

**BOROUGH OF RED BANK  
COUNTY OF MONMOUTH**

**RESOLUTION NO. NP23-139**

**RESOLUTION AUTHORIZING EXECUTION OF A DEVELOPER'S AGREEMENT**

**PARK VALLEY MONMOUTH, LLC  
120 MONMOUTH STREET  
RED BANK, NJ  
BLOCK 33, LOT 9.01**

**WHEREAS**, the Borough of Red Bank is a duly organized Municipal Corporation of the State of New Jersey; and

**WHEREAS**, the Red Bank Zoning Board of Adjustment is a duly organized Land Use Board, organized and existing in accordance with the Rules and Regulations of the State of New Jersey and the Borough of Red Bank; and

**WHEREAS**, on or about June 10, 2020, Agents of Park Valley Monmouth, LLC submitted a Development Application to the Borough of Red Bank; and

**WHEREAS**, the said Application involved the property located at 120 Monmouth Street, Red Bank, NJ, more formally identified as Block 33, Lot 9.01; and

**WHEREAS**, the said Application sought Major Site Plan Approval, Use / "d" Variance Approval, Floor Area Ratio Variance Approval, Density Variance Approval, Height Variance Approval, Bulk Variance Approval, and Waiver Approval to effectuated the following:

- Demolition of the existing building on the site; and
- Construction of a 4-story 60,117 SF Mixed Use Building, consisting of 1,293 SF of commercial space on the ground floor and 32 Residential Apartments (in the aggregate) on the 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> floors; and
- Construction of various site improvements, including an at grade parking lot beneath the building, landscaping, lighting, and utilities.

**WHEREAS**, the said Application was conditionally approved by the Red Bank Zoning Board of Adjustment; and

**WHEREAS**, a Resolution memorializing the aforesaid approval was adopted by the Red Bank Zoning Board on or about October 21, 2021; and

**WHEREAS**, the said Resolution of Conditional Approval is incorporated herein at length; and

**WHEREAS**, as a condition of the aforesaid approval, the Applicant's representatives are required to execute a Developer's Agreement with the Borough of Red Bank; and

**WHEREAS**, the execution of such a Developer's Agreement will memorialize the Developer's various construction / development-related obligations; and

**WHEREAS**, the proposed Developer's Agreement is attached hereto; and

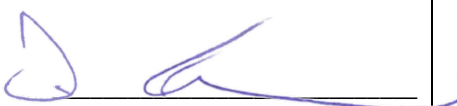
**WHEREAS**, the execution of such a Developer's Agreement will be in the best interest of the Borough of Red Bank and the residents thereof;

**NOW, THEREFORE, BE IT RESOLVED**, by the Borough Council of the Borough of Red Bank as follows:

1. That the Borough of Red Bank is hereby authorized to execute the attached Developer's Agreement, or a document substantially similar thereto.
2. That prior to signing, the said Developer's Agreement shall be reviewed and approved, as to form and content, by the Borough Attorney, the Borough's designated Engineer, and any other Municipal Officials as the Borough of Red Bank may require.
3. That the within Resolution shall take effect immediately.
4. That the Mayor, the Administrator, the Borough Clerk, and other municipal representatives are hereby authorized to sign any and all documents necessary to effectuate the intentions of the within Resolution, including, but not limited to, the attached Developer's Agreement, and / or document substantially similar thereto and / or any associated New Jersey Department of Transportation permits associated therewith.

	MOVED	SECONDED	AYES	NAYS	ABSTAIN	ABSENT
Councilmember Bonatakis						x
Councilmember Cassidy			x			
Councilmember Facey-Blackwood			x			
Councilmember Forest	x		x			
Councilmember Jannone			x			
Councilmember Triggiano		x	x			
Mayor Portman			x			
<b>ON CONSENT AGENDA</b>	Yes _x	No __				

I hereby certify that the above Resolution was adopted by the Borough Council of the Borough of Red Bank, In the County of Monmouth at a Meeting held on December 14, 2023.



Laura Reinertsen, Borough Clerk

## DEVELOPER'S AGREEMENT

**THIS AGREEMENT** entered into this \_\_\_\_ day of \_\_\_\_\_, 2023

BY AND BETWEEN THE FOLLOWING:

**BOROUGH OF RED BANK**, a Municipal Corporation of the State of New Jersey, having its principal office located at, 90 Monmouth Street, Red Bank, New Jersey 07701 (hereinafter referred to as the "Borough" or "Municipality" or "Red Bank")

AND

**PARK VALLEY MONMOUTH, LLC**, a Limited Liability Company of the State of New Jersey, having its principal business office located at 120 Monmouth Street, Red Bank, NJ 07701 (hereinafter referred to as "Developer" or "Applicant")

**WHEREAS**, by Resolution No. 2021-16 (the "Resolution") the Board of Adjustment of the Borough of Red Bank ("Board" or "Zoning Board") granted Developer's application for the following approvals: Major Site Plan Approval, Use/ "D", Variance Approval, Floor Area Ratio Variance Approval, Density Variance Approval, Height Variance Approval, and Bulk Variance Approval and various waivers to construct a mixed-use building, containing thirty-two (32) residential apartments, commercial space, and other associated improvements on the premises located at 120 Monmouth Street, situated on the North-West Corner of Monmouth and Pearl Streets, Red Bank, New Jersey (hereinafter referred to as the "property", "site", "premises"); and

**WHEREAS**, a memorializing Resolution was adopted by the Zoning Board on or about October 21, 2021; and

**WHEREAS**, the said Resolution is incorporated herein at length; and

**WHEREAS**, the Approvals call for certain improvements and the Developer has agreed to construct the referenced improvements as shown on the submissions and records comprising the Developer's approved application, all of which are made part of the within Agreement by reference hereto as though fully set forth at length (the "Site Plan"),

**NOW, THEREFORE**, the parties to the within Agreement, for and in consideration of the mutual promises and covenants to each other and for the other good and valuable consideration, including the Major Site Plan and variance approval granted by the Board, hereby agree for themselves, their successors and assigns, as follows:

1. Application of the Agreement: The terms and conditions of the within Agreement shall be applicable only to the specifically approved project by the Developer, unless otherwise provided for in the within agreement.
2. Developer Bound: The Developer agrees to be bound by the testimony, representations, commitments, matters of fact and matters of law which constitute the file and record of the Board in the subject matter, and the Defendant furthermore agrees that is shall faithfully discharge all of the obligations and commitments thereof.
3. Construction Subject to Ordinance: The Developer shall construct in accordance with the specifications of the Ordinances of the Borough of Red Bank, as amended to date, in a manner satisfactory to the Board Engineer and in accordance with the site plan improvements as set forth on the "Site Plan" including, but not limited to, the installation of any items specifically set forth in the above-referenced Resolution of the Board. Developer shall perform all requisite work in full compliance and observation of all Ordinances of the Borough of Red Bank. The Developer shall be responsible for securing all permits required by law including road opening permits and others required by the ordinances of the Borough of Red Bank and to pay the requisite fees/inspection fees/ escrow fees called for under appropriate Borough fee schedules.

4. Performance Guarantees: Developer shall post with the Borough performance guarantees with adequate surety to ensure the faithful completion of the Improvements in the manner and amounts required by the Board Engineer, subject to the approval of the Borough Attorney. Any partial reduction granted in the performance guarantees pursuant to N.J.S.A. 40:55D-53 shall be applied to any cash deposit in the same proportion as any original cash deposit bears to the full amount of the performance guarantee. In addition, all taxes, assessments, escrows, and fees for the property must be paid prior to the release of all performance guarantees. As used herein, "Improvements" shall be defined as: Curb, Hardscape, Pavement, Traffic Signs, Storm Drainage System, Hydrants, Landscaping, Street Trees, Street Lighting, and other similar features.

5. Performance Guarantee Replacement: In the event that any insurance company, financial institution, or other entity issuing a performance guarantee hereunder shall be subject to a reorganization, rehabilitation or other action whereby a State or Federal agency has taken over management of the entity or, if in reasonable opinion of the Borough, the circumstances and conditions of the entity results in the Borough declaring, in its sole discretion, it feels its interests are jeopardized, the Developer, shall within 60 days of such written notification sent by the Borough, replace the performance guarantees in a form / manner approved by the Borough. If requested by the Developer, and provided suitable replacement guarantees have been submitted to, and approved by the Borough, the Borough shall adopt a resolution conditionally releasing the jeopardized, or potentially jeopardized performance guarantees.

6. Lapsed Performance Guarantee: In the event any performance guarantee shall lapse, be cancelled or withdrawn or otherwise not remain in full force and effect, the Developer, until a replacement guarantee has been deposited with and approved by the Borough, shall cease and desist any and all work on the project or development, except for minor work for safety specifically authorized, in writing, by the Borough's Construction Official.

7. Engineering Escrow: The Developer shall submit and maintain an engineering escrow in the manner and amount required by the Borough (in accordance with any Prevailing Statutory / Ordinance Requirements). If the said escrow should be exhausted, or nearly exhausted, the Developer shall pay such additional funds, as determined by the Borough.

8. Legal Fee Escrow: The Developer shall submit and maintain a legal escrow in the manner and amount required by the Borough (in accordance with any Prevailing Statutory / Ordinance Requirements). If the said escrow should be exhausted, or nearly exhausted, the Developer shall pay such additional funds, as determined by the Borough.

9. Water and Sewer Fees: The Developer agrees to pay to the Borough of Red Bank, based on the approved plan, the following fees in full prior to the issuance of the Construction / Building Permits for the premises:

- a. Sewer construction fees: (As determined by the Borough)
- b. Water connection fees: (As determined by the Borough)
- c. Water Vulnerability fee: (As determined by the Borough)

Total Water, Sewer and Water Vulnerability Fee: (As determined by the Borough)

10. Withholding Permits/Certificates of Occupancy: Developer understands and agree in the event it is in violation of any terms of this Agreement, the Borough may, in its discretion, withhold the issuance of any further building/construction permit(s) and/or certificate(s) of occupancy until the violation has been corrected. Developer understands and acknowledges that all conditions contained in the record of proceedings in the within matter, including any agreements made by the Developer, were absolutely essential to the Board's decision to grant the approval referenced herein. A breach of any such condition, or a failure by the Developer to adhere to the material terms of the Zoning Board approval, any agreement within the time required shall result in the automatic revocation of the Zoning Board approval and shall terminate the right of the Developer to obtain construction/building permits, certificates of occupancy and/or any other governmental authorizations necessary in order to continue development of the specified project.

11. Completion of Improvements: The Improvements contemplated in the within Agreement and in the Approvals shall be performed within a period of three (3) years from the date hereof or such additional periods of time as may be granted by the Borough, in writing, in accordance with N.J.S.A. 40:55D-52, and prior to the issuance of a certificate of occupancy. The failure of the Borough to declare the Developer in default upon the expiration of the three (3) years and/or the willingness of the Borough to allow Developer additional time to complete the Improvements shall not be deemed a waiver of any of the Borough's rights

under the within Agreement. The issuance of a certificate of occupancy by the Borough within the three (3) year period shall not be deemed a waiver for any defects ascertained/discovered during said period, or any period subsequent thereto.

12. Payment(s) and Condition(s) Precedent: Any payments, posting of bonds or other financial obligations required to be performed by the Developer in the Agreement, unless specifically set forth otherwise, shall be completed and / or performed prior to the issuance of any Building/Construction Permits to the Developer.

13. Assignment/Sale of Premises: In the event the property is sold or otherwise conveyed by the Developer prior to the installation of all Improvements, the Developer shall have the right, with the formal consent / authority of the Borough, to assign both the performance guarantees and the within Developer's Agreement to a subsequent qualified Developer. Any such assignment agreement shall also be formally reviewed / approved / authorized by the Borough of Red Bank, in writing, in the Borough's sole and absolute discretion. In the event a subsequent developer tenders new guarantees to the Borough, the same shall be reviewed and approved by the Borough and by the Borough Attorney (as to form and content) prior to acceptance, and prior to release of the initial Developer's performance guarantees.

14. Record Drawings: The Developer shall provide to the Borough, by filing with the Board Engineer, record drawings of all improvements and utilities, including water, sanitary sewer and storm drainage, as constructed by the Developer both within its development site and off track. The said drawings shall be reviewed / approved by the Borough's Board Engineer. Said record drawings shall be in conformance with applicable Borough standards, and shall be both in hard copy and on disc. A final and duly certified survey of the site shall be submitted at the time of request for a Certificate of Occupancy.

15. Maintenance of Project: During the course of construction and until the time of final acceptance of Improvements, the Developer shall: (1) keep the site free of dirt, stone, mud and other debris; (2) maintain and keep all storm drainage within the site free from accumulation of debris and leaves. "Final Acceptance" of Improvements for the purpose of the within provision is deemed to be the date upon which the Improvements are accepted by the Borough, the final maintenance guarantees for the same are posted with the Borough and a resolution of acceptance is formally adopted by the governing body of the Borough. Unless the Law allows / provides otherwise, the said maintenance guarantees shall be posted with the Borough for a period of not less than two (2) years in an amount not less than fifteen (15%) percent of the cost of the Improvements.

16. Public Roadways to be Maintained: Developer shall be responsible for the cleaning and sweeping of the public roadways at the point of entrance to and exit from the Developer's project to avoid the accumulation of debris and to maintain the public roadways in a clean and safe condition. In the event that the Developer fails to perpetually maintain the roadways in accordance with the foregoing standards, the Borough may cause same to be completed and the Superintendent of the Department of Public Works, or his/her designee, shall certify the Borough's expense in connection herewith to, the Borough CFO and the Borough Tax Collector. Said amount shall constitute a lien upon the premises and permission is hereby given that such lien may be recorded in the office of the Monmouth County Clerk.

17. Deeds and Affidavits of Title: Developer shall provide to the Borough such documents, including, but not limited to ,deeds, affidavits of title, corporate resolutions to convey, and a letter from the title insurance company which letter shall certify to the Borough that the Grantor is the fee owner of the property and has the ability to transfer the interest conveyed without encumbrances as are necessary to convey a valid, marketable and insurable easement(s) or fee title, as the case may be, for such dedications, if any, of property or easements as may be required by the Approvals.

18. Borough Observation, Access, and Inspections: The Borough, its consultants, employees, agents, representatives, and professionals (to be liberally construed) (with equipment / machinery) shall (without Notice) be given free access to the property to observe construction of the subject development, including, but not limited to, roadways, sanitary sewers, water mains, storm sewers, landscaping, buffer areas and appurtenances associated with the approved plan. The purpose of such observations shall be limited to providing the Borough with a greater degree of confidence that such improvements shall be constructed in accordance with the Developer's approved submittals. The Borough, or its representatives, consultants, employees, professionals, or agents, shall not supervise, direct or have control over the Developer's work during such observations or as result thereof, nor shall they have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Developer, for the safety precautions and programs incident to the work of the Developer, or for any failure of the Developer

to comply with applicable laws, rules, regulations, Ordinances, codes or orders. It is further understood by all parties, that the Developer is not an agent, representative, or employee of the Borough.

19. Construction Schedule:

The Developer shall construct, in accordance with the specifications and design standards of the Borough Ordinances, and in a manner satisfactory to the Board Engineer, all Improvements, including, but not limited to, the installation of those items specifically set forth herein. The following construction sequence shall be adhered to, in sequence, by the Developer for the within construction project.

- a. Prior to issuance of construction/building permits or commencement of construction, all conditions of the Zoning Board Resolution shall be satisfied, the plans shall be signed / accepted by the Borough/Zoning Board, and all performance bonds, maintenance guarantees, inspection fees and other required fees and contributions shall be posted with the Borough (and the bonds shall also be subject to the review and approval of the Borough of Red Bank, and the Borough's Legal / Engineering Representatives). In accordance with the MLUL, Developer agrees to make a deposit of cash or Letter of Credit (LC) in a sum to be determined by the Borough, on the recommendation of the Board Engineer. A performance guarantee for all Improvements, in a form and amount to be similarly approved, by the Borough of Red Bank shall be posted. The cash deposit or LC shall be held in the name of the Borough, and may be expended / utilized by the Borough to complete the improvements provided for in the specified Zoning Board Approval in the event said Improvements are not accomplished by Developer within the time as provided in the Approval or as may otherwise be agreed upon by the parties hereto in the within Agreement. As may be required by the Approval, the Developer shall post a performance guarantee (in the form of cash, bond, or Letter of Credit), which may be used to pay for any repairs for damage caused by the Developer or its agents, contractors, representatives, or vendors to public facilities resulting from construction of the Project. Developer is responsible for any damage caused by, or related to, construction of the Project which it fails to correct or repair. Any obligation of the Developer to repair damaged public facilities caused by the Developer shall be required only after the Developer is given written notice of the damage, and a 30 day opportunity to correct or cure the same. Continuous maintenance and repair of municipal roadways damaged during the course of construction shall be an express and continuing obligation of the Developer, subject to the foregoing provisions.
- b. Prior to issuance of zoning, development and construction permits, the Board Engineer must certify, in writing, and find that all conditions of the Approval are satisfied, including, but not limited to, the grant of authority to the Borough (at no cost) to exercise jurisdiction over the entire Project under Title 39 of New Jersey Statutes (should the Borough wish to receive such authority).
- c. Seventy-two (72) hour prior notice of intent to begin construction shall be given to the Board Engineer. Notice may be made by phone or email, but must be confirmed by certified mail, seventy-two (72) hours prior to any site activity.
- d. The Developer shall provide a written explanation by regular mail to property owners within 200 feet of the site and other interested parties as directed by the Board Engineer. The letter shall inform the recipients of the anticipated construction sequence and timing and shall be sent a minimum of two weeks prior to commencement of construction.
- e. Construction traffic shall be permitted to gain access to the site only through the construction access route specifically approved by the Board Engineer. The construction access shall be maintained throughout the course of construction so as to provide safe, adequate, and appropriate emergency vehicular access to the construction site. Developer shall arrange for, and be responsible to pay, for all costs of traffic control officers and vehicles as otherwise required under Borough ordinances and as provided in the Agreement between the Borough and Red Bank PBA Local #39. The cost of vehicles shall be \$85.00 per hour (or higher amount if so authorized by Borough Protocol / Policy). The Board Engineer and the Borough must approve any change in construction access.

- f. Site Mobilization. Vehicles and manpower may access the site to commence the construction activities described in the within Developer's Agreement.

20. Completion of Improvements:

- a. Once completed, the installed system shall be dedicated to the Borough of Red Bank, and formally accepted by the Borough of Red Bank.
- b. As permitted by law and as may be required by the applicable utility company, the Developer shall post the upfront "contributed installation" costs for each street light fixture.
- c. All site Improvements shall be completely constructed within a period of six (6) months from the date of the receipt of approval from the New Jersey Department of Transportation to connect into the Maple Avenue line (or other options), as more particularly referenced elsewhere herein. The issuance of a Certificate of Occupancy by the Borough shall not be deemed a waiver or release of any defect found in the Improvements or acceptance of the Improvements during said period or subsequent thereto.

21. Soil Erosion and Sediment Control:

- a. Precautions relating to dust control shall be identified on the approved soil erosion and sediment control plans and shall otherwise comply with the detail sheets in the latest version of the "Standards for Soil Erosion and Sediment Control in New Jersey" (hereinafter referred to as "Standards"). Developer agrees to sweep, as frequently as determined to be reasonable necessary by the Standards, the FSCD or the Board Engineer, any and all public roadways where tracking of sediment occurs on one or more instances during any given day. Developer further agrees that it shall be solely responsible for any sediment tracked onto public roadways by any and all of its agents or subcontractors, and any damage caused by the same, until issuance of the Certificate of Occupancy. In addition, Developer agrees that any and all sediment tracked onto public roadways shall be immediately removed by the Developer. In the event that the Developer fails to fulfill its obligation to immediately remove sediment in roadways, the Borough may, without any obligation to do so, assume the said obligation and back charge the Developer, at prevailing rates, for manpower and equipment necessary. (The Developer shall reimburse the Borough within 30 days of receipt of any invoice / bill). The Developer shall release, defend, indemnify, and hold the Borough and its contractors/agents/representatives/consultants/professionals harmless from any and all liabilities/losses/damages associated with the work performed in the said regard.
- b. The Developer shall be solely responsible for inspection and maintenance of all soil erosion and sediment control measures ("Measures") shown on the approved plans or the Standards. Upon noticing any deficiencies in either the maintenance or effectiveness of the approved Measures, or upon receipt of notice of the same by the Board Engineer, the Developer agrees to take immediate action to correct said deficiencies, in a fashion acceptable to the Board Engineer. Such action may include, but not be limited to, restoration of the approved Measures or providing a design for new measures by a New Jersey licensed professional Engineer according to the Standards to correct said deficiencies. No new designs can be implemented or used without prior written approval by the FSCD and the Board Engineer.
- c. The Developer agrees to prevent sediment from leaving the site according to the Soil Erosion Act of New Jersey. The Developer further agrees to be solely responsible for any and all damages resulting from sediment leaving the site. The Developer also agrees to provide dust control as required, according to the Standards, in order to prevent negative impacts to adjacent areas.
- d. The Developer agrees to notify any contract purchaser of the Project, in writing, that upon purchasing the property, the new Owner / Developer shall become solely responsible for proper maintenance and installation of all soil erosion and sediment control measures, devices, appurtenances, etc.

22. Traffic Control and Roadway Closing:

- a. With respect to traffic, the Developer shall adhere to an approved design based upon the Manual on Traffic Control Devices, specifically the section on construction maintenance signs. The existing structural condition of roadways accessing the site shall be documented as outlined, and the Developer shall be responsible for all repairs to the said roadways resulting from damage caused by the Developer's traffic and construction activity. Repairs of all distressed pavement found to be the Developer's responsibility shall be made prior to issuance of the Certificate of Occupancy. A separate cash guaranty for said maintenance and repair shall be posted prior to construction as outlined in Section D.2.
- b. The Developer agrees there shall be no parking of construction related vehicles on or within any existing public right-of-way. The Developer and its subcontractors shall become familiar with and utilize all specifically approved truck routes and follow weight limits of all access routes to the Project.
- c. In the event of any road closures, the Developer further agrees to first seek the written approval of the Board Engineer and Borough. The Developer is also aware that appropriate detour traffic signs shall be in place and there shall also be prior written notice to the Police Department, all emergency services, and the public at large.
- d. Unless otherwise indicated, the Developer agrees to be responsible for the installation, maintenance, and removal of all traffic control signs and traffic safety devices until such time as all site construction is completed, and a Certificate of Occupancy has been issued.
- e. Developer shall post a separate cash guaranty or irrevocable letter of credit in an amount determined by the Board Engineer for the repair of any municipal roadway pavement damaged as a result of construction traffic and Developer further agrees to obtain a soil removal permit as required by Prevailing Regulations.
- f. Developer hereby grants Title 39 permission (N.J.S.A. 40:39-1 et seq.) to the Borough of Red Bank to permit the enforcement of traffic / motor vehicle regulations, said requests to be submitted to the Borough thirty (30) days prior to the commencement of site work.

23. Damage to Public and Private Property:

- a. The Developer shall use reasonable and good faith precautions to prevent damage to public and private property, trees, landscaping, and structures along and adjacent to the Project. The Developer agrees, at Developer's cost, to make all necessary arrangements with the respective utility companies prior to relocation or interruption of service.
- b. The Developer agrees not to enter upon or make use of any private property abutting or in proximity to the Project, except where permission is secured in writing therefore from the affected owner. The Developer agrees to restore or repair, in a reasonable manner satisfactory to the owner, such property which may be damaged by those in the Developer's employ / control / direction during the execution of the Project. The Developer agrees to move heavy equipment over existing pavement as little as possible. Where, in the opinion of the Board Engineer, the Developer or its agents have damaged existing pavement, the Developer agrees to restore such pavement to its original pre-disturbance condition.
- c. Failure to correct damage to public and private property caused by those in the Developer's employ / control / direction shall render the Developer in breach of the within Agreement and subject Developer to the remedies prescribed herein or as otherwise allowed under Law.

24. Construction Inspections and Specifications:

- a. The Developer agrees that all construction methods and materials shall comply with the New Jersey Department of Transportation "Standard Specifications for Road and Bridge Construction," unless otherwise shown on the approved plans or amended herein. In the case of conflicting specifications or details, the more restrictive regulations shall apply.



- b. Construction inspection shall be performed under the supervision of the Board Engineer. The Developer agrees to request inspection by the Board Engineer a minimum of two (2) business days prior to beginning any of the following activities:  
  
Soil Erosion and Sediment Control measures, preparation of road subgrade, curb and gutter (forms), curbs and gutter (material placement), road surface and paving, sidewalk (forms), sidewalks (material placement), storm drainage pipes and other drainage or flood control facilities (including detention), street and traffic control signs, sanitary sewer trench compactor, water main trench compactor and services, landscaping, traffic safety measures, paving of parking areas and parking lot striping.
- c. The Developer understands and agrees that the failure to request inspection as set forth herein may result in uninspected Improvements being summarily rejected, removed, and/or replaced, and not eligible for bond release.
- d. The Developer understands and agrees that in addition to the above, random and periodic inspections of the site are required/permitted to ensure compliance with the subject Developer's Construction Agreement. The Borough is, at any time, and without notice, permitted to make such inspections without notice to the Developer or its site representative.
- e. The Developer agrees that inspection by the Borough of the Improvements and/or utilities shall not operate to subject the Borough or its agents, employees, professionals, or consultants to claims, suits or liability of any kind (which may at any time arise because of defects or negligence caused by the Developer or its agents during or as a result of construction). The Developer recognizes its responsibility to maintain safe conditions at all times during construction, prior to acceptance of the Improvement by the Borough, and during the Developer's required maintenance period after formal Borough acceptance. The Developer agrees to provide proper utilities, Improvements and site accessibility at all times during construction.
- f. The Developer agrees that the Borough (and its agents, employees, professionals or consultants) shall not have control or charge of construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with the work and therefore, the Developer shall not be held responsible for or have control or charge over any acts or omissions of the Developer, its contractors and subcontractors, or any of the Developer's contractors or subcontractors agents or employees or any other person performing any work related to the Development. The Developer agrees however, that nothing herein shall preclude the Borough from exercising all available remedies, including injunctive relief, to insure compliance with the terms and conditions of the within Agreement, or to otherwise protect and promote public health, safety, and welfare.

25. Developer Representative on Site: Developer agrees to maintain an authorized English-speaking representative on site, at all times, who is a competent and responsible person under the Occupational Safety and Hazards Act, while site Improvements installation or construction of buildings, or development is in progress or otherwise ongoing (to be liberally construed). The said representative shall have authority to correct any deficiency and to correct any unsafe conditions as noted by the Board Engineer, Public Works Superintendent, Municipal Construction Official or Zoning Officer, or their authorized representatives. The Developer shall be responsible for notifying the aforementioned Municipal officials of the name, address, e-mail address, and telephone number of the authorized representative. Failure to provide onsite representation shall render the Developer in breach of this Agreement and subject Developer to the remedies prescribed herein, and as otherwise allowed at law / equity.

26. Permits:

- a. Developer agrees to obtain and keep in its possession at the job site all local, State and Federal permits and Approvals required to construct the Project, or to perform any activity required to construct the Project. The Developer shall present true copies of the Permits to Borough Officials (when requested to do so). Developer agrees to provide any and all notices required by said permits. Developer's authorized representative shall, at all times, possess on-site copies of all permits and approved plans issued (for inspection purposes).

- b. In the event that there is any violation of any local, State or Federal permit, the Developer shall provide the Board Engineer with notice of any such violation within twenty-four (24) hours of receiving the notice of violation.

27. Affordable Housing Compliance: All required / prevailing Affordable Housing obligations / directives / contribution / agreements shall be satisfied prior to the issuance of a Certificate of Occupancy.

28. Construction and Maintenance of Roadway, and Stormwater Management Areas:

- a. Developer shall be solely responsible for the construction and maintenance of all roadways within the property as hereinafter may be constructed in accordance with the Zoning Board Approval. Developer shall provide the necessary easements to the Borough permitting access for the purpose of delivering municipal services over said roadways of the Property.
- b. Developer shall be solely responsible for the construction of any and all utilities, including, but not limited to electricity, water, sewer, storm drainage, cable television, street and exterior lighting and fire prevention, subject to the rights and obligations to: (a) complete such utilities and other Improvements as may be required for each section or phase as set forth in the Approvals and the within Agreement, and (b) complete only such Improvements as may be required for the completion of each area, subject to provisions of the within Agreement.
- c. All open space as so designated in the Approval shall be set aside and maintained in accordance with N.J.S.A. 40:55D-43 and other Prevailing Provisions of the Borough's Regulations. Developer agrees that the maintenance of such open space shall be provided specifically by deed restriction and such other fashion as deemed necessary by the Board Engineer. Any and all areas designated on the Approval as wetlands or wetlands buffers shall be deed restricted, except for those lands for which State and Borough approval for development has been granted.
- d. The Developer shall assure the proper maintenance of roadways and other common elements of the site and a mechanism for the Borough to assure that the said areas are appropriately maintained during the construction and installation of the stormwater system.

29. Notice of Non-Compliance: At its discretion, the Borough shall issue a notice of non-compliance upon any violation of the within Agreement. Construction Code violations are governed by the Uniform Construction Code, and the same are not modified by the within Agreement. The Developer agrees to eliminate any violation within twenty-four (24) hours of receipt of notice or the Developer shall be subject to receipt of a stop work order in accordance with the within Agreement, provided, however, that the Board Engineer shall have the discretion to extend said 24-hour period if it is demonstrated to him that the Developer is diligently pursuing a remedy for the non-compliance, and the public interest is not jeopardized. Developer agrees to use best efforts to eliminate any violation within twenty-four (24) hours of receipt of any such notice.

30. Miscellaneous: The parties hereby specifically agree as follows:

- a. Unless otherwise indicated, the Developer shall comply with any / all Prevailing Provisions of the Residential Site Improvement Standards (RSIS), as necessary / applicable.
- b. The Resolution of Conditional Approval, as adopted by the Red Bank Zoning Board of Adjustment is incorporated herein at length.
- c. The Plans submitted to and approved by the Zoning Board of Adjustment (in conjunction with the subject Zoning Board Application) (modified per the Conditions of the Resolution) are incorporated herein at length as well.
- d. Any and all Easements necessary to be prepared, conveyed, issued, shall be reviewed and approved by the Borough Council of the Borough of Red Bank, the Board Engineer, the Borough Attorney.
- e. All Provisions of the within Agreement shall comply with Prevailing New Jersey Law, as may be amended from time to time.

- f. In the event that any of the terms of the within Agreement are more stringent than those set forth in the prevailing municipal regulation or the Resolution, the Developer hereby agrees to comply with the more stringent provisions of the within Agreement.
- g. The Developer understands and agrees that no clearing, grading, land disturbance, or removal of trees in any areas designated on the plans as an area of disturbance shall take place until such time as all necessary State, County and Local Permits are obtained. Developer further understands and agrees that no construction/building permits will be issued by the Borough until the Developer complies with all Borough Ordinances and obtains all required permits and approvals from the State, Federal, and Local agencies, the County of Monmouth, and all other agencies with jurisdiction over the matter. The Developer shall, at Developer's cost, obtain all necessary permits for work within public rights-of-way. The Developer shall also obtain, at Developer's cost, all necessary permits for excavation, curb removal, and road opening as well as any Soil Permit which may be required.
- h. Construction activity shall be prohibited on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. The Developer further agrees to restrict all construction activity for site work and exterior construction to the hours of 8 a.m. to 6 p.m. Monday through Friday and 8 a.m. to 4 p.m. on Saturdays (unless other more stringent restrictions have been adopted by the Borough of Red Bank and, in which event, such stricter Regulations shall apply). In addition, the Developer agrees to restrict all interior construction activity to the hours of 8:00 a.m. to 8:00 p.m., Monday through Friday, and 8 a.m. to 4 p.m. on Saturdays (unless other more stringent restrictions have been adopted by the Borough of Red Bank and, in which event, such stricter Regulations shall apply). The Developer agrees to restrict the delivery of equipment, materials, and vehicles as defined in the Borough Code during the same hours. The Developer may seek a formal waiver of the said time restrictions from the Borough Council of the Borough of Red Bank.
- i. All noise generated by construction activities shall also comply with the General Ordinances of the Borough of Red Bank, and the rules and prevailing policies of the New Jersey Department of Environmental Protection, with the more restrictive provisions applying.
- j. All real estate taxes and assessments on the entire property encompassed by the Approval shall be paid in full, as same become due, based upon bills and invoices duly prepared and issued by the Tax Collector of the Borough of Red Bank (or his / her Agents) for said property. Failure to pay taxes shall be considered an event of default, and shall entitle the Borough to avail itself to all remedies set forth herein and/or as otherwise authorized by any other law.

31. Remedies:

- a. The Borough may declare Developer in default under the within Agreement, provided written notice of the facts giving rise to said default is provided to Developer, and a thirty-day period is provided within which Developer may cure or demonstrate the ability to cure such default. In the event the default is not cured within such thirty-day period, but Developer has demonstrated to the satisfaction of the Borough the ability and willingness to cure said default and has commenced to cure said default within said thirty-day period, and further provided the public interest is not jeopardized, the Borough may permit Developer such reasonable time as may be required to cure the default. In the event Developer shall fail to cure the default within said thirty-day period or fail to commence and diligently pursue such action as may be required to cure such default within said thirty-day period, the Borough may act to formally declare Developer in default. Included within an event of default is the failure of Developer to maintain the property in the improved sections as required under the Prevailing Municipal Regulations (including) 1) brush, grass, weeds and debris; 2) property maintenance, and/or 3) litter control. A default by Developer in the terms of the within Agreement, or the Approvals received from the Zoning Board or any other governmental authority shall entitle the Borough to immediately issue a stop work order by the Zoning Officer or the Construction Official. Upon the issuance of such an order, all construction shall cease until the order is rescinded by the appropriate official. If the default is not cured

within the time period indicated in the stop work order, the Borough may proceed to exercise its right and to utilize any and all security available to cure the default. Non-compliance by Developer with any of the Prevailing Provisions of the Borough Regulations may result in enforcement by the Borough.

- b. The Borough may issue a stop work order for any construction activities associated with the Development if the Developer does not cure the violation set forth in the notice of non-compliance. The Developer agrees not to resume any construction activity until written notice to proceed is received from an official Borough representative. The Developer may only perform any construction activity necessary to cure the noticed violation (in conjunction with written approval from the Board Engineer).
- c. The parties also acknowledge that any dispute or breach of the terms of the within Agreement may also be resolved in the Superior Court, Monmouth County. The parties submit to the jurisdiction of said Court and agree that any aggrieved party shall, in addition to all other available remedies, be entitled to injunctive relief on short notice. The parties also waive any right for a jury trial. In addition, the parties specifically agree that the Borough of Red Bank does not waive, and, in fact, specifically reserves its right to file any appropriate complaints in the Municipal Court of the Borough of Red Bank in order to enforce its Ordinances and the compliance thereof by the Developer and its successors.
- d. The Developer understands that its failure to immediately correct any deficiency determined by the Borough to be a hazard or threat to public health or safety shall be considered automatic authorization for the Borough to have said deficiency corrected and the Borough has the right (but not the obligation) to enter the property (with workers and machinery/equipment) remedy any such defects. The Developer agrees to reimburse the Borough for all reasonable costs resulting from the repair/cure of said deficiency and all reasonable costs of damages resulting from the Developer's lack of response to correct said deficiency or failure to successfully correct/cure the said deficiency.

32. Entire Agreement: This Agreement, together with the Approvals, sets forth the promises, agreements, conditions, and understandings between the parties hereto relative to the subject matter hereof. Except as herein otherwise specifically provided, subsequent alterations, amendments, changes, or additions to this Agreement must be in writing and signed by every party.

33. No Waiver: Nothing herein shall be construed as a waiver by the Borough of Red Bank of the Requirements of the Ordinances of Borough of Red Bank, or any requirements or conditions of the Approval, unless such waiver is specifically stated/recited herein.

34. Successors and Assigns Bound: All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall be binding upon the respective parties hereto and their successors, assigns and purchasers. The Approval and all subsequent approvals shall be assignable to a successor in interest by conveyance or assignment only if approved and only in the event the new purchaser or assignee executes an agreement (with the Borough of Red Bank) in writing to commit to all terms, conditions, and provisions of the within Agreement and the Approvals. If the purchaser or assignee fails to execute such an agreement, the Borough shall have the right to withdraw the Approval and proceed with such other relief as may be appropriate. No assignment shall be complete until written notice has been provided to the Borough. The within Agreement shall be binding upon and inure to the benefit of Developer, and the Borough and their respective successors and assigns, and the within Agreement, or a Memorandum of the within Agreement may be recorded, at Developer's expense, in the office of the Monmouth County Clerk.

35. Compliance with Applicable Laws: The Developer shall comply with all laws and regulations of the State of New Jersey, the County of Monmouth, and the Borough of Red Bank. In addition, the Developer shall comply with all environmental laws and regulations of the federal, state, and local governments. Failure to comply with the prevailing laws and any violations thereof shall be deemed to be a breach of the within Agreement. To the extent the Borough must bring an action for compliance with the within Agreement, defend or participate in any litigation with regard to said laws or regulations related to the Developer's development, and/or actions, whether purposeful or negligent, any such action shall be subject to the provisions set forth in the immediately following paragraph regarding indemnification and attorney's fees. In addition, the Developer shall release, defend, indemnify, and hold the Borough, the Red Bank

Zoning Board, and their respective agents, representatives, employees, consultants, and professionals harmless for such violations and shall reimburse the Borough for any and all fees, judgments or penalties (including legal fees) entered against the Borough (or agents thereof) as a result of the purposeful or negligent actions or inactions of the Developer (or Agents thereof).

36. Indemnification and Attorney's Fees: Developer agrees to release, defend, indemnify, hold the Borough (and the Red Bank Zoning Board of Adjustment), their officials, officers, consultants, agents, servants, representatives, employees, and professionals (to be liberally construed) harmless from and against any and all claims, liabilities, costs, and/or expenses of every kind and nature (including reasonable attorney fees) arising from Developer's performance of the Developer's obligations pursuant to the within Agreement, the failure by the Developer to perform such obligations, any action or failure to act by the Developer with the respect going to the project to which the within Agreement is applicable or in connection with any allegation of any of the foregoing. Such indemnification and/or hold harmless obligation shall extend not only to actual damages but shall also include reasonable costs and expenses of litigation, including but not limited to expenses and fees in connection with the engagement or utilization of any fact or expert witnesses as well as reasonable attorney fees (to be liberally construed). When requested by the Borough, the Developer agrees, in good faith, to aid and/or defend the Borough, its officials, officers, agents, servants, representatives, employees, consultants, and professionals (to be liberally construed) in the event any or all of same are named as defendant or defendants in any action relating to activities or obligations of the Developer arising under the within Agreement or in connection with the project to which the within Agreement applies (to be liberally construed).

37. Insurance: Because the construction activities proposed by the Developer will occur in areas adjacent to Borough owned properties and/or rights of way, and / or property actually owned by the Borough, the Developer shall name the Borough, the Red Bank Zoning Board of Adjustment, and their agents, representatives, employees, contractors, professionals, and consultants as additional insureds with respect to the property in all general liability, excess and umbrella policies it may obtain with respect to the construction / development activities on the Property. The policy limits shall be no less than \$1 million per occurrence and \$3 million aggregate. Proof of such certificate of insurance shall be submitted to the Borough Clerk, the Board Engineer, and Borough Attorney prior to the commencement of construction/development activities. Additionally, the said certificates shall specifically provide that the said insurance coverage cannot be cancelled without 60 days advanced written notice to the Borough Clerk and the Borough Attorney, (The said certificates shall be reviewed on an annual basis until construction / development activity is completed.)

38. Preconstruction Meeting: The Developer shall provide three (3) business days' notice to the Board Engineer prior to any construction or other work at the site pursuant to Prevailing Municipal Regulations. In addition, there shall be a preconstruction meeting with the Board Engineer prior to the commencement of any construction affecting public improvements. The Borough shall be permitted to invite any other designated Municipal representatives to attend any such meeting(s) as well.

39. Reliance of Borough: The Developer further acknowledges and understands that all of the conditions contained in the within Agreement and the record of the proceedings in the within matter, including any agreements made by the Developer with the Board and incorporated in the Approvals, as well as the approved Site Plan, are hereby deemed to be essential to the Borough's decision to enter into the within Agreement. A breach of any such conditions, the failure of the Developer to adhere to the terms of any agreement incorporated within the resolution, or the within Agreement, or deviation from the approved plans/resolution, shall result in a breach of the within Agreement, and the same shall terminate the right of the Developer to obtain additional construction/building permits, certificates of occupancy, or any other governmental authorizations to continue developing the project, until such time as breach has been remedied.

40. Conditions of approval: The Developer shall also comply with the following terms and conditions:

- a. Compliance with all requirements of all ordinances of the Borough of Red Bank and all proper recommendations of the Board Engineer;
- b. All recommendations, conditions and requirements of the Monmouth County Planning Board and/or the New Jersey Department of Transportation, including the posting of any bonds, as may be required;
- c. Developer shall post satisfactory performance bonds to guarantee the installation of such improvements as may be required by the Board Engineer;

- d. Compliance with the Freehold soil Conservation District for a soil erosion and sediment control plan, if applicable;
- e. Approval of the Two River Water Reclamation Authority for sewer service, if applicable;
- f. Compliance with all conditions set forth in Board Resolution No. 2021-16 which is incorporated herein by reference.

41. Stormwater Management Condition: Pursuant to the Resolution of Approval, the Developer shall address the issue and disposition of stormwater drainage from the approved site in a manner satisfactory to the Borough and the Board Engineer. As a result of meetings with the Board Engineer, the Developer and the Board Engineer have discussed various methods of addressing stormwater management issues for the site and the surrounding properties. The parties have agreed to review certain alternates and prioritize them as far as which alternate is in the best interest of the Developer, the Borough, and the public, and which can be satisfied through necessary permits, possible obstacles which may be encountered in connection with any of the alternate methodologies, and which option ultimately will be formally agreed upon between the Developer and the Borough of Red Bank.

- a. The first option proposes a plan for the engineering and installation of a drainage pipe that would begin at a cross drain at the mid-block of Monmouth Street for approximately 15 feet to a manhole located near the corner of Pearl Street and Monmouth Street on Monmouth Street where a pipe would be installed to run from the northern half of Monmouth Street to Maple Avenue/Route 35, and would tie into an existing line which is owned by The State of New Jersey. The Developer and the Borough agree that it is the obligation of the Developer to have the subject proposal permitted and funded solely by the Developer and all work required to install this drainage pipe shall be at the sole cost of the Developer. In the event the Borough and the Developer agree that the within option is approved by both parties, the Developer agrees to apply to the Department of Transportation of the State of New Jersey for any and all permits necessary to allow this option to be installed. The said application shall be made no later than March 1, 2024. Each party hereto acknowledges that once filed, the application may take approximately eighteen (18) months (from the date of filing the application) to be reviewed and acted upon by the Department of Transportation. The parties acknowledge that the said timeframe is an estimate only and is not binding on either party hereto. In the event the Department of Transportation issues a permit to the Developer for the aforesaid installation, the Developer shall have 3 months (from the receipt of such permit from the Department of Transportation). The developer further agrees that, prior to filing, the plans for the improvement shall be attached to the site plan currently on file with the Borough of Red Bank and shall be attached to the plans which shall be signed by the Board Engineer and the Borough of Red Bank before filing.
- b. Time Frame for Completion of Construction: it is anticipated by the Developer and the Borough that the installation of the within improvement shall take approximately three months, from the initiation of construction. However, the parties acknowledge that the ability of the developer to complete construction during that time may be beyond the control of the Developer. Delays may result from the receipt of materials necessary for the construction, weather delays inhibiting/compromising construction, unforeseen topographical issues, issues of public utilities, issues of public safety, all of which shall be addressed by the Developer in good faith and a timely manner to minimize the need to delay any of the foresaid conditions or any other unforeseen conditions. The Developer shall confirm with the Board Engineer and keep the Board Engineer (as well as the Borough) advised of any and all such conditions resulting in delays during the construction.
- c. Responsibility for Costs: Previously, as indicated, it shall be the sole responsibility of the Developer to pay all costs in connection with the planning, design, permitting, insuring, safety control and any other "hard or soft costs" in the process of the design, construction and installation of this system, including inspection escrows.
- d. Insurance: The Developer agrees that The Borough of Red Bank, the Red Bank Zoning Board of Adjustment, and their respective agents, representatives, employees, contractors, consultants, and professionals (to be liberally construed) shall be named

as additional insureds by the Developer's insurance company with respect to its property and all general liability, excess and umbrella policies it may obtain with respect to the construction activities on the affected properties and all other properties impacted in this process and activities provided for in this agreement. Policy limits shall be no less than \$1 million per occurrence and \$3 million in aggregate. Proof of such certificate of insurance shall be submitted to the Borough Clerk, Board Engineer, and Borough Attorney prior to the commencement of construction activities. Additionally, the said certificates shall specifically provide that the said insurance coverage cannot be cancelled without 60 days advanced written notice to the Borough Clerk and the Borough Attorney, (The said certificates shall be renewed on an annual basis, until construction / development activity is completed.)

- e. The Developer agrees, at Developer's cost, to prepare a cost estimate and post a performance bond for the entire cost of the improvement prior to initiation of construction, and the performance bonds shall remain in place until the acceptance of the pipe and system by the Borough of Red Bank. It is understood that upon satisfactory completion and formal acceptance of the storm drainage system and appurtenances within the Monmouth Street and Pearl Street rights-of-way, the Borough shall, through the adoption of a formal Resolution, assume ownership and maintenance responsibilities thereafter, and the performance bond shall subsequently be converted to a two-year maintenance bond to be approved by the Borough.
- f. In the event that the Board Engineer determines that the system referred to above in this agreement is not acceptable in the discretion of the Board Engineer, the second option is for the Developer to install a stormwater drainage pipe from its premises located at 120 Monmouth Street, in a northern direction to the State drainage pipe located at Water Street. If determined by the Board Engineer to be the preferred method of dealing with the stormwater drainage issue, the Developer agrees that it shall be responsible for the design and installation of stormwater drainage system from its property to the Water Street connection on the same terms and conditions provided for in the first option set forth herein. It should be noted, however, that a permit will also be necessary from the State of New Jersey Department of Transportation for connection to the particular point of connection, as Water Street is also a State Highway (Route 35).
- g. In the event that the Board Engineer deems the first and second options provided here as unacceptable, in his sole discretion, the third option would be for the applicant to be responsible for the installation of a stormwater drainage system from its premises, that would be connected to the existing Borough drainage system which would run from the Developer's premises to an existing system located at Oakland Street and Pearl Street. In such an event, all of the terms and conditions set forth above as well as the any and all necessary permits, installation costs, performance guarantees and other requirements specified above shall be applicable as well. Once again, it is noted that a permit will be necessary from the State of New Jersey Department of Transportation if the within option is the system approved, in writing, by the Board Engineer, as improvements would likely be required along Oakland Street up to Maple Avenue, which is also State Highway 35.
- h. In the event that none of the aforesaid three options provided can be implemented (in a manner formally approved by the Borough), the Developer agrees to discuss the possibility of on-site retention of stormwater in coordination with the Board Engineer. Any such details shall be specifically reviewed and approved by the Board Engineer, in the sole discretion of the Board Engineer.
- i. The Developer shall pay all costs for the preparation and submission of the permit application to the New Jersey Department of Transportation. That notwithstanding, the Borough of Red Bank, as official owner of the right-of-way, agrees that, if required, it shall, at no cost, be the official / technical signor of the said application. (Unless otherwise agreed by the Borough of Red Bank, the Applicant shall physically submit the application to the New Jersey Department of Transportation).

42. Installation of Footings and Foundations: In connection with the negotiation of the within agreement, the Borough representative and the Developer came to an agreement in which the Developer shall, at its own risk, receive approval for the installation of footings and foundations without the completion of the necessary signoffs on the completed site-plan. The Developer shall be issued permits for the installation of footings and foundations, once again at its own risk, and the Developer shall be required to post a performance bond in connection therewith. Again, all costs incurred by the Developer in connection with the installation of the footings and foundations shall be at the Developer's sole cost and expense.

43. Condition of Issuance of Certificates of Occupancy: Upon execution of the within Agreement, subject to satisfactory completion of all of the Developer's prior obligations, subject to satisfaction of all other relevant standards, and provided there is no breach / default hereunder, the Borough shall issue all building permits necessary to construct the approved structure, and site improvements provided that no Certificate of Occupancy for the property shall be issued until the formal completion and acceptance by the Borough for the installed system.

44. Further Assurances: Given the multi-faceted options associated herein (see Paragraph 41), the parties agree that they shall, in good faith, reasonably cooperate with each other to effectuate the goals, objectives, and intentions of the within agreement.

45. Severability: If any terms or conditions are determined invalid by a court of competent jurisdiction, the remainder of the terms and conditions shall remain in full force and effect.

46. Interpretation of Law: The within Agreement shall be interpreted under and governed by the laws of the State of New Jersey.

47. Notices: All notices are required or permitted under this Agreement shall be in writing by first-class mail to the addresses set forth herein or as otherwise designated by the parties in writing.

**IN WITNESS WHEREOF**, the Developer has hereunto caused these presents to be signed by its proper authorized parties and has caused its proper seals, if any, to be affixed hereto. The Borough of Red Bank has caused this instrument to be signed by its Mayor and attested by its Clerk and does cause its proper and corporate seal to be affixed as of the date and year first above written.

**Park Valley Monmouth, LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Borough of Red Bank**

By: \_\_\_\_\_

William Portman, Mayor

Witnessed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_