved plans and/or conservation easements, if required. The permittee shall allow an authorized Bureau representative on the site to inspect to ensure compliance with this permit.

Additionally, the permittee shall notify the Department in writing (at the address listed on page one of this permit) within five working days prior to commencement of operation of a CAFRA individual permit. At this time, the permittee shall certify that all conditions of the permit that must be met prior to operation of the development have been met.

27. The permittee shall record the permit, including all conditions listed therein, with the Office of the County Clerk (the Registrar of Deeds and Mortgages, if applicable) of each county in which the site is located. The permit shall be recorded within 30 calendar days of receipt by the permittee, unless the permit authorizes activities within two or more counties, in which case the permit shall be recorded within 90 calendar days of receipt. Upon completion of all recording, a copy of the recorded permit shall be forwarded to Watershed & Land Management at the address listed on page one of this permit.
28. This permit is issued subject to compliance with N.J.A.C. 7:7-27.2 Conditions that apply to all coastal permits.

APPROVED PLANS:

The drawings hereby approved consist of one (1) sheet, Sheet 2 of 8, prepared by Bahram Farzaneh, PE, PP, of French & Parrello Associates, dated June 16, 2022, last revised February 8, 2023, and entitled: "SITE AND GRADING PLAN FOR PRELIMINARY AND FINAL MAJOR SITE PLAN FOR SEASIDE HEIGHTS MIXED USE DEVELOPMENT, BLOCK 5.01, LOTS 58, 59, 63, BOROUGH OF SEASIDE HEIGHTS, OCEAN COUNTY, NEW JERSEY" and thirteen (13) sheets, Sheets A-000 through A-121, prepared by Avelino Martinez, Sheet A-000 and A-121 dated April 6, 2023, Sheets A-110 through A-112 dated March 31, 2023, and Sheets A-113 through A-120 dated March 2, 2023, and all sheets entitled: "PROPOSED MIXED USE DEVELOPMENT, BOULEVARD, SEASIDE HEIGHTS, NEW JERSEY".

APPEAL OF DECISION:

Any person who is aggrieved by this decision may submit an adjudicatory hearing request within 30 calendar days after public notice of the decision is published in the DEP Bulletin (available at www.nj.gov/dep/bulletin). If a person submits the hearing request after this time, the Department shall

deny the request. The hearing request must include a completed copy of the Administrative Hearing Request Checklist (available at www.nj.gov/dep/landuse/forms.html). A person requesting an adjudicatory hearing shall submit the original hearing request to: NJDEP Office of Legal Affairs, Attention: Adjudicatory Hearing Requests, Mail Code 401-04L, P.O. Box 402, 401 East State Street, 7th Floor, Trenton, NJ 08625-0402. Additionally, a copy of the hearing request shall be submitted to the Director of Watershed & Land Management at the address listed on page one of this permit. In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see www.nj.gov/dep/odr for more information on this process.

If you need clarification on any section of this permit or conditions, please contact Watershed & Land Management's Technical Support Call Center at (609) 777-0454.

Approved By:

Janet L. Stewart, Manager
Land Resource Protection

c: Municipal Clerk, Seaside Heights Borough
Municipal Construction Official, Seaside Heights Borough
Agent (original) – Bahram Farzaneh

EXHIBIT F

**MEMORIALIZING RESOLUTION OF THE BOROUGH
OF SEASIDE HEIGHTS PLANNING BOARD
APPLICATION NO. 2023-12
RESOLUTION NO. 2023-31**

WHEREAS, the Borough of Seaside Heights Planning Board is a duly constituted Planning Board pursuant to N.J.S.A. 40:55D-23 *et seq.* and the Borough of Seaside Heights Land Use Ordinance Section 246-22; and

WHEREAS, Applicant, SSH BOULEVARD URBAN RENEWAL, LLC, Nino Coviello, Esq., appearing on behalf of the Applicant, has applied to the Borough of Seaside Heights Planning Board for Preliminary and Final Major Site Plan Approval to construct a 120-foot tall mixed-use building which will contain seven (7) residential floors over three (3) parking level floors; 77 residential units and 153 parking spaces; and commercial ground-floor space; a 4th floor restaurant; and roof-top lounge and multi-purpose room and swimming pool for premises located at 58 Hamilton Avenue, 406 Boulevard, 418 Boulevard, also known as Block 5.01, Lots 58, 59 and 63, as designated on the Official Tax Map of the Borough of Seaside Heights; and

WHEREAS, the Applicant has provided proper notice to all property owners within 200 feet and all other pertinent parties; and

WHEREAS, the Applicant has submitted to the Board an Affidavit of Publication in proper form; and

WHEREAS, pursuant to Resolution No. 16-131, the Governing Body of the Borough of Seaside Heights directed the Planning Board to conduct a preliminary investigation to determine whether the subject real property is an area in need of redevelopment; and

WHEREAS, on February 27, 2018, the Borough of Seaside Heights Planning Board held a public hearing at which time the planner presented the findings of his preliminary investigation resulting in a determination to recommend that the subject real property be designated as an area in need of redevelopment; and

WHEREAS, on April 18, 2018, pursuant to Resolution No. 2018-107, the Governing Body of the Borough of Seaside Heights determined that the subject real property is an area in need of redevelopment; and

WHEREAS, on August 5, 2020, pursuant to Ordinance No. 20-06, the Governing Body adopted the Boulevard Redevelopment Plan, as last amended by Ordinance No. 2022-04, adopted on May 4, 2022; and

WHEREAS, the subject real property is situated within the Amended Boulevard Redevelopment Plan, dated January, 2023 as presented by Keenan Hughes, licensed New Jersey Planner; and

WHEREAS, on May 2, 2023, a Redevelopment Agreement was signed by the Borough of Seaside Heights, the owner of the subject real property and SSH Boulevard Urban Renewal, LLC, as the “Redeveloper” of the subject property; and

WHEREAS, on or about June 26, 2023, SSH Boulevard Urban Renewal, LLC submitted an Application for Preliminary and Final Major Site Plan Approval consistent with the Amended Boulevard Redevelopment Plan, dated January, 2023; and

WHEREAS, the Planning Board has considered the Application and the documents filed by the Applicant and the Board having reviewed the Applicant’s Application for Development at a hearing held on August 28, 2023; and

WHEREAS, the Planning Board, after carefully considering all the evidence provided, has made the following findings of facts:

1. All those exhibits contained in the Board's file and discussed during the hearing are hereby considered evidence for the purpose of this Application.

2. The property is located in the R-Residential Zone District and in the RB-Retail Business Zone District.

3. The Applicant is the contract purchaser of the subject property.

4. Avelino Martinez was duly sworn and testified as follows:

A. Mr. Martinez is a licensed architect with Blackbird Group Architects, LLC.

B. The project is a proposed mixed-use building for which he prepared architectural plans.

C. The first-floor plan provides for retail commercial use of approximately 6,460 square feet. The three floors above the ground floor will be a parking garage for 153 parking spaces for the residents of the building.

D. The fourth floor will maintain a restaurant of approximately 8,500 square feet. Partial use of the fourth floor and the six floors above will be for residential use containing 77 residential units. The entrance of the building will be through a lobby in the middle of the building. The access to the garage will be on the southerly side of the building. There will be three elevators in the building; two for pedestrians or residents and one for freight to move deliveries from floor to floor. There will be four stairways located in the building.

E. There will be garbage chutes for the residents that will fall into a trash receptacle. The trash for the commercial use of the building will be to the north.

F. Of the 153 parking spaces, 23 parking spaces will be designated for electric vehicle use; 8 electric vehicle spaces will be installed to start the project and the balance will be for future installment. The electric vehicle parking stalls meet the State requirement for 15% of the total spaces. The parking spaces are for residents only and not for use by the public.

G. The fourth-floor restaurant will have both indoor dining and outdoor balcony alfresco dining.

H. There will be amenities on the roof-top level which contains approximately 11,827 square feet of which 5,032 square feet will be enclosed interior space. The amenities include a multi-purpose room, indoor lounge, a gym, a pool, and an outdoor deck, rest rooms, storage and mechanical equipment.

I. The height of the building will be approximately 120 feet 8 inches. The Ordinance permits 125 feet in height and therefore the building is compliant.

J. With regard to Keenan Hughes' items to be addressed, there will be no pedestrian access from the ground-floor retail space to the parking garage. The reason why there is no access point for the ground-floor commercial space to the garage is because the retail space is at street level and the parking level is two feet higher than the retail space for flood compliance.

K. Tandem parking spaces will be assigned by unit.

L. The canopy over the entrance of the building will project partially into the sidewalk and will not impede any pedestrians' right-of-way on the Boulevard.

M. The hours of operation for the restaurant, retail spaces, and garbage pick-up will comply with the Borough of Seaside Heights' Ordinances. The residential and commercial uses of the building will use a private trash hauler.

N. The recycling chute will empty directly into a bin. The trash will go directly into a compactor that gets fed into dumpster. The dumpsters are smaller than traditional ones and will be rolled out into the street for pick-up. The commercial uses in the building will also roll out the trash.

O. The existing pilings located on the subject property have not been taken into consideration with regard to the structural details of the current plan for the building.

P. Any and all signage to be erected for the Application for Development will comply with all Local Ordinances and will be approved by the Zoning Officer.

5. Bahram Farzaneh was duly sworn and testified as follows:

A. Mr. Farzaneh is a professional engineer and professional planner for French & Parello Associates. He is a civil engineer and senior project manager.

B. The subject property has three frontages, the main frontage is located on the Boulevard and there is frontage on Webster Avenue and Hamilton Avenue. The property is currently vacant.

C. The building will cover the entire property so there are no internal site improvements.

D. A 24-foot-wide access ramp to the garage will be located on Hamilton Avenue. The sidewalks will be replaced with new concrete and wherever there are pavers, they will be replaced with concrete as well.

E. Planters will be located along the Boulevard with native grass and shrubs and benches. Three trees are located on Webster Avenue and one dying tree will be replaced.

F. ADA accessible grates around the base of the trees will be installed.

G. With regard to utilities for the Project, Mr. Farzaneh met with the representatives from the Seaside Heights Public Works Department. There is an existing utility pole that will provide electricity to the building through underground wiring.

H. There will not be enough water pressure for the development and therefore, the existing six-inch water main on Webster Avenue running from Central Avenue to the Boulevard will be reconstructed to an eight-inch water main to increase the water supply. The site and utilities plan will be worked out with the Borough of Seaside Heights in terms of construction and expense.

I. A CAFRA permit has been approved and submitted into evidence dated May 12, 2023, expiring on May 11, 2028.

J. The sewer lines in existence will meet the capacity for the Application for Development.

6. Keenan Hughes was duly sworn and testifies as follows:

A. Mr. Hughes is the Borough Redevelopment Planner.

B. He stated that the Application for Preliminary and Final Major Site Plan Approval has no variances or waivers and is compliant with the Amended Boulevard Redevelopment Plan, dated January, 2023, that he authored and is marked A-5 in evidence.

7. The meeting was open to the public for comment. Bryan Laino of 42 Hamilton Avenue was sworn and gave public comment. He questioned why there were no variances for the subject Application for Development. He expressed concern with regard to the distance between the building to be constructed from 42 Hamilton Avenue. During his public comment, Mr. Farzaneh measured that it is six feet from the subject property's property line to the eastern portion of the building for Mr. Laino gave as his address. Mr. Laino expressed concern that during the demolition of the steel structure previously located on the subject site, the fencing adjacent to 42 Hamilton was damaged. Teresa Farrell was duly sworn and gave testimony. She also resided at 42 Hamilton Avenue. Ms. Farrell expressed concern about the height of the building. During her testimony, Mr. Hughes gave testimony that the Borough Council adopted the plan and permitted the building height. Mr. Hughes said that the affect as to surrounding areas were taken into consideration and that the dimensions of the building were deemed appropriate. Clara Bozentko was duly sworn and gave the address of 42 Hamilton Avenue. She expressed concern that the Redevelopers were from North Jersey and that "we are in South Jersey". Ms. Bozentko expressed concern as to the height of the building and roof-top amenities. Robert Engel was duly sworn and gave testimony. He resides in Ortley Beach. He stated that he comes to Seaside Heights often with his family and that the steel structure previously located on the site was "an eye sore". He stated that he has known Dan Matarese, the principal owner of the Applicant, and that he does excellent work. He testified he has seen Mr. Matarese's projects and that he treats his employees well and works well with the citizenry of the town. After all public comment was heard, the public portion of the meeting was closed.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Seaside Heights Planning Board on this 25th day of September, 2023, that the Application of the Applicant, SSH BOULEVARD URBAN RENEWAL, LLC, shall be GRANTED, subject to the following conditions:

1. The Application for Development is consistent with the Amended Boulevard Redevelopment Plan, dated January, 2023, and therefore no variances or waivers are being sought.

2. The parking garage shall be maintained for tenant resident parking only. Parking spaces shall be assigned per unit. Tandem parking shall be for the same unit.

3. The dumpsters' residential trash shall be wheeled out to the street for pick-up as well as the commercial refuse.

4. The access ramp into the parking garage from Hamilton Avenue shall be, at a minimum, 24 feet with width.

5. The landscaping plan for the Boulevard for 2 by 2 and 6 by 2 planter boxes and benches shall be subject to review and approval by the Construction Department and Zoning Officer.

6. There are three trees located to the north on Webster Avenue which will remain and one tree which shall be replaced.

7. The existing water main on Webster Avenue between Central Avenue and the Boulevard shall be reconstructed to an eight-inch water main. The cost of the renovation shall be addressed between the Applicant and the Borough of Seaside Heights.

8. Any and all signage to be located on the building and/or the

property shall be subject to compliance with Local Ordinances to be approved by the Zoning Officer.

9. No construction permits shall be issued until the Developer has resolved the damage to the fencing adjacent to the building located at 42 Hamilton Avenue. The complaints of damage have been duly filed with the Borough of Seaside Heights. The Code Enforcement Officer, Kenneth Roberts, will provide the information to the Developer so that the damage to the fence may be resolved between the Applicant and the residents of 42 Hamilton Avenue. The applicant shall remove all debris on the subject property as well as on neighboring property, which may be caused as a result of any demolition and fence removal.

10. The Applicant shall substantially adhere to the plans submitted during the hearing. A substantial deviation from the approved plan shall require further review and approval by the Borough of Seaside Heights Planning Board. A *de minimus* change that the Construction Official and/or Zoning Official deems to be "cosmetic" in nature and does not increase an encroachment for which a variance was granted or changes the character of the structure, or violate a specific condition, may be approved by the appropriate Official.

11. The Application shall provide site performance bonds and inspection fees in accordance with the Borough of Seaside Heights ordinances, or any other law or regulation as required.

12. The approval is conditioned on the Applicant's payment of all real estate taxes due to date.

13. The approval is conditioned on the Applicant's payment of any outstanding fees and escrows required by this Application.

14. The Applicant shall obtain any and all other approvals or waivers required by law from any other regulatory agency, including, but not limited to the New Jersey State Division of Alcoholic Beverage Control, New Jersey Department of Environmental Protection, CAFRA or a Letter of No Interest, compliance with FEMA and local flood plan regulations, the Ocean County Planning Board, Ocean County Soil Conservation District, the Borough Sewer and Water Department, the New Jersey Department of Transportation and/ or a Letter of No Interest, the local fire official, the Borough's beaches, stormwater management, and flood damage prevention Ordinances.

15. No building permit shall be issued for any additional construction located on the subject property, even if said application conforms to all zoning ordinances, without review and approval of this Board.

16. The Applicant shall use building materials that meet all Borough building codes and requirements.

Moved by: Robert Triano

Seconded by: Chris Vaz

ROLL CALL

Those in Favor: Robert Triano, Chris Vaz, Frank C. Gorman, David Witherspoon, Paul Firetto

Those Opposed: None

Those Abstaining: None

CERTIFICATION

I, SHERRI R. SIELING, Planning Board Secretary of the Seaside Heights Planning Board, hereby certify the above Resolution to be a true and correct copy of a resolution adopted by the Seaside Heights Planning Board on September 25, 2023.

A handwritten signature in black ink, appearing to read "Sherrri R. Sieling". The signature is written in a cursive style with a large, prominent loop at the end.

SHERRI R. SIELING, Planning Board Secretary

EXHIBIT G

Site Plans and Subdivisions Approved by the Ocean County Planning Board - 2024

| PLAN DETAILS | BLOCK | LOT | APPLICATION | PLANS | ACRES | LOTS | SQFT | UNITS | MISC |
|---|-------|---------------|---|-------|-------|------|------|-------|---|
| Municipality: SEASIDE HTS Plan Number: SHB104B Meeting: 12/04/2024 Application Type: SP Development Type: R | 55 | 3 | Location: Ocean Terrace Applicant: 1511 Ocean Terrace, LLC Development: 1511 Ocean Terrace Desc: 10 Unit Condominium Building Engineer: FWH Associates, P.A. | | 0.23 | | | | Census Number: Comments: Additional Minutes: Pinelands Number: Status: Approved with Contingency |
| Municipality: SEASIDE HTS Plan Number: SHB134A.01 Meeting: 04/03/2024 Application Type: SP Development Type: CR | 5.01 | 58, 59 & 63 | Location: Hamilton Avenue & Boulevard Applicant: SSH Boulevard Urban Renewal, LLC Development: Desc: restaurant, retail, residential, pool, recreational area Engineer: French & Parillo Associates | | 0.71 | | | | Census Number: Comments: Additional Minutes: Pinelands Number: Status: Approved Contingency Met on: 07/02/2024 |
| Municipality: SEASIDE HTS Plan Number: SHB165A Meeting: 10/16/2024 Application Type: SP Development Type: R | 26 | 29.02 - 29.05 | Location: Bay Blvd. & Lincoln Ave. Applicant: Mascogiuri, Adrian Development: Desc: Residential - 2 Duplexes Engineer: Morgan Engineering & Surveying | | 0.18 | | | | Census Number: Comments: Additional Minutes: Pinelands Number: Status: Approved Contingency Met on: 10/28/2024 |
| Municipality: SEASIDE HTS Plan Number: SHB178 Meeting: 02/07/2024 Application Type: MI Development Type: R | 4.01 | 29 | Location: Hamilton Avenue Applicant: 29 Hamilton Partners LLC Development: Engineer: Blue Marsh Associates, Inc. | | 0.09 | 2 | | | Census Number: Comments: Additional Minutes: Pinelands Number: Status: Approved Contingency Met on: 07/31/2024 |
| Municipality: SEASIDE HTS Plan Number: SHB179 Meeting: 02/21/2024 Application Type: MI Development Type: R | 35 | 61 | Location: Hering Ave. Applicant: ABR Seaside Heights, LLC Development: Engineer: FWH Associates, PA | | 0.17 | 3 | | | Census Number: Comments: Additional Minutes: Pinelands Number: Status: Approved |
| Municipality: SEASIDE HTS Plan Number: SHB180 Meeting: 03/06/2024 Application Type: MI Development Type: R | 23 | 18 | Location: Sumner Avenue Applicant: Gero, Kevin & Lisa Development: Engineer: East Coast Engineering, Inc. | | 0.09 | 2 | | | Census Number: Comments: Additional Minutes: Pinelands Number: Status: Approved Contingency Met on: 07/31/2024 |
| Municipality: SEASIDE HTS Plan Number: SHB181 Meeting: 03/20/2024 Application Type: MI Development Type: R | 22 | 18 & 20 | Location: Webster Ave. Applicant: Barsch, Thomas & Linda Development: Engineer: Ten10 Architecture | | 0.17 | 2 | | | Census Number: Comments: Additional Minutes: Pinelands Number: Status: Approved |

EXHIBIT H



714 Lacey Road, Forked River, NJ 08731 Tel (609) 971-7002 Fax (609) 971-3391
www.SoilDistrict.org

SOIL EROSION AND SEDIMENT CONTROL CERTIFICATION N.J.S.A. 4:24-39, ET. SEQ., CHAPTER 251, P.L.1975

CERTIFICATION DATE: August 26, 2024

SSH Boulevard Urban Renewal LLC
485 Texas Road
Morganville, NJ 07751

Re: SCD#25178; SSH Boulevard Urban Renewal LLC - Site Plan; Block 5.01, Lots 58, 59, 63;
Seaside Heights Borough

Pursuant to Chapter 251, Soil Erosion and Sediment Control Act, P.L. 1975, the Ocean County Soil Conservation District, hereby, grants certification of the soil erosion and sediment control plan for the above-referenced project, subject to the following:

1. The applicant is required to schedule a pre-construction meeting with the District prior to the start of soil disturbance activities. The applicant must also notify the District, by mail or fax, at least 48 hours prior to initial land disturbance.
2. Any changes to the certified Soil Erosion and Sediment Control Plan will require the submission of a revised Soil Erosion and Sediment Control Plan to the District for review and approval.
3. The applicant must notify the District when the project is completed.
NOTE: No certificate of occupancy can be granted by a municipality until a report of compliance is issued by the District.
4. The applicant must carry out all land disturbance activities in accordance with the Standards for Soil Erosion and Sediment Control in New Jersey, promulgated by the State Soil Conservation Committee. A copy of the certified plan and a copy of these provisions must be kept on the job site at all times.
5. Any conveyance of the project (or portion thereof) will transfer full responsibility for compliance to subsequent owner(s). The District must be notified in writing of any change of ownership.
6. This certification is limited to the controls specified in this plan. It is not authorization to engage in the proposed land use unless such use has been previously approved by the municipality or other controlling agency. **THIS CERTIFICATION SHALL EXPIRE IN 3-1/2 YEARS.**

Failure to comply with any of the conditions listed may result in the issuance of a Stop Construction Order.

NOTE: (1) All sediment spilled, dropped, washed or tracked onto roadways (public or private), or other impervious surfaces must be removed immediately.

NOTE: (2) At the time of the final inspection you are required to provide confirmation that the proper type and amount of seed, lime and fertilizer have been used for permanent stabilization work.

NOTE: (3) Additional Measures will be required if erosion problems develops.

NOTE: (4) The revised Standards for Soil Erosion and Sediment Control in NJ require applicants to perform a soil test to determine the lime application rate prior to permanent stabilization.

NOTE: (5) The District has determined that this project is not subject to the soil restoration requirements of the revised land grading standard.



SUPERVISOR

Copy to: Applicant, Municipality Construction Official, Planning Board, Applicant's Engineer, District

EXHIBIT I



THE OCEAN COUNTY UTILITIES AUTHORITY

Serving Ocean County & Southern Monmouth County

ALAN W. AVERY, JR., CHAIRMAN
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JAMES A. DALY
STEVEN C. KENNIS, ALTERNATE
ROBERT A. SABOSIK, ALTERNATE

KEITH B. MARCOON, P.E., EXECUTIVE DIRECTOR

March 12, 2025

Bahram Farzaneh, PE
French & Parrello Associates
1800 Route 34, Suite 101
Wall, NJ 07719

Re: Mixed Use Development – 406 Boulevard
Block 5.01, Lots 58, 59 & 63
Seaside Heights Borough, Ocean County, New Jersey
OCUA Project No. C-27-015
FPA No. 17555.002

Dear Mr. Farzaneh:

After reviewing the plans, specifications and the Engineer's reports for the above referenced project, the project is found to be in substantial conformance with the rules and regulations of this Authority.

The original OCUA application, WQM-003 forms, along with a copy of the OCUA resolution, are enclosed for your use. Copies of these forms have been forwarded to any parties listed below.

Any flows from environmentally sensitive areas that may be subject to regulations must be specifically permitted by the NJDEP.

If construction has not commenced within two years of this letter's approval date, an application for an extension must be submitted.

Sincerely,


Robert G. McGlaughlin
Planning/Metering Specialist

RGM
Enclosures
c. Borough of Seaside Heights Public Works



OCEAN COUNTY UTILITIES AUTHORITY SEWERAGE PROJECT APPLICATION FORM

Application is hereby made for the approval of plans and specifications for the proposed sanitary sewerage facilities.

1. Local Authority Borough of Seaside Heights
 Address 100 Grant Ave., Seaside Heights, NJ 08751 Phone 732-375-4720
2. Name of Project Mixed Use Development - 406 Boulevard
3. Name and Address of current property owner: SSH Boulevard Urban Renewal, LLC, c/o Daniel Matarese
 Address 485 Texas Road, Morganville, NJ 07751 Phone _____
4. Location of proposed construction _____
58 Hamilton Ave., 406 Boulevard, and 418 Boulevard, Seaside Heights, NJ Block 5.01, Lots 58, 59, 63
 (street) (tax map block and lot numbers)
5. Name of person designing plans Bahram Farzaneh, P.E.
French & Parrello Assoc.,
 Address 1800 Rt 34, Suite 101 Wall, NJ 07719 Phone 732-312-9760
6. Total projected average daily flow 34,246 Gallons per Day
 Signature of current Owner: 
 PRINT name of Owner or Authorized Agent SSH Boulevard Urban Renewal, LLC, c/o Daniel Matarese

APPROVAL BY LOCAL AUTHORITY

This application for approval to construct sewerage facilities has met all the requirements of:

Borough of Seaside Heights Utilities

(Local Authority)



(Signature of Authorized Agent)

PRINT Name and Title of Authorized Agent Brian Hoffnagle Assistant Superintendent
of public works

For projects located in Monmouth County _____

(Signature of MRRSA Authorized Agent)

PRINT Name and Title of Authorized Agent _____

ACTION BY THE OCEAN COUNTY UTILITIES AUTHORITY

Received by The Ocean County Utilities Authority Fee CK#5005 \$650.00 Date: 2/10/2025

Reviewed by: R. McGLAUGHLIN Date: 3/12/2025

Revisions received: _____ Date: _____


Approved / Disapproved by:  Date: 3/12/2025

EXHIBIT J



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER QUALITY

WATER POLLUTION MANAGEMENT ELEMENT

401 East State Street

P.O. Box 420, Mail Code 401-02B

Trenton, New Jersey 08625-0420

Tel. (609) 984-4428 • Fax (609) 777-0432

www.nj.gov/dep/dwq

PHILIP D. MURPHY

Governor

TAHESHA L. WAY

Lt. Governor

SHAWN M. LATOURETTE

Commissioner

06/26/2025 (Via Email Only)

Email: danny@dancogc.com
Daniel Matarese, Owner
SSH Blvd Urban Renewal LL
485 Texas Road, P.O. Box 2
Morganville, NJ 07751

Re: Treatment Works Approval **No. 25-0171**
Seaside Heights Mixed Use Development
Seaside Heights Borough, Ocean County

Dear Daniel Matarese:

There is enclosed a Treatment Works Approval issued to you pursuant to Title 58 of the Revised Statutes of New Jersey and in consideration of your application received on 04/08/2025 signed by Daniel Matarese, Owner, and Bahram Farzaneh, P.E.

This approval is valid for a period of two (2) years from the issuance date, unless otherwise stated in the attached approval document. This approval shall expire unless building, installing or modifying of the treatment works has begun within the initial approval period. Treatment works approvals may be extended beyond the original two-year approval date, to a maximum period of five years from the original issuance date, in accordance with the terms and conditions contained in N.J.A.C. 7:14A-22.12. A time extension request must be received by the Department prior to the permit's expiration date. Time extension requests shall be submitted to the Bureau of Ground Water, Residuals, and Permit Administration (BGRPA) at the address noted in the heading of this letter.

Within 30 days of completion of the treatment works approved herein, the permittee shall submit an executed Form WQM005 (Certification of Completion) to BGRPA and to the receiving sewage treatment plant, as indicated in the Treatment Works Approval under Part II - "General Conditions for Treatment Works Approvals", Section B.

If you have any questions regarding the permit, please contact Antoanela Chopan either by phone at (609) 984-4428 or via email at Antoanela.Chopan@dep.nj.gov.

Sincerely,

A handwritten signature in black ink that reads "Brian Sage".

Brian Sage, Section Chief TWA Unit
Bureau of Ground Water, Residuals, and Permit Administration

25-0171

Enclosure

cc: French & Parrello Associates
Seaside Heights Borough
OCUA

bahram.farzaneh@fpaengineers.com
bhoffnagle@seaside-heightsnj.org
rmcgloughlin@ocua.com



STATE OF NEW JERSEY
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 P.O. Box 420, Trenton, NJ 08625-0420

PERMIT TO CONSTRUCT AND OPERATE* TREATMENT WORKS

*Local Agency approval required prior to operation

The New Jersey Department of Environmental Protection grants this approval in accordance with your application, attachments accompanying same application, and applicable laws and regulations.

| | | | |
|-------------------|----------------------|------------------------|--------------------|
| PERMIT NO. | ISSUANCE DATE | EXPIRATION DATE | DESIGN FLOW |
| 25-0171 | 06/26/2025 | 06/25/2027 | 0.0034 M.G.D. |

NAME AND ADDRESS OF APPLICANT

SSH Blvd Urban Renewal LLC
 485 Texas Road, P.O. Box 2
 Morganville, NJ 07751

LOCATION OF ACTIVITY

Seaside Heights Borough
 Ocean County

This permit grants permission to:

Construct and operate 26 LF of 8-inch PVC sanitary sewer lateral to serve a proposed project known as "Seaside Hights Mixed Used Development", consisting of 77 residential units, 6,460 Square-feet of retail space, and a 450-seat restaurant, located at 406 Boulevard, Seaside Heights Borough, Ocean County, New Jersey.

According to the plans entitled:

"Preliminary and Final Site Plan for Proposed Mixed-Used Development 406 Boulevard, Block 5.01, Lots 58, 59, and 63, Borough of Seaside Heights, Ocean County, New Jersey", three (3) sheets 1, 2, and 8, prepared by FPA French & Parrello Associates, dated June 16, 2022, last revised November 26, 2024.

and according to the specifications entitled:

"Sanitary Sewer Specifications for Mixed-Used Development, Block 5.01, Lots 58, 59, and 63, Borough of Seaside Heights, Ocean County, New Jersey", prepared by FPA French & Parrello Associates, dated March 1, 2024

APPROVED by the Department of Environmental Protection

 Brian Sage, Section Chief – TWA Unit
 Bureau of Ground Water, Residuals and Permit Administration

This permit is also subject to special provisos and general conditions stipulated on the attached page(s) which are agreed to by the permittee upon acceptance of the permit.

PART I

PROVISOS

A. Project Specific Provisos

1. That pursuant to N.J.A.C. 7:10A-1 et. seq., an appropriate public wastewater collection system licensed operator will be required for your system.
2. That the proper operation and maintenance of the sewer system approved herein is the sole responsibility of the OWNER AND OR APPLICANT named herein or its assignees.
3. That except as provided in N.J.A.C. 7:14A-22.4, any future sewer connections into the sanitary sewer system approved herein will require a treatment works approval from the N.J.D.E.P.
4. The issuance of this permit does not exempt the applicant of the responsibility to comply with all other permitting and regulatory requirements of the Department's Division of Land Resource Protection, as applicable.
5. That prior to initiating construction of the sewerage facilities approved herein, the applicant is required to obtain a CAFRA permit or a determination of non-jurisdiction letter from the Department's Division of Land Resource Protection.

B. Custom Requirement

1. That contributory flow of 34,246 GPD (0.003424 MGD) gallons per day (as noted in the Sanitary Sewer Report) allocated in this permit is based upon proposed:
 - (a) 70 two-bedroom residential units at 225 gpd / unit = 15,750 gpd
 - (b) 7 three-bedroom residential units at 300 gpd / unit = 2,100 gpd
 - (c) 6,460 Sq. Ft. Retail Space at 0.10 gpd / Sq.Ft. = 646 gpd
 - (d) 450-seats restaurant at 35 gpd / seat = 15,750 gpd.
2. It is the applicant's responsibility to obtain all Federal, State and local approvals that may be required for this project.

GENERAL CONDITIONS FOR TREATMENT WORKS APPROVALS**Section A. GENERAL CONDITIONS**

1. This permit is revocable, or subject to modification or change, at any time, when in the judgement of the Department of Environmental Protection of the State of New Jersey such revocation, modification or change shall be necessary.
2. The issuance of this permit shall not be deemed to affect in any way action by the Department of Environmental Protection of the State of New Jersey on any future application.
3. The works, facilities, and/or activities shown by plans and/or other engineering data, which are this day approved, subject to the conditions herewith established, shall be constructed and/or executed in conformity with such plans and/or engineering data and the said conditions.
4. No change in plans or specifications shall be made except with the prior written permission of the Department of Environmental Protection of the State of New Jersey.
5. The granting of this permit shall not be construed to in any way affect the title or ownership of property, and shall not make the Department of Environmental Protection or the State a party in any suit or question of property.
6. This permit does not waive the obtaining of Federal or other State or local government consent when necessary. This permit is not valid and no work shall be undertaken until such time as all other required approvals and permits have been obtained.
7. A copy of this permit shall be kept at the work site, and shall be exhibited upon request of any person.
8. No treatment unit or conveyance system may be by-passed which would result in the discharge of untreated sewage into any of the waters of the state.
9. The full responsibility for adequate design, construction and operation of the treatment works, and the full responsibility for successful collection, treatment, and discharge of pollutants shall be on the applicant.
10. The issuance of approval by the Department shall not relieve the applicant of the continuing responsibility for the successful collection, treatment, or discharge of pollutants for the continuing compliance with any applicable effluent limitations, permits, regulations, statute, or other law.
11. Review and approval is based solely upon the information contained in the application and the contents of the engineer's report as certified by the licensed professional engineer as being in compliance with the Department's Rules and Regulations.

Section B. CONSTRUCTION COMPLETION CERTIFICATION

1. Within 30 days of completion of the treatment works approved herein, the permittee shall submit two executed forms, WQM005 Certification of Approval, to the appropriate sewage treatment plant (STP) for their approval prior to operation. One executed copy approved by the receiving STP shall be forwarded to the appropriate Bureau and address noted on the cover page of this approval. Failure to submit the certification within 30 days of completion of the project may be grounds for revocation of the permit. Should partial operation be required prior to completion, approval will be under local jurisdiction.
2. In cases where the project and the receiving treatment facility are one in the same, the WQM005 Certification of Approval form must be submitted to the Bureau and address noted on the cover page of this approval within 30 days of completion of the treatment works. Failure to submit the certification within this time period may be grounds for revocation of the permit.

Section C. PERMIT EXPIRATION AND EXTENSIONS OF TIME

1. This permit shall remain in force for a period of only two years from the date of approval unless stated otherwise within the special provisos, or construction of said works has begun within the approved time frame. Interruption of construction of said works for a period of more than two years may serve as a basis for permit revocation.
2. Treatment works approvals may be extended beyond the original two year approval date, to a maximum of five years from the original issuance date, in accordance with the terms and conditions in N.J.A.C. 7:14A-22.12, unless stated otherwise within the special provisos. A time extension request must be received by the Department prior to the permit's expiration date. Requests must be submitted to the Bureau and address noted on the cover page.

Section D. ADJUDICATORY HEARING REQUESTS

1. Pursuant to N.J.A.C. 7:14A-22.24 et seq., any interested person who considers himself or herself aggrieved by this action, may, within 30 days of publication of notice of the decision in the *DEP Bulletin*, request a hearing by addressing a written request for such hearing to the:

New Jersey Department of Environmental Protection
Office of Administrative Hearings and Dispute Resolution
P.O. Box 402, Mail Code 401-07A
401 East State Street
Trenton, NJ 08625-0402
Attention: Adjudication Hearing Request

Such a request should include a completed Administrative Hearing Request Checklist and Tracking form for Approvals or Denials (enclosed herein for Denials). This form is required, as DEP is the transmitting agency to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

EXHIBIT K



Brian M. Nelson, Esq.
bnelson@shnlegal.com

200 Monmouth Street, Suite 310
Red Bank, New Jersey 07701
732.784.1470 Law Office

February 26, 2024

VIA U.S. & ELECTRONIC MAIL

Nino A. Coviello, Esq.
Saiber LLC
18 Columbia Turnpike, Suite 200
Florham Park, New Jersey 07932

Re: Pending De-Designation as Redeveloper
SSH Boulevard Urban Renewal, LLC (“**SSH**”)
10 Story Mixed Use Building (the “**Project**”)
Block 5.01, Lots 58, 59 and 63 (the “**Property**”)
Borough of Seaside Heights, Ocean County

Dear Mr. Coviello:

As you know, our office serves as Redevelopment Counsel to the Borough of Seaside Heights (the “**Borough**”). The Borough has asked that all further communications regarding this Project be made in writing due to significant concerns relating to its viability and SSH’s ability to complete it. The Borough has further directed that we transmit this letter placing SSH on notice that the Borough is considering de-designating SSH as redeveloper absent certain conditions being met by March 15, 2024: (1) submittal of a Project Schedule acceptable to the Borough; (2) submittal of escrow in the amount of \$50,000; and (3) firm evidence of sufficient financial ability to complete the Project expeditiously.

SSH initially applied to be designated redeveloper of the Property in April 2021. In SSH’s application, it was represented—perhaps unrealistically—that this Project could be substantially completed by June 2022. It was also represented in SSH’s application that it was securing a \$32 million line of credit to commence the Project.

February 26, 2024

Page 2

Based on the representations provided in SSH's application to the Borough and the presentation of the same at that time, on May 5, 2021, pursuant to Resolution No. 2021-168, the Borough conditionally designated SSH redeveloper of the Property subject to entry of a Redevelopment Agreement. At this time, the Borough proceeded to condemn the Property from its prior owner, taking possession of the Property for this Project on August 2, 2021. The initial cost of this acquisition to the Borough was more than \$1.5 million, which has now escalated to more than \$2.5 million. For the third year now, the Borough has not collected any tax on the Property and has had to carry and maintain it.

At the request of SSH, which wanted to expand the scope of the Project from 8 to 10 stories, the Borough amended the Boulevard Redevelopment Plan (the "**Redevelopment Plan**") through the adoption of Ordinance No. 2022-04 on May 4, 2022.¹ On August 3, 2022, pursuant to Resolution No. 22-212, the Borough formally designated SSH the Redeveloper of the Property and authorized the entry of a Redevelopment Agreement. On the same date, pursuant to Ordinance No. 2022-20, the Borough also authorized the entry of a Purchase and Sale Agreement for the sale of the Property to SSH (collectively, the "**Agreements**").

After nearly ten months of waiting and regular follow-up by the Borough and counsel, SSH still had not executed the Agreements. Accordingly, on April 5, 2023, the Borough adopted Resolution No. 23-112, which de-designated SSH as redeveloper if SSH did not provide the executed Agreements to the Borough by May 5, 2023. After continued and repeated follow up by the Borough and counsel, SSH finally produced executed Agreements on May 2, 2023. SSH, however, failed to provide Exhibit A, the Project Schedule, which is required by the Redevelopment Agreement and N.J.S.A. 40A:12A-9 (the "**Redevelopment Law**").

Despite continued and repeated requests for nearly a year, SSH still has not provided the Borough with a Project Schedule. Further, SSH still has not posted escrow as required by the Redevelopment Agreement. Accordingly, it is the Borough's position that the Agreements are *ultra vires* and not effective unless and until these outstanding matters are fully

¹ Later amendments were made to the Redevelopment Plan that were not specifically in relation to this Project.

February 26, 2024

Page 3

addressed, which are the Borough's basis for the first two demands made above.²

On or about June 26, 2023, SSH applied for Preliminary and Final Major Site Plan Approval. On September 25, 2023, pursuant to Planning Board Resolution No. 2023-31, these approvals were memorialized. It is the Borough's understanding that CAFRA and other Governmental Approvals have also been granted by other agencies prior thereto. These Governmental Approvals are believed to have become unappealable as of approximately November 9, 2023.

At the Borough's request, on January 16, 2024, SSH, the Borough and counsel met via a Zoom conference. During this conference, SSH represented that it is having trouble securing financing for the Project and that the construction costs have ballooned to approximately \$100 million. It also seems that certain Project partners that were initially represented in SSH's application have abandoned the Project. Simple math seems to indicate that at this construction cost, the Project, as proposed, is not viable. Further, it appears that SSH is not capable of financing the Project at this construction cost in the absence of Project partners.

The Borough cannot afford any further delays in relation to the completion of this Project. Should SSH like to propose amendments to the Project to make it viable, they should be presented by March 15, 2024 along with a clear plan and information evidencing that SSH is capable of completing the amended project in a timely fashion. Even if the first two issues associated with the Agreements are addressed, the Borough needs firm evidence of SSH's ability to finance and complete the Project in a timely fashion. Otherwise, the Borough is left with no choice but to de-designate SSH and proceed to secure another redeveloper to complete the redevelopment of the Property.

² While not a requirement of the Redevelopment Law, SSH has represented that a Long-Term Tax Exemption is necessary for the Project to proceed. The Long-Term Tax Exemption Law requires the submission of an application for the Borough to consider the entry of a Financial Agreement, which must be adopted by ordinance. Despite sending application materials to former and current counsel for SSH, no application has been received to date. No construction can commence until a Financial Agreement is approved by both the Borough and the New Jersey Department of Community Affairs. This process could take up to six months to complete and hasn't even commenced with the filing of an application.

February 26, 2024

Page 4

We look forward to your prompt response as time is of the essence.

Very truly yours,

SPIRO HARRISON & NELSON LLC

By: _____

Brian M. Nelson

cc. Christopher Vaz, Borough Administrator

EXHIBIT L



Nino A. Coviello
973.645.4800
ncoviello@saiber.com

November 20, 2024

VIA EMAIL: bnelson@shnlegal.com

Brian Nelson, Esq.
Spiro, Harrison & Nelson
200 Monmouth Street, Suite 310
Red Bank, New Jersey 07701

**Re: SSH Boulevard Urban Renewal, LLC (“SSH”)
10 Story Mixed Use Building (the “Project”)
Block 5.01, Lots 58, 59 and 63 (the “Property”)
Borough of Seaside Heights, Ocean County**

Dear Mr. Nelson:

As you know, this firm represents SSH Boulevard Urban Renewal, LLC (“SSH”) in connection with the referenced Project. As you are also aware, the Project is governed by a Redevelopment Agreement dated May 2, 2023 (the “Redevelopment Agreement”) and a Real Estate Purchase and Sale Agreement dated May 2, 2023 (the “PSA”), both between SSH and the Borough. This letter is written in response to the parties most recent conference held on November 18, 2024.

As we have previously reported, SSH has obtained all Governmental Approvals except the municipal water main and sewer connections and associated approvals. SSH will need approval from the Ocean County Utilities Authority and a Treatment Works Approval Permit from the New Jersey Department of Environmental Protection but cannot apply for either of those approvals until the water main and sewer connections have been resolved. These unresolved utilities connections prevent SSH from moving forward with the Project because SSH cannot apply for OCMUA or TWA permits until these utility connections are resolved. Moreover, SSH cannot complete a PILOT application if costs associated with these utilities are anticipated to be assessed, and without knowing the extent to which SSH is going to be asked to contribute; and reserving any rights to challenge or object to any such assessments. Finally, it also prevents financing from being finalized while both the Project timeline and financing costs are yet undetermined despite SSH’s diligent efforts to have these issues resolved. SSH has been diligently pursuing the finalization of the approvals for the Project, but the foregoing issues are outside of SSH’s control.

We also note that pursuant to Section 12.1(a) of the Redevelopment Agreement, SSH is not contractually required to provide a financial plan that includes anticipated sources of funding to the Borough until either six (6) months from the date that SSH obtains all Governmental Approvals, or thirty (30) days prior to the commencement of construction of the Project. As noted above, SSH has not obtained all Governmental Approvals despite its diligent efforts to do

Brian M. Nelson, Esq.
November 20, 2024
Page 2

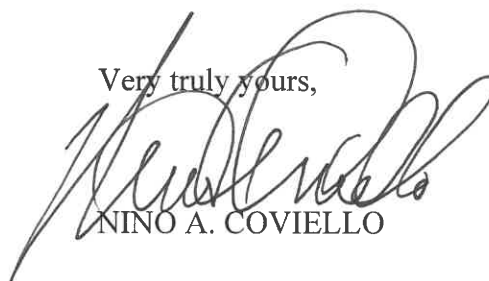
so, due in part to the delay in resolving municipal utilities connections which prevents SSH from finalizing the outstanding State and County approvals.

We also note that SSH obtained preliminary and final site plan approval pursuant to memorializing resolution 2023-21 from the Seaside Heights Planning Board, adopted on September 25, 2023 (the "Resolution"). This approval provides certain protections to SSH, namely that the Project cannot be altered in any way for a period of two (2) years and is thereafter only subject to changes in zoning if construction has not commenced. N.J.S.A. 40:55D-52(a). SSH has spent over \$1,000,000.00 in obtaining that approval and attempting to achieve resolution compliance to commence construction of the Project. While the Borough had indicated concern that the Project may not be viable for economic reasons that are not germane to the protections afforded to SSH under the Municipal Land Use Law, the Project is currently sacrosanct from any revisions. Any future discussion regarding revisions to the Project are subject to (i) the substantial costs and expenses SSH has incurred to date, in reliance on the Redevelopment Plan that the Borough adopted and the Project the Planning Board approved; and (ii) that the Project cannot be legally altered at this point.

We finally note that in the event the parties have not closed on the Property by the Closing Date, SSH may waive receipt of the Governmental Approvals and proceed to closing pursuant to Section 8(e)(iii) of the PSA.

Thank you for your attention in this regard. If necessary, my client and I will make ourselves available to discuss any concerns the Borough or its representatives may have.

Very truly yours,



NINO A. COVIELLO

NAC:sp
Enc.

EXHIBIT M



Brian M. Nelson, Esq.
bnelson@shnlegal.com

200 Monmouth Street, Suite 310
Red Bank, New Jersey 07701
732.784.1470 Law Office

December 18, 2024

VIA ELECTRONIC ONLY

Nino A. Coviello, Esq.
Saiber LLC
18 Columbia Turnpike, Suite 200
Florham Park, New Jersey 07932

Re: Project Delays and Continued Defaults
SSH Boulevard Urban Renewal, LLC (“**SSH**”)
10 Story Mixed Use Building (the “**Project**”)
Block 5.01, Lots 58, 59 and 63 (the “**Property**”)
Borough of Seaside Heights, Ocean County

Dear Mr. Coviello:

As you know, our office serves as Redevelopment Counsel to the Borough of Seaside Heights (the “**Borough**”). This shall serve as a formal reply to your correspondence dated November 20, 2024. As set forth herein, the Borough’s position is that SSH is in continued default of the Redevelopment and Purchase and Sale Agreements entered on May 2, 2023. The Borough will terminate both Agreements and de-designate SSH as the Redeveloper should the conditions herein not be met by January 31, 2025.

As you know, this Project commenced with your client’s application to be designated Redeveloper of the Property in April 2021. Based on your client’s representations at that time, the Borough expended over \$2.5 million acquiring the Property through condemnation for SSH’s Project, which is still six months to a year from even possibly being able to commence. Every Project Schedule provided by SSH, including the one provided most recently in March 2024, has not been met. Due to SSH’s continued inability and failure to commence the Project, the Borough continues to have to carry the Property while it generates no tax revenue and remains an eyesore in the community.

December 18, 2024

Page 2

As cited in your March 13, 2024 correspondence, pursuant to § 8.e. of the Purchase and Sale Agreement, the “Buyer shall have a period of 14 months from and after the Effective Date (the “**Governmental Approval Period**”), within which to obtain all Governmental Approvals.” The Purchase and Sale Agreement was effective on May 2, 2023 (executed under threat of default after six months of delays). This deadline lapsed on July 2, 2024 and the Borough has the absolute right to terminate the Purchase and Sale Agreement upon return of \$300,000 of deposit monies (representing a credit for demolition costs) to SSH.

In your November 20, 2024 correspondence, you advise that “SSH has obtained all Governmental Approvals except the municipal water main and sewer connections and associated approvals.” Despite SSH having received final site plan approval memorialized in a Planning Board Resolution adopted on September 25, 2023 in which this issue was addressed, SSH did not file its preliminary water and sewer application until September 6, 2024. This is a clear impediment to the critical path schedule of the approval process. This application was recommended for approval by the Borough’s engineers on October 23, 2024 merely requiring your client to tap into new water mains being installed on either Hamilton or Webster Avenues¹ along with other de minimis comments. The Borough has yet to receive SSH’s final application for its water and sewer approvals. Clearly, your client has not diligently pursued these Governmental Approvals while the Borough has rapidly processed your client’s applications. Worse, your client’s inexplicable delay in seeking these approvals is being utilized to try to run the clock under the Redevelopment Agreement. ***The Borough will no longer entertain such arguments as an excuse for repeated delays.***

Finally, SSH has still not made an application for a Long Term Tax Exemption, which it has represented is necessary for securing financing for the Project. Such applications are typically made based on reasonably estimated costs while redevelopers seek to be designated. In January 2024, SSH represented that this application would be made once architectural drawings are completed so that final project costs could be ascertained. Based on our most recent November 18, 2024 conference, architectural drawings are still not completed. Further, any claims that this application cannot be made due to uncertainty relating to the cost of water and sewer connections is not acceptable in that the connections are a known cost and do not require any offsite improvements of significance in this instance. Further, relative to the overall project cost, these connection costs are extraordinarily nominal, not a reason to

¹ It should be noted that per SSH’s site plan approval this connection was to be made on Webster Avenue, but the Borough will allow SSH to connect at the location of its choosing.

December 18, 2024

Page 3

cause a delay in the submission of an application required to enter a Financial Agreement with the Borough.


Based on the foregoing, by or before January 31, 2025, SSH shall submit its final water and sewer application to the Borough² with all required fees paid, verifiable evidence of sources of funds (equity and debt) for the project, and a complete Long Term Tax Exemption Application.

Should these conditions not be met within the timelines specified, the Borough will proceed to de-designate SSH as Redeveloper of the Property and terminate the Redevelopment and Purchase and Sale Agreements. No further extensions will be granted.

The Borough reserves all rights and remedies not necessarily herein described available to it under applicable law and in the Redevelopment and Purchase and Sale Agreements.

Very truly yours,

SPIRO HARRISON & NELSON LLC

By: 
Brian M. Nelson

cc. Christopher Vaz, Borough Administrator

² Submission of SSH's application to the Ocean County Utilities Authority shall be within 30 days of receipt of the Borough's final water and sewer approvals. Submission of SSH's application to the NJDEP for Treatment Works Approval shall be made within 30 days of receipt of the Ocean County Utilities Authority final water and sewer approvals.

EXHIBIT N

Justin R. Calta

From: Nino A. Coviello
Sent: Friday, August 1, 2025 5:04 PM
To: Brian Nelson; Kira Dabby
Cc: Justin R. Calta
Subject: SSH and Seaside Heights 406 Blvd
Attachments: 2024-11-7 SALES 13-24, DEP10 8-24.pdf; SSH LTTE APPLICATION DRAFT(4933-1677-9343).doc; 406 BLVD SEASIDE HEIGHTS CONSTRUCTION LOAN TERM SHEET.pdf

Hi Brian:

Apologies for the late response; my office is currently in the process of relocating and I've been preoccupied with the administrative headache of overseeing that endeavor.

Attached is a draft PILOT application with financial projections.

I've also attached a draft loan term sheet which will need to be updated, but since this was of paramount concern to the Borough, I am including it subject to a reservation of right to update. It's my understanding that final signatures of the plans has not yet occurred; hopefully, the submission of the PILOT application and the draft term sheet will advance that signature process which will expedite the loan approval. In short, loan negotiations will resume shortly after securing final signatures.

Thank you for your attention in this regard. Please provide dates and times when the Town officials would like to meet with my client.

Regards,
Nino

Nino A. Coviello
Co-Managing Member



Saiber LLC t: 973.645.4800
18 Columbia Turnpike f: 973.622.3349
Suite 200 e: ncoviello@saiber.com
Florham Park, NJ 07932



www.saiber.com

Please Note: As of August 18, 2025, our office will be relocating to the following new address: 7 Giralda Farms, Suite 360, Madison, New Jersey 07940. Kindly update your records accordingly.

EXHIBIT O



Brian M. Nelson, Esq.
bnelson@shnlegal.com

200 Monmouth Street, Suite 310
Red Bank, New Jersey 07701
732.784.1470 Law Office

October 6, 2025

VIA ELECTRONIC MAIL AND U.S. MAIL

Nino A. Coviello, Esq.
Saiber LLC
18 Columbia Turnpike, Suite 200
Florham Park, New Jersey 07932

Re: Project Status
SSH Boulevard Urban Renewal, LLC (“**SSH**”)
10 Story Mixed Use Building (the “**Project**”)
Block 5.01, Lots 58, 59 and 63 (the “**Property**”)
Borough of Seaside Heights, Ocean County

Dear Mr. Coviello:

As you know, our office serves as Redevelopment Counsel to the Borough of Seaside Heights (the “**Borough**”). We write to confirm that your client has until December 26, 2025 to provide a complete financial plan to the Borough. The information your client has provided thus far is incomplete and fails to demonstrate how your client can adequately finance and construct the Project.

As you know, this Project commenced with your client’s application to be designated Redeveloper of the Property in April 2021. On May 2, 2023, the Borough entered into a Redevelopment Agreement and a Real Estate Purchase and Sale Agreement with your client. Based on your client’s representations at that time, the Borough expended over \$2.5 million acquiring the Property through condemnation for SSH’s Project. Nevertheless, SSH failed to meet every Project Schedule provided by SSH, including the one provided in March 2024. Due to SSH’s continued inability and failure to commence the Project, the Borough continues to have to carry the Property while it generates no tax revenue and remains an eyesore in the community.

In your November 20, 2024 correspondence, you advised that “SSH has obtained all Governmental Approvals except the municipal water main and sewer

October 6, 2025

Page 2

connections and associated approvals.” To be clear, and as noted in my prior correspondence to you, SSH waited until September 6, 2024 to file its preliminary water and sewer application, which was a clear impediment to the critical path schedule of the approval process. As stated in my prior letter, your client did not diligently pursue these Governmental Approvals.

Your November 20, 2024 correspondence also stated that “SSH cannot complete a PILOT application if costs associated with these utilities are anticipated to be assessed, and without knowing the extent to which SSH is going to be asked to contribute; and reserving any rights to challenge or object to any such assessments.” You further stated that the outstanding water main and sewer approvals prevented “financing from being finalized while both the Project timeline and financing costs are yet undetermined” You told the Borough that those issues were “outside of SSH’s control.”

Now, over nine months later, SSH still has not made these required submissions, despite having received its final Governmental Approval – the NJDEP Treatment Works Approval – on June 26, 2025. Your client’s November 20, 2024 letter claimed SSH could not finalize its PILOT application or financing until utilities issues were resolved; however, resolution of utilities issues *over three months ago* still has not resulted in meaningful progress.

On August 1, 2025, you forwarded, in your words, a “draft PILOT application with financial projections,” along with a “draft loan term sheet which will need to be updated”. You indicated your hope that signatures would be forthcoming, which might expedite the loan approval. Your client has not submitted anything since that email attaching grossly incomplete information in draft form. For example, SSH’s Projected Assumptions document estimates the Project cost to be \$88,275,000. But the draft Construction Loan Term Sheet provides evidence of financing in the amount of only \$40 million at most while providing no evidence of any sources of equity. SSH’s draft Application for Long-Term Exemption is unsigned and lacks exhibits.

Your November 20, 2024 correspondence acknowledged that “pursuant to Section 12.1(a) of the Redevelopment Agreement,” SSH is “contractually required to provide a financial plan that includes anticipated sources of funding to the Borough” within six months from the date that SSH obtains all Governmental Approvals.

Accordingly, the Borough expects to receive “a financial plan that the Redeveloper believes to be complete, describing the anticipated sources of funding for the Project, including, but not limited to, a commitment or a ‘term

October 6, 2025

Page 3

sheet' for construction financing required for the Project and a representation regarding any equity capital necessary for the Commencement of Construction of the Project," by December 26, 2025. This financial plan must describe **viable** sources of funding for the **full amount** of the Project cost. In addition, the Borough expects to receive an Application for Long-Term Tax Exemption that is signed, finalized, and complete with Exhibits.

In short, the delays by your client remain unacceptable. The Borough's December 18, 2024 correspondence expressed concern over the delays at that time and cautioned that your client would be de-designated as Redeveloper of the Property, and the Redevelopment and Purchase and Sale Agreements would be terminated, if your client failed to complete the stated conditions within the timelines specified. The Borough continues to reserve all rights and remedies not necessarily herein described available to it under applicable law and in the Redevelopment and Purchase and Sale Agreements.

Very truly yours,

SPIRO HARRISON & NELSON LLC

By: 

Brian M. Nelson

cc. Christopher Vaz, Borough Administrator

EXHIBIT P

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room
November 25, 2025
Caucus Meeting 4:00 p.m.

Open Public Meetings Act Statement

Roll Call

EXECUTIVE “CLOSED” SESSION:

Resolution No. 25-290: Authorizing an executive session.

Motion: _____ *Second:* _____ *Roll Call*

Personnel: Nothing pending.

Contracts: SSH Blvd., LLC (redevelopment attorney, Brian Nelson, Esq. appearing via Zoom).

Ongoing/Anticipated Litigation: Discuss potential litigation against certain OPRA requestors.

Motion to close Executive Session: _____ *Second:* _____ *Roll Call*

PUBLIC “OPEN” SESSION:

1. Discuss agenda items.
2. Code Enforcement/Zoning Officer.
3. Beach badges and fees.
4. Parking fees, etc.
5. Borough Council discussion items, if any.

Public comments, if any.

Motion to close the Caucus Meeting: _____ *Second:* _____

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room
November 25, 2025
Regular Meeting 5:00 p.m.

Open Public Meetings Act Statement
Serenity Prayer
Pledge of Allegiance

Roll Call

Meeting minutes:

Approving meeting minutes re: November 5, 2025. (All Borough Council members were present.)

Motion: _____ Second: _____ Roll Call

Resolutions and ordinances for consideration by consent:

Resolution No. 25-291: Payment of bills.

Resolution No. 25-292: NV5 professional services agreement (re: design assistance and construction support services for the Central Avenue Safety Improvements project).

Resolution No. 25-293: Approving disposal of capital equipment.

Resolution No. 25-294: Approving shared services agreement with Ocean County Prosecutor's Office re: "Driving While Intoxicated Enforcement Program (D.W.I.E.P).

Resolution No. 25-295: Approving shared services agreement with Ocean County Prosecutor's office re: "Drug Recognition Expert Callout Program (D.R.E.C.P.)."

Resolution No. 25-296: Approving games of chance application(s).

Resolution No. 25-297: Authorizing refund of tax account re: 55 Blaine Avenue overpayment in the amount of \$2,682.44.

Resolution No. 25-298: Authorizing refund of tax account re: 201 Hiering Avenue overpayment in the amount of \$1,655.25.

Resolution No. 25-299: Authorizing Change Orders #6 and #7 re: Sunset Beach Inclusive Playground project.

Resolution No. 25-300: Authorizing execution of emergency interconnection agreement with New Jersey American Water Company, Inc.

Resolution No. 25-301: Authorizing vacation of one on-street parking space on Franklin Avenue re: Planning Board site plan approval 15 Hamilton/16 Franklin Avenues.

Resolution No. 25-302: Budget appropriation transfers.

Resolution No. 25-303: Waiver property tax and utilities re: Seaside Heights Business Improvement District occupancy of Gallery 619 (619 Boulevard).

Resolution No. 25-304: Authorizing contract for smartphone/smart device sales of beach badges and wristbands.

Resolution No. 25-305: Awarding contract to Carasoft re: Police Department (Building A) security cameras.

Resolution No. 25-306: De-designating redeveloper (re: SSH Blvd., LLC).

Ordinance No. 2025-30: Beach badge fees.

Ordinance No. 2025-31: Parking (re: annual permit fee; West Central Avenue; handicap parking).

Ordinance No. 2025-32: Electric utility rates.

Ordinance No. 2025-33: Elected official pay restrictions and sick leave payout maximum (required by DLGS through the Transitional Aid Agreement).

Ordinance No. 2025-34: Repealing purchase and sale agreement (re: SSH Blvd., LLC).

Public comments, if any, concerning Consent Agenda

Motion Second Roll Call

Approvals:

Nothing pending.

Public comments, if any, concerning special event approvals

Motion Second Roll Call

Public comments:

Citizens and interested parties are invited to address the Mayor & Borough Council. Please walk to the microphone in front of the dais when recognized by the Mayor. Please state your name and address before beginning your comments so that the Borough Clerk may accurately include your comments in the meeting minutes.

Adjourn:

Motion _____ *Second* _____ *Roll Call*

Notes:

Next Borough Council meeting is Wednesday, December 3, 2025.

Tree Lighting Ceremony is Saturday, December 6, 2025.

EXHIBIT Q



Nino A. Coviello
973.645.4800
ncoviello@saiber.com

October 31, 2025

VIA EMAIL: bnelson@shnlegal.com

Brian Nelson, Esq.
Spiro, Harrison & Nelson
200 Monmouth Street, Suite 310
Red Bank, New Jersey 07701

**Re: SSH Boulevard Urban Renewal, LLC (“SSH”)
10 Story Mixed Use Building (the “Project”)
Block 5.01, Lots 58, 59 and 63 (the “Property”)
Borough of Seaside Heights, Ocean County**

Dear Mr. Nelson:

As you know, this firm represents SSH Boulevard Urban Renewal, LLC (“SSH”) in connection with the above-referenced Project. As you are also aware, the Project is governed by a Redevelopment Agreement dated May 2, 2023 (the “Redevelopment Agreement”) and a Real Estate Purchase and Sale Agreement dated May 2, 2023 (the “PSA”), both between SSH and the Borough.¹

This letter is written for two purposes: first, to respond to your letter dated October 6, 2025; and second, to inform the Borough of subsequent events regarding SSH and a request for Borough assistance in this regard.

Regarding your October 6, 2025 correspondence, as discussed in my January 23, 2025 letter, SSH applied for, but had not yet received, various Borough-related approvals or approvals which required Borough action to finalize. Your letter claims that the last Governmental Approval was the TWA permit SSH obtained on June 26, 2025, and, according to Section 12.1(A) of the Redevelopment Agreement, which provides that SSH must submit “a financial plan that [SSH] believes to be complete” including, as an example, a commitment letter for construction financing and “a representation regarding any equity capital necessary for the Commencement of Construction of the Project.” (Emphasis added).

The TWA Permit, however, is not the last Governmental Approval pending. Rather, the Borough has yet to act on a final site plan package that SSH’s engineer delivered to the Zoning/Construction office on or about May 15, 2025 for final approval. In the cover letter, SSH’s engineer explained that two administrative changes were reflected on the revised site plan set: (i) all electric vehicle (EV) parking spaces were situated on the ground floor for insurance and fire-safety purposes, since it is hazardously difficult to extinguish an EV fire on the upper-floors of a building, which also resulted in the creation of one (1) additional space, and which revised site

¹ Capitalized words used but not defined have the meanings given to them in the PSA or the Redevelopment Agreement, as applicable.

Brian M. Nelson, Esq.

October 31, 2025

Page 2

plan now provides for two (2) parking spaces for each Unit; and (ii) a separate elevator was provided for the restaurant patrons only for safety purposes so that residents would not need to use the same elevator available to the general public when patronizing the restaurant. In the five (5) months since that submission occurred, SSH has not heard from the Borough regarding the revised site plan despite repeated follow-ups by SSH's professionals throughout the summer months of this year.

This process was clearly outlined in Section 10 of the Memorializing Resolution. Section 10 states that "The Applicant shall substantially adhere to the plan submitted during the hearing. A substantial deviation from the approved plan shall require further review and approval by the [Planning Board]. A *de minimis* change that the Construction Official and/or Zoning Officer deems to be 'cosmetic' in nature and does not increase an encroachment for which a variance was granted or changes the character of the structure, or violate a specific condition, may be approved by the appropriate Official." Here, the two (2) requested amendments are internal only and obviously *de minimis* and do not change the character of the Project whatsoever. Rather, they are minor changes made for safety purposes while the Project remains substantially the same as what was approved of by the Planning Board earlier.

The Borough has yet to act on that revised site plan package. As a result of the Borough's inaction, SSH does not have all Governmental Approvals yet, since site plan approval is clearly within the scope of that definition under Section 1.1 of the Redevelopment Agreement. Accordingly, the six (6) month time frame the Borough claims expires on December 26, 2025 has not even commenced yet *as a direct result of the Borough's own inaction*.

SSH continues to be frustrated with the inaction and non-response from the Borough over the lifetime of this Project. As mentioned in prior correspondence, it took the Borough several months to process the sewer and water application and to provide signatures to a TWA application – all of which the Borough claimed were simple in nature. The same is true with the two (2) minor changes to the site plan. There is simply no credible reason why the Borough has not acted on that May submission for the past five (5) months.

In the meantime, however, SSH has continued to diligently pursue what it can accomplish in the absence of having obtained all Governmental Approvals as a result of the Borough's inaction. For example, SSH has been pursuing MEP/construction drawings (at significant, six-figure expense) in anticipation of receiving a final, signed site plan. SSH's engineers made multiple requests to Borough officials regarding transformer sizes, metering, and other utility matters beginning in June of this year. For some reason, the Borough has yet to provide answers to these requests following a site meeting in July. Likewise, SSH provided a financing term sheet in compliance with the Redevelopment Agreement prior to when it would even be due together with a draft PILOT application – neither of which can be finalized until all Governmental Approvals have been obtained.

In a further good-faith effort to assure the Borough that construction of the Project will be fully funded, enclosed with this letter is a pre-approval letter for a construction loan in the full amount of \$80,000,000.00 that is consistent with the construction cost projection submitted earlier.

Brian M. Nelson, Esq.
October 31, 2025
Page 3

Other lenders remain actively interested in financing the project as well, by way of cash or equity, and SSH expects additional loan approvals and commitment letters in the coming days, which it will happily supply the Borough with as a courtesy in advance of the time period specified in Section 12 of the Redevelopment Agreement.

As to the second issue, as the Borough may recall, SSH was initially represented by another law firm. Unbeknownst to SSH, and without the consent of SSH, that law firm dissolved and terminated the "SSH Boulevard Urban Renewal LLC" entity on August 19, 2024. SSH became aware of this shortly before this letter while confirming whether the corporate annual dues were up to date. Despite SSH's immediate efforts to reinstate the entity, SSH was informed by multiple agencies that the certificate of dissolution and termination is final and cannot be undone.

This occurred entirely outside of SSH's control. Although the certificate of dissolution and termination contains a representation that it was confirmed that the entity had no ongoing affairs and ceased business operations, SSH was never contacted to confirm this was true.

In the meantime, SSH formed a new entity, "Seaside Heights Boulevard LLC" and began the initial steps of having that entity qualified as an urban renewal entity with the New Jersey Department of Community Affairs. As the Borough knows, however, the new entity will need to be designated as the redeveloper of the Project and assume both the PSA and Redevelopment Agreement.

As expressed in prior communications, the Borough would like to discontinue carrying the Property as soon as possible. As contemplated by Section 8(e)(iii) of the PSA, SSH has the option of waiving receipt of any outstanding Governmental Approvals and proceeding to Closing within ninety (90) days of notifying the Borough of its intention to do so. In a good faith effort to move the Project forward, **subject however**, to the Borough's designation of the replacement entity as the redeveloper of the Project and the Borough's consent to the assignment of the PSA and Redevelopment Agreement to the new entity as well, along with the completion of a PILOT program with the new entity, please accept this letter as notification of SSH's desire to waive any receipt of the Governmental Approvals as a condition of Closing and its intention to purchase the Property; SSH would also expect the Borough to reasonably cooperate in expediting the last remaining Governmental Approvals. This arrangement can be memorialized in a separate agreement among the parties.

Thank you for your attention in this regard. I suggest an in-person meeting would be the best method of resolving the outstanding items raised in this letter, and reaffirming the good relationship between the Borough and SSH.

Very truly yours,



NINO A. COVIELLO

NAC/ma
cc: Client (via email)



865 NJ 33 Business Ste 3 unit #111 | 855-940-LEND | www.LendCapLLC.com

October 29, 2025

Dear Dan Matarese,

SSH Boulevard Urban Renewal LLC, the borrower, is pre-approved for a construction loan in the amount of **\$80,000,000** for the property located at **404–416 Boulevard, Seaside Heights, New Jersey 08751**. The loan is offered at an interest rate of **6.25%** with a **4-year term**.

Based upon information received at application, along with credit and asset verification reviewed by **LendCap LLC**, the sponsor described above meets all of the requirements for a construction loan. We have determined that the sponsor possesses sufficient funds necessary to close the transaction.

In order to move forward with our proposal, we request that the sponsor provide documentation confirming that the property will be closed and owned with clear title, obtain planning board approval from the Township of Seaside Heights, New Jersey 08751, secure PILOT program approval from the same township, and provide completed architectural and engineering plans for construction.

Sincerely,

Nolan Venancio
Partner
LendCap LLC
732-865-6985

EXHIBIT R

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room
April 1, 2026
Caucus Meeting 4:00 p.m.

Open Public Meetings Act Statement

Roll Call

EXECUTIVE “CLOSED” SESSION:

Resolution No. 26-119: Authorizing an executive session.

Motion: _____ *Second:* _____ *Roll Call*

Personnel: Borough Clerk’s Office; Police Sergeant vacancies.

Contracts: Nothing pending.

Ongoing/Anticipated Litigation: Nothing pending.

Motion to close Executive Session: _____ *Second:* _____ *Roll Call*

PUBLIC “OPEN” SESSION:

1. Discuss agenda items.
2. Electric Utility sale of generators and purchase of peak shaving equipment.
3. Borough Council discussion items, if any.

Public comments, if any.

Motion to close the Caucus Meeting: _____ *Second:* _____

Borough of Seaside Heights
George E. Tompkins Municipal Complex
Municipal Court Room
April 1, 2026
Regular Meeting 5:00 p.m.

Open Public Meetings Act Statement
Serenity Prayer
Pledge of Allegiance

Roll Call

Meeting minutes:

Approving meeting minutes re: March 18, 2026. (All Borough Council Members were present.)

Motion: _____ Second: _____ Roll Call

Resolutions and ordinances for consideration by consent:

Resolution No. 26-120: Payment of bills.

Resolution No. 26-121: Approving games of chance application(s).

Resolution No. 26-122: Approving Michael Jacobus and Kevin Zilenas members of the Seaside Heights Volunteer Fire Department/Ocean Rescue Team.

Resolution No. 26-123: Awarding contract re: IT Consulting and Technical Support Services.

Resolution No. 26-124: Acceptance of “Cops in Shops” grant award.

Resolution No. 26-125: Disposal of jet-vac truck.

Resolution No. 26-126: Intentionally left blank.

Resolution No. 26-127: Approving fixed rate insured prescription management services (re: Benecard Services, LLC).

Resolution No. 26-128: Equal Employment Opportunity statement and group affidavit.

Ordinance No. 2026-08: Ordinance to Exceed the Municipal Budget Appropriation Limits and to Establish a Cap Bank.

Ordinance No. 2026-09: Adopting Fourth Amended Boulevard Redevelopment Plan for Delineated Redevelopment and Rehabilitation Areas.

Public comments, if any, concerning Consent Agenda

Motion _____ Second _____ Roll Call _____

Resolutions and Ordinances (separate motions and votes)

Resolution No. 26-129: Police Sergeant promotion No. 1.

Public comments, if any, concerning Resolution No. 26-129

Motion _____ Second _____ Roll Call _____

Resolution No. 26-130: Police Sergeant promotion No. 2.

Public comments, if any, concerning Resolution No. 26-130

Motion _____ Second _____ Roll Call _____

Resolution No. 26-131: Sidebar agreement with PBA Local 252.

Public comments, if any, concerning Resolution No. 26-131

Motion _____ Second _____ Roll Call _____

Ordinance No. 2026-07: Amending Chapter 246 re: adding section 246-42.2 entitled “Multi-Family Inclusionary Zone Overlay.”

Public comments, if any, concerning Ordinance 2026-07

Motion _____ Second _____ Roll Call _____

Approval 2026 Municipal Budget

Public Hearing scheduled for May 6, 2026.

Public comments, if any, concerning 2026 Municipal Budget as introduced.

Motion _____ Second _____ Roll Call _____

Approvals:

My 8th & 9th, Great American Volleyball tournament, beach

May 9th, Bike MS: Coast the Coast, bike ride through multiple municipalities

Public comments, if any, concerning special event approvals

Motion

Second

Roll Call

Public comments:

Citizens and interested parties are invited to address the Mayor & Borough Council. Please walk to the microphone in front of the dais when recognized by the Mayor. Please state your name and address before beginning your comments so that the Borough Clerk may accurately include your comments in the meeting minutes.

EXHIBIT S



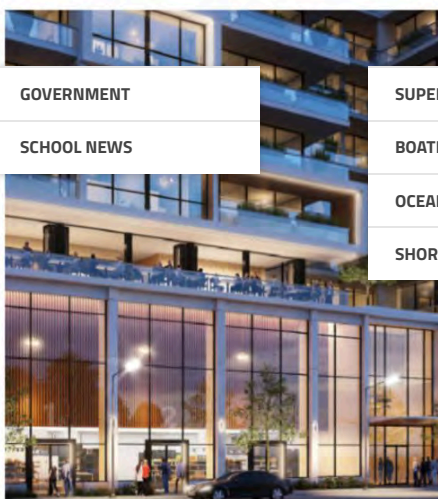
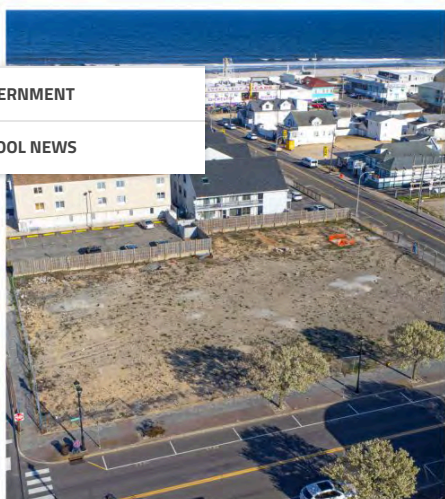
GOVERNMENT

Seaside Heights to Seek New Developer After Plans For 10-Story Building Canceled



by Daniel Nee April 2, 2026

ADVERTISEMENT



Renderings and plans for the former 'steel structure' redevelopment effort, Seaside Heights, N.J. (Source: SSH Redevelopment Plan Deck)

Seaside Heights officials will soon begin a new search for a partner to develop a prime piece of real estate along the Boulevard that has been plagued with litigation and unkept promises by past developers.

Known in local lore as the "steel structure" lot after the gigantic edifice that stood there, rusting, for more than a decade, the property at 404 Boulevard is once again up for grabs. Located in the center of an otherwise booming real estate market between Hamilton and Webster avenues, the site remains under borough ownership after a redeveloper was unable to prove he had sufficient financing the undertake the project by the town's Jan. 31, 2026 deadline. Seaside Heights officials have formally terminated what had initially been an agreement for a group of partners to build a ten story mixed use building at the site. While the original group of investors broke up, the remaining partner, Dan Matarese – owner of Danco Construction – continued an effort to move the project forward on his own, but was unable to secure financing after what was reportedly a failure on the part of a bank.

The borough took ownership of the property in 2020 after more than a decade of watching the hulking skeleton of a building rust in the elements, [and condemned it](#). It

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- GOVERNMENT
Lavallette Badge Sales Sl Trail 2025; New Pre-Seas Dates Added
- ORTLEY BEACH & NORTH BEAC
Toms River Council Appro Affordable Housing Fram One Day Before Judge's D
- GOVERNMENT
Developers, Officials Deb Options for 'Bamboo' Nigl Property Redevelopment

restaurants. Craparotta took advantage of extensions allowing him to leave the premises half-built due to state legislation passed in the wake of the 2008 financial crisis and, four years later, Superstorm Sandy. After more than a decade and frustration – and amidst the deterioration of the steel girders and rainwater-filled pool molds – the borough condemned it. That led to a group of investors, including the wife of Ocean County Republican Chairman George Gilmore and other New Jersey political luminaries, proposing the mixed use complex.

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While the steel structure was eventually torn down and the 10-story tower was...
...governing board, little to no...
...ever got off the ground, l...
...for the last three years sending repeated correspondence to the group. It was late...
...learned that the LLC which included the initial group of investors had been dissolv...
...leaving Matarese in charge. The borough council voted to terminate the agreeme...
...December 2025 before providing Matarese one more chance to prove he had sufficient...
...financial backing after he threatened litigation. That proof was never produced, officials...
...said, leading to the termination moving forward.

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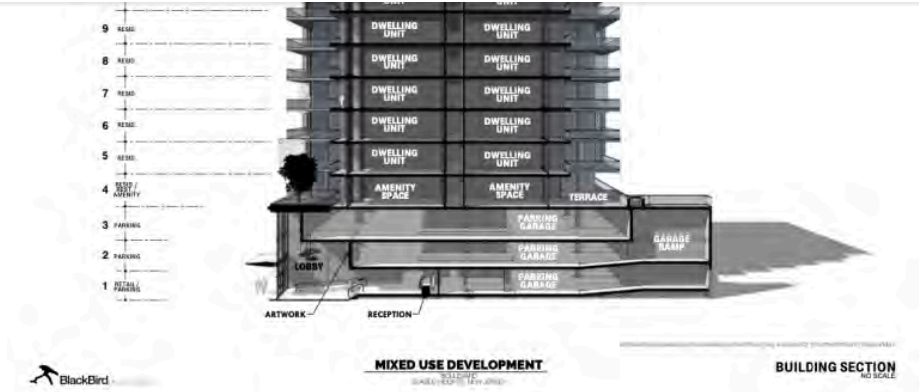
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Renderings and plans for the former 'steel structure' redevelopment effort, Seaside Heights, N.J. (Source: SSH Redevelopment Plan Deck)





Renderings and plans for the former 'steel structure' redevelopment effort, Seaside Heights, N.J. (Source: SSH Redevelopment Plan Deck)



Renderings and plans for the former 'steel structure' redevelopment effort, Seaside Heights, N.J. (Source: SSH Redevelopment Plan Deck)

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Borough officials this week floated a renewed effort to redevelop the property, as well as several others that remain vacant along the Boulevard. The specifications will be reviewed by the council and planning board, and the borough will again seek redevelopers for the plot. Mayor Anthony Vaz said the new specifications will include a mandate for any redeveloper to provide extensive guarantees that their financing is solid.

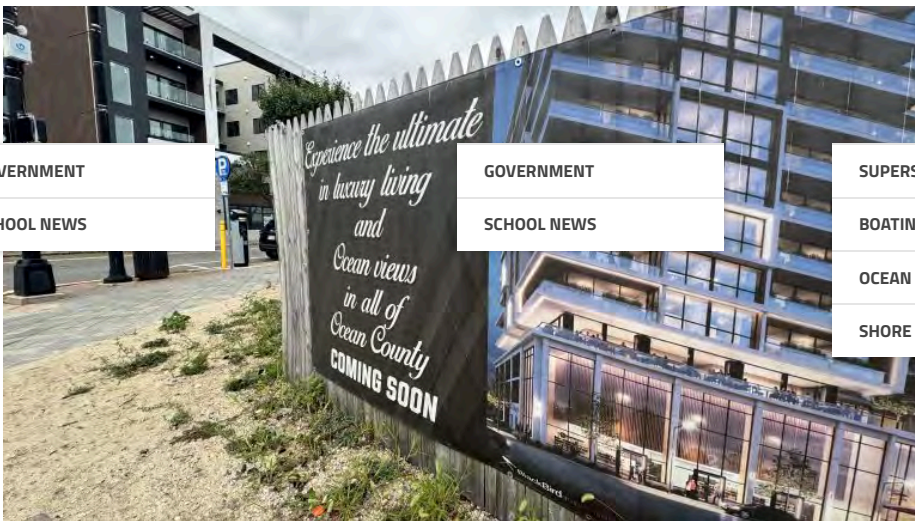
"We have to make sure that when there are projects, the financing is there," said Vaz. "This was one of the first redevelopment projects we started with, and we've learned a valuable lesson along the way. We want to know about finances right away this time."

What will ultimately be proposed by a future redeveloper will be required to meet specifications set by the council. Vaz said he and his colleagues are currently looking at various options including the maximum number of floors, building height, and how to best fit in a retail component on the ground floor as part of a larger effort to create a vibrant business district off the boardwalk. It is unlikely that future specifications will allow a building as tall as ten stories to be proposed.





The property that once housed the former 'steel structure' in Seaside Heights, now slated for redevelopment. (Photo: Shorebeat)



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ADVERTISE ON LAVALLETTE-SEASIDE SHOREBEAT

A sign advertising redevelopment at the 'steel structure' site on the Boulevard in Seaside Heights, Sept. 2025. (Photo: Shorebeat)

"I heard feedback after from the public," said Vaz. "They want something to go up, but they weren't crazy about ten stories. I don't think we'll ever see a ten story building proposed in Seaside ever again."

Vaz said the borough was more than willing to allow the building as proposed, since the council had set the specifications, but will most likely limit the height of the building when the council embarks on a new solicitation for developers. The process of choosing new specifications will not be rushed, he said, but will be promulgated sooner rather than later given the site's anchor position on the Boulevard.

"I don't think we can wait a great deal of time, because we have to move forward," said Vaz. "This affects ratables, redevelopment, and the Boulevard project as a whole."





The property that once housed the former 'steel structure' in Seaside Heights, now slated for redevelopment. (Photo: Shorebeat)

The borough has not been sued by Matarese, however the question as to whether litigation – or simple negotiations on money spent by the developer while the site remained under borough ownership – remains open. Matarese, if he desires, will be able to submit a proposal under the new specifications like any other developer, but will be required to meet the stringent financing requirements that will be mandated. Vaz said he does not hear a great deal of complaints about the site in its current form, but the patience of residents may wear thin as the clock ticks.

"It's been out there for three years, almost four, and it's not a great sight to see," the mayor said. "It's better than the steel that was up there, but it's not good. I do hear concerns because people do want to see something built there."

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Civil Case Information Statement

Case Details: OCEAN | Civil Part Docket# L-001091-26

Case Caption: SSH BOULEVARD URBAN RENEWAL L
VS BOROUGH OF SEA

Case Initiation Date: 04/14/2026

Attorney Name: JUSTIN R CALTA

Firm Name: SAIBER LLC

Address: 7 GIRALDA FARMS SUITE 360

MADISON NJ 07940

Phone: 9736223689

Name of Party: PLAINTIFF : SSH Boulevard Urban Renewal
LL

Name of Defendant's Primary Insurance Company
(if known): None

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS

Document Type: Complaint

Jury Demand: NONE

Is this a professional malpractice case? NO

Related cases pending: NO

If yes, list docket numbers:

**Do you anticipate adding any parties (arising out of same
transaction or occurrence)?** NO

Does this case involve claims related to COVID-19? NO

**Are sexual abuse claims alleged by: SSH Boulevard Urban
Renewal LL?** NO

**Are sexual abuse claims alleged by: Seaside Heights Boulevard
Urba?** NO

**Are sexual abuse claims alleged by: Danco General Contracting,
Inc?** NO

THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

Do parties have a current, past, or recurrent relationship? NO

If yes, is that relationship:

Does the statute governing this case provide for payment of fees by the losing party? NO

**Use this space to alert the court to any special case characteristics that may warrant individual
management or accelerated disposition:**

Do you or your client need any disability accommodations? NO

If yes, please identify the requested accommodation:

Will an interpreter be needed? NO

If yes, for what language:

Please check off each applicable category: Putative Class Action? NO **Title 59?** NO **Consumer Fraud?** NO
Medical Debt Claim? NO

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with *Rule* 1:38-7(b)

04/14/2026
Dated

/s/ JUSTIN R CALTA
Signed