Torres Rojas, Genara

From:
Sent: Tuesday, July 03, 2012 2:09 PM
To: Duffy, Daniel
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: Jennifer
Last Name: Giattino
Company:
Mailing Address 1:
Mailing Address 2:
City:
State:
Zip Code:
Email Address:
Phone:
Required copies of the records: Yes

List of specific record(s):
Request for copies of the agreements between the PA and the City of Hoboken regarding land ownership and development on the South Waterfront in Hoboken. Also, a copy of the lease agreement for 225 River Street between second and third streets.

THE PORT AUTHORITY OF NY & NJ

Daniel D. Duffy
FOI Administrator

August 21, 2012

Ms. Jennifer Giattino

Re: Freedom of Information Reference No. 13298

Dear Ms. Giattino:

This is a response to your July 3, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for copies of the agreements between the Port Authority and the City of Hoboken regarding land ownership and development on the South Waterfront in Hoboken and a copy of the agreement for 225 River Street between second and third streets.

Material responsive to your request and available under the Code can be found on the Port Authority's website at http://www.panynj.gov/corporate-information/foi/13298-LPA.pdf. Paper copies of the available records are available upon request.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,

Daniel D. Duffy
FOI Administrator

225 Park Avenue South
New York, , NY 10003
T: 212 435 3642 F: 212 435 7555

LEASE AND DEVELOPMENT AGREEMENT

among

THE CITY OF HOBOKEN, NEW JERSEY

and

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY

and

225 RIVER STREET LLC

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LEASE AND DEVELOPMENT AGREEMENT

This LEASE AND DEVELOPMENT AGREEMENT is made as of the 23rd day of February, 2006, by and among THE CITY OF HOBOKEN (the "**City**"), a municipal corporation of the State of New Jersey acting by and through the Mayor thereof and having its office at City Hall, Hoboken, New Jersey 07030, THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY (the "**Port Authority**"), a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America and having its office at 225 Park Avenue South, 15th Floor, New York, New York 10003, whose representative is the Executive Director of the Port Authority, and 225 RIVER STREET LLC (the "**Lessee**"), a limited liability company organized and existing under and by virtue of the laws of the State of New Jersey and having an office and place of business at 5 Marine View Plaza – Suite 500, Hoboken, New Jersey 07030, whose representatives are its managing members Michael Barry and David Barry.

WITNESSETH, That:

WHEREAS, pursuant to concurrent legislation of the State of New Jersey, Chapter 9, Laws of New Jersey, 1983, and Chapter 107, Laws of New Jersey, 1984, and the State of New York, Chapters 676 and 677, Laws of New York, 1984 (the "**Waterfront Development Legislation**") amending and supplementing, respectively, Chapter 44, Laws of New Jersey, 1947, and Chapter 631, Laws of New York, 1947, the Port Authority has been authorized to participate in a program of waterfront development to revitalize and economically develop waterfront property; and

WHEREAS, pursuant to the Waterfront Development Legislation (N.J.S.A. 32:1–35.26[k]), the Port Authority is authorized and empowered in its discretion to enter into an agreement with a municipality to effectuate, establish, acquire, construct, rehabilitate, improve, maintain or operate all or any portion or portions of any authorized waterfront development project upon terms and conditions as it may deem in the public interest, and a municipality, notwithstanding any contrary provision of law, general, special or local, is empowered and authorized to enter into an agreement with the Port Authority for or related to the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of any authorized waterfront development undertaken by the Port Authority; and

WHEREAS, pursuant to the Waterfront Development Legislation (N.J.S.A. 32:1–35.31), the City is authorized to consent to the use by the Port Authority of any real property owned by such municipality and necessary, convenient or desirable, in the opinion of the Port Authority, for marine terminal purposes (which purposes, as defined in such Legislation, include mixed–use waterfront development projects of the nature hereinafter referred to), and, as an incident to such consent, to lease or otherwise transfer to the Port Authority any such marine terminal on terms as may be determined by the Port Authority and such municipality upon the adoption of an appropriate resolution by the governing body of such municipality; and

WHEREAS, the City and the Port Authority may, pursuant to the Waterfront Development Legislation (N.J.S.A. 32:1–35.36[k]), enter into an agreement with any person, firm, partnership, association, company or corporation for or related to the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of the waterfront development project contemplated herein; and

WHEREAS, the Port Authority and the City, acting exclusively pursuant to the Waterfront Development Legislation to effectuate the mixed-use waterfront development project within the waterfront development site in Hoboken, New Jersey, authorized by the Waterfront Development Legislation, entered into certain transactions and agreements on August 16, 1995, including (i) a "Municipal Development Agreement" (as amended on June 30, 1998 and as further authorized to be amended on May 3, 2001 and December 2, 2002) with respect to certain property located in the City (referred to in the aforesaid agreement, and hereinafter, as the "Development" or the "South Waterfront Development"), (ii) a Deed whereby the City conveyed to the Port Authority fee title to certain property located within the Development (referred to in the Municipal Development Agreement as the "Subsequent Development Property") and (iii) a Lease Agreement (as supplemented as of June 30, 1997, the "Ground Lease") whereby the Port Authority leased the ground area (but not the air space over such area) of such property; and

WHEREAS, at its meeting held on March 15, 1995, the Hoboken City Council (the "**Council**") amended the "Waterfront at Hoboken Redevelopment Plan of 1989" (such plan, as amended by the Council on July 1, 1997, December 4, 2002, and April 21, 2004 a copy of which is attached as Exhibit D, the "**Plan**"), and also adopted certain amendments to the City Zoning Ordinance (such

amendments, and the amendments to the City Zoning Ordinance adopted by the Council on July 1, 1997 and December 4, 2002, a copy of which is attached as Exhibit A, the "**Amendments**") in furtherance of the Plan; and

WHEREAS, the Municipal Development Agreement and the Ground Lease provide, inter alia, that the City and the Port Authority may enter into one or more agreements with developers for the effectuation, establishment, acquisition, construction, rehabilitation and operation of the South Waterfront Development; and

WHEREAS, the Lessee desires to plan, design, develop, construct and operate a "W" hotel, or substantially equivalent hotel as reasonably determined by the City and Port Authority, on property located within Parcels 7 and 8 on Block B as more particularly described on Exhibit H and, in connection therewith, sublease from the City the applicable ground area of the Premises (as hereinafter defined) and lease from the Port Authority the applicable airspace in the Premises above such ground area and any remaining ground rights thereto, in accordance with the Plan, the Amendments, the Design Guidelines (as defined below) and the terms and conditions hereinafter set forth; and

WHEREAS, in consideration of the City and the Port Authority entering into the Exclusivity Agreement and designating Lessee as the developer of the Premises, a nonrefundable payment to the Port Authority in the amount of One Hundred Fifty Thousand ($150,000.00)Dollars has been paid to the Port Authority and the Lessee has caused its affiliate to relinquish its rights to a no interest loan from the City with respect to another project and to provide the City with a benefit of $1,200,000.00 which is the present value of the principal amount of the loan during the 2003 fiscal year rather than receive payments over the 29 term of the loan; and

WHEREAS, the City and the Port Authority desire to grant to the Lessee, and the Lessee desires to acquire from the City and the Port Authority, certain leasehold estate interests for implementation of the Project, all in accordance with the Plan, the Amendments, the Design Guidelines and the terms and conditions hereinafter set forth; and

WHEREAS, each of the City, the Port Authority and the Lessee has the legal power and authority and has been duly authorized by all requisite municipal, governmental, corporate

or other action to enter into and perform the terms of this Lease and Development Agreement;

NOW, THEREFORE, for and in consideration of the covenants and mutual agreements herein contained, the City, the Port Authority and the Lessee hereby covenant and agree as follows:

ARTICLE 1. DEFINITIONS

"**Accounting Principles**" shall mean generally accepted accounting principles (GAAP) consistently applied.

"**Accrued Amount**" shall have the meaning provided in Section 14.3.1 hereof.

"**Adjustment Period**" shall have the meaning provided in Section 4.4.2 hereof.

"**Affiliate**" shall mean any Person (hereinafter defined) which, directly or indirectly, controls, is controlled by or is under common control with any other Person. "**Control**" shall be deemed to exist where any Person has (1) ownership of fifty percent (50%) or more of all of the voting stock of a corporation or more than fifty percent (50%) of all of the legal or equitable interests in any other business entity or (ii) possession of the power, directly or indirectly, to cause the direction of management and policies of a corporation, partnership, trust or other business entity, whether through voting securities, by contract, by common directors, officers or trustees or otherwise. Affiliate shall also mean any individual who is a member of the immediate family (whether by birth or marriage) of a Person who is an individual, which includes for purposes of this definition a spouse, a brother or a sister of the whole or half blood of such Person, the spouse of any such brother or sister, a lineal descendant or ancestor (including an individual related by or through legal adoption) of such Person or any of the foregoing or a trust for the benefit of such Person or any of the foregoing.

"**All or Substantially All of the Premises**" shall have the meaning provided in Section 19.1 hereof.

"**Alternative Disposition**" shall have the meaning provided in Section 15.1 hereof.

"**Amendments**" shall have the meaning provided in the sixth WHEREAS clause of this Agreement.

"**Annual O & M Rental**" shall have the meaning provided in subsection 4.4.2 hereof.

"**Annual PILOT Rental**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Annual PILOT Rental Commencement Date**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Applicable O & M Rate**" shall have the meaning provided in subsection 4.4.2 hereof.

"**Applicable PILOT Rate**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Assignment**" shall have the meaning provided in Section 14.1 hereof.

"**Base Period**" shall have the meaning provided in Section 4.4.2 hereof.

"**Basic Rental**" shall mean the rental provided for in Section 4.1 hereof.

"**Basis**" shall have the meaning provided in Section 15.1 hereof.

"**Building**" shall have the meaning provided in Section 5.1 hereof.

"**Business Day**" shall mean any day which is not a Saturday, Sunday or a day observed as a holiday by the State of New Jersey, the State of New York or the Federal government.

"**Capital Improvement**" shall have the meaning provided in Section 15.1 hereof.

"**causes or conditions beyond its control**" shall have the meaning provided in Section 25.6 hereof.

"**Certificate of Completion**" and "**Certificate of Partial Completion**" shall have the meanings provided in Section 5.16 hereof.

"**Conceptual Plan**" shall have the meaning provided in Section 5.2 hereof.

"Condominium" shall have the meaning set forth in Section 14.2.5 hereof.

"Condominium Association" shall have the meaning provided in Section 14.1 hereof.

"Construction Application" shall have the meaning provided in Section 5.3.2 hereof.

"Construction Completion Date" shall have the meaning provided in subsection 5.16.3 hereof.

"Construction Completion Deadline" shall have the meaning provided in Section 5.3.4 hereof.

"Construction Loan" shall have the meaning provided in Section 14A.1 hereof.

"Construction Mortgage" shall have the meaning provided in Section 14A.1 hereof.

"Construction Mortgage Loan Amount" shall have the meaning provided in Section 14A.1 hereof.

"Construction Permit" shall have the meaning provided in subsection 5.3.4 hereof.

"Construction Plans" shall have the meaning provided in subsection 5.3.2 hereof.

"Construction Work" shall mean any and all work performed by the Lessee, its contractors, subcontractors, agents or employees relating to or in connection with the Project pursuant to the terms of this Agreement, including but not limited to any "Partial Approval Work" (as defined below) and work performed subsequent to the Construction Completion Date.

"Consumer Price Index" or **"CPI"** shall mean the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor, New York, New York – Northeastern New Jersey Area, All Items (1982-1984 = 100) or its successor.

"Control" shall have the meaning provided in the definition of "Affiliate" above in this Article 1.

"**Design Guidelines**" shall mean the Design Guidelines dated December 22, 1995, as amended, a copy of which is attached hereto as Exhibit B and made a part hereof.

"**Design Controls**" shall mean, collectively, (i) the Plan, (ii) the Amendments and (iii) to the extent not inconsistent with (i) and (ii) above, the Design Guidelines.

"**designated address**" shall have the meaning provided in Section 24.11 hereof.

"**Development**" shall mean certain property located in the City which is subject to the terms and conditions of and is described in the Municipal Development Agreement.

"**Development Area**" shall mean Blocks A, B and C as described in Exhibit C attached hereto and forming a part hereof.

"**Development Costs**" shall have the meaning provided in Section 15.1 hereof.

"**Development Square Feet**" shall mean ninety percent (90%) of Gross Square Feet, and "**Development Square Footage**" **or** "**DSF**" shall mean ninety percent (90%) of the Gross Square Footage (both as defined below).

"**EEO**" shall have the meaning provided in Section 21.12 hereof.

"**Environmental Damages**" shall mean any one or more of the following: (i) the presence on, about or under the Premises of any Hazardous Substance and/or (ii) the disposal, release or threatened release of any Hazardous Substance from the Premises, and/or (iii) any personal injury (including wrongful death), property damage, deed/use restriction or natural resources damages arising out of or related to Hazardous Substances on, about or under the Premises or disposed of or released from the Premises, and/or (iv) the violation of any Environmental Requirements pertaining to Hazardous Substances.

"**Environmental Requirement(s)**" shall mean all applicable present and future laws,' statutes, enactments, resolutions, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, requirements and similar items, of all governmental agencies, departments, commissions, boards, bureaus, or

instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment, and in the event that there shall be more than one compliance standard, the standard for any of the foregoing to be that which requires the lowest level of a Hazardous Substance, the foregoing to include without limitation:

(i) All requirements pertaining to reporting, licensing, permitting, investigation, and remediation of emissions, discharges, releases, or threatened releases of Hazardous Substances into the air, surface water, groundwater, or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Substances; and

(ii) All requirements pertaining to the protection of the health, and safety of employees, the public or the environment.

"**Event of Default**" shall have the meaning provided in Section 17.1 hereof.

"Exclusivity Agreement" shall mean the Exclusivity Agreement dated as of May 27, 2003 among the City, the Port Authority and 225 River Street LLC, as amended, a copy of which is annexed hereto as Exhibit P.

"**Expiration Date**" shall mean the day before the ninety-eighth (98th) anniversary of the Lease Commencement Date.

"**Financing**" shall have the meaning provided in Section 15.1 hereof.

"First Class Hotel" shall mean a first class, full service, luxury hotel which provides ancillary services and facilities including 24 hour room service, concierge service, a fully staffed fitness center, restaurant, bar, banquet/ballroom facilities and meeting/conference rooms.

"**Force Majeure**" shall have the meaning provided in Section 25.6 hereof.

"fringe benefits" shall have the meaning provided in Section 4.4.1 hereof.

"**Governmental Authority(ies)**" shall mean the United States of America, the State of New Jersey, the City of Hoboken (to the extent acting in its governmental, not proprietary, capacity), the County of Hudson and any agency, department, corporation, commission, board, bureau, instrumentality or political subdivision of any of the foregoing (excluding the Port Authority) now existing or hereafter created, having or exercising jurisdiction over the Premises or any portion thereof including, without limitation, jurisdiction over the administration or enforcement of any Environmental Requirements.

"**Gross Revenues**" shall have the meaning provided in subsection 4.6.2 hereof.

"**Gross Room and Parking Revenues**" shall have the meaning provided in Section 4.2.1 hereof.

"**Gross Square Feet**" shall mean square feet measured in accordance with the definition of Gross Square Footage below.

"**Gross Square Footage**" with respect to any building shall mean the aggregate amount of the gross square footage of horizontal areas, excluding parking and mechanical areas, of all ground and above ground floors of such building. For purposes of determining Gross Square Footage, all dimensions shall be measured from and between the interior faces of the perimeter walls. Lessee represents that the Gross Square Footage of the Building is 245,000.

"**Ground Lease**" shall have the meaning provided in the fifth WHEREAS of this Agreement.

"**Hazardous Substance(s)**" shall mean and include without limitation any pollutant, contaminant, toxic or hazardous waste, dangerous substance, potentially dangerous substance, noxious substance, toxic substance, flammable, explosive or radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, petroleum and petroleum products and other substances which have been or in the future shall be declared to be hazardous or toxic, or the removal of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have been or in the future shall be restricted, prohibited, regulated or penalized by any Environmental Requirement.

"**Hotel**" shall mean a "W" hotel, or substantially equivalent First Class Hotel as reasonably determined by the City and the Port Authority.

"**Hotel Management Company**" shall mean Starwood or another hotel operator that (w) is not a Prohibited Party (as defined in Section 14.4 below), (x) has substantial experience in the management and operation of (A) other First Class Hotels similar in size, type, amenities and reputation to a "W" hotel including the ownership and/or management for at least ten (10) recent years of at least five (5) First Class Hotels containing at least 175 rooms each and at least 1200 rooms in the aggregate, or (B) other Upper Scale Hotels, including the ownership or management for at least ten (10) recent years of at least five (5) Upper Scale Hotels, (y) is a member of a national reservation or affiliation system, and (z) is financially solvent and has sufficient net worth to perform the obligations of the Hotel Management Company under the hotel management agreement.

"Hotel Owner" shall mean a hotel owner that (x) is not a Prohibited Party and (y) is financially solvent and, together with its Hotel Owner Affiliate, has a tangible net worth of at least $37,500,000.00 and has unencumbered assets with a fair market value in excess of fifty percent (50%) of the fair market value of the Hotel; provided, however, that the figure set forth in clause (y) shall be increased every ten (10) years from the Lease Commencement Date by the percentage by which the CPI has increased over the previous ten (10) year period.

"Hotel Owner Affiliate" shall mean any Person which, directly or indirectly, controls, is controlled by or is under common control with the Hotel Owner. **"Control"** for the purpose of the definition of Hotel Owner Affiliate shall be deemed to exist where any Person has (1) ownership of thirty-three (33%) percent or more of all of the voting stock of a corporation or more than thirty-three (33%) percent of all of the legal or equitable interests in any other business entity or (ii) possession of the power, directly or indirectly, to cause the direction of management and policies of a limited liability company, corporation, partnership, trust or other business entity, whether through position as its managing member of a limited liability company, general partner of limited partnership or through voting securities, by contract, by common directors, officers or trustees or otherwise.

"Hotel Residence Assignment" shall have the meaning provided in Section 14.1 hereof.

"Hotel Residence Financing" shall have the meaning provided in Section 15.1 hereof.

"Hotel Residence Mortgage" shall have the meaning provided in Section 14A.1. hereof.

"Hotel Residence Mortgagee" shall have the meaning provided in Section 14A.1. hereof.

"Hotel Residence Owner" shall have the meaning provided in Section 14.1. hereof.

"Hotel Residences" shall have the meaning provided in Section 14.1. hereof.

"Hotel Unit" shall have the meaning provided in Section 14.1. hereof.

"Hotel Unit Owner" shall mean the Initial Developer and any successor or assignee of the Initial Developer's right, title and interest in and to the Hotel Unit, which must meet the requirements of a Hotel Owner.

"**Indemnified Party(ies)**" shall have the meaning provided in Section 5.11. hereof.

"**Initial Developer**" shall have the meaning provided in Section 15.1 hereof.

"Initial Developer's Architect/Engineer" shall have the meaning provided in Section 5.3.1. hereof.

"Initial Developer's Certificate" shall have the meaning provided in Section 5.16.1 hereof.

"Initial Hotel Residence Sale" shall have the meaning provided in Section 15.1 hereof.

"**Initial Owner**" shall have the meaning provided in Section 15.1 hereof.

"**Institutional Investor**" shall have the meaning provided in Section 14A.1 hereof.

"**Involuntary Rate**" shall mean the Prime Rate (hereinafter defined) plus five (5%) percent per annum, but in no event in excess of the maximum lawful interest rate then in effect in the State of New Jersey.

"**Land**" shall have the meaning provided in Section 2.1 hereof.

"**Lease Commencement Date**" shall have the meaning provided in Section 3.1 hereof.

"**Lease Year**" shall mean (x) the period from the Lease Commencement Date through the last day of the calendar month in which the day preceding the anniversary of the Lease Commencement Date occurs, (y) each succeeding twelve-calendar-month period thereafter and (z) the succeeding period, if any, of less than twelve (12) full calendar months ending on the Expiration Date.

"**Lessee**" shall mean 225 River Street LLC or any successor to its interest hereunder, or if any such Person shall assign or transfer its interest hereunder in accordance with the terms of this Agreement, the term "Lessee" shall also mean such assignee or transferee and the assignor or transferor to the extent that such assignor or transferor remains liable pursuant to the terms and conditions of this Agreement. After the Master Deed for River Street Residences Condominium is recorded against the Premises in the Hudson County Register's Office, "Lessee" shall mean, individually and collectively, the Unit Owners as tenants in common, each with an undivided interest in the leasehold estates created hereunder, equal to its percentage interest in the Condominium.

"**Major Sublease**" shall have the meaning provided in Section 15.1 hereof.

"**Master Deed**" shall mean the master deed for River Street Residences recorded against the Premises which shall create the condominium form of ownership of the Premises, consisting of one Hotel Unit and approximately 36 Hotel Residences.

"**Matter**" shall have the meaning provided in subsection 5.15.1 hereof.

"**Maximum Modified PILOT Rate**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Maximum Modified PILOT Rental**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Meaningful Participation**" shall have the meaning provided in Section 23.3 hereof.

"**Modified PILOT Excess Accrual**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Modified PILOT Rate**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Mortgage**" shall have the meaning provided in Section 14.1 hereof.

"**Mortgage Amount**" shall have the meaning provided in Section 14A.1 hereof.

"**Municipal Development Agreement**" shall have the meaning set forth in the fifth WHEREAS clause of this Agreement.

"**Net Participation Rental**" shall have the meaning provided in Section 4.6 of hereof.

"**Net Proceeds**" shall have the meaning provided in Section 15.1 hereof.

"**Net Revenues**" shall have the meaning provided in Section 4.6.2 hereof.

"**New Lease**" shall have the meaning provided in Section 14A.11 hereof.

"**Notice(s)**" shall have the meaning provided in Section 24.1 hereof.

"**O & M Area**" shall have the meaning provided in Section 4.4.1 hereof.

"**O & M Board**" shall have the meaning provided in Section 4.4.1 hereof.

"**O & M Costs**" shall have the meaning provided in Section 4.4.1 hereof.

"**O & M Fund**" shall have the meaning provided in Section 4.4.1 hereof.

"**O & M Work**" shall have the meaning provided in Section 4.4.1 hereof.

"**Operating Expenses**" shall have the meaning provided in Section 4.6.2 hereof.

"**Organizational Documents**" shall have the meaning provided in Section 15.5 hereof.

"**other payroll costs**" shall have the meaning provided in Section 4.4.1 hereof.

"**Parking Garage**" shall have the meaning provided in Section 5.1 hereof.

"**Partial Approval Plans**" shall have the meaning provided in Section 5.4 hereof.

"**Partial Approval Work**" shall have the meaning provided in Section 5.4 hereof.

"**Partial Construction Permit**" shall have the meaning provided in Section 5.4 hereof.

"**Partial Occupancy Request**" shall have the meaning provided in subsection 5.16.4 hereof.

"**Partial Sale**" shall have the meaning provided in Section 15.1 hereof.

"**Payment Period**" shall have the meaning provided in subsection 4.2.1 hereof.

"**Percentage Increase**" shall have the meaning provided in Section 4.4.2 hereof.

"**Percentage/Participation Rental Commencement Date**" shall have the meaning provided in Section 4.2.1 hereof.

"**Percentage Rental**" shall have the meaning provided in subsection 4.2.2 hereof.

"**Permanent Interest**" shall have the meaning provided in Section 19.1 hereof.

"**Permanent Loan**" shall have the meaning provided in Section 14A.1 hereof.

"**Permanent Mortgage**" shall have the meaning provided in Section 14A.1 hereof.

"**Permanent Mortgage Loan Amount**" shall have the meaning provided in Section 14A.1 hereof.

"**Permanent Taking**" shall have the meaning provided in Section 19.1 hereof.

"**Person**" shall mean and include an individual, company (including a limited liability company), corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, state, county or municipal government, bureau, department or agency thereof, and any other entity.

"**Physical Infrastructure**" shall have the meaning provided in Section 7.8 hereof.

"**Plan**" shall have the meaning provided in the sixth WHEREAS clause of this Agreement.

"**Premises**" shall have the meaning provided in subsection 2.1.3 hereof.

"**Present Value**" shall mean the value as of the date in question of a sum or sums to be paid or collected in the future, to be calculated using a rate equal to the weekly Index of 25 Revenue Bonds, as published in The Bond Buyer as of the date in question, plus one hundred (100) basis points; provided, however, that if the Index of 25 Revenue Bonds is no longer available, a successor index shall be used, or, in the absence thereof, the rate to be used for calculating Present Value shall be a discount rate certified by the Port Authority's Chief Financial Officer, as of the date in question, as appropriate for such calculation.

"**Prime Rate**" shall mean the rate announced from time to time by a major money center bank at its principal office from time to time as its prime or base rate, which bank shall be selected by the Port Authority on written notice to the other parties hereto. If such bank no longer announces a prime or base rate, the Prime Rate shall be the prime or base rate announced from time to time by a comparable institution selected in writing by the Port Authority on written notice to the other parties hereto. Any interest payable under this Agreement with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and

shall be calculated on the basis of a 360-day year of twelve thirty-day months.

"**Proceeds Payment**" shall have the meaning provided in Section 15.2 hereof.

"**Prohibited Party**" shall have the meaning provided in Section 14.4 hereof.

"**Project**" shall mean the development of the Building and all other improvements to be located in and on the Premises, including the planning, design and construction work therefor.

"**Project Area**" shall mean the area shown roughly within the bold lines on Exhibit E attached hereto and any other adjacent area owned or controlled by the City.

"**Proportionate Share**" shall have the meaning provided in Section 15.1 hereof.

"**RAW**" shall have the meaning provided in Section 5.15.3 hereof.

"**Recognized Mortgagee**" shall have the meaning provided in Section 14A.1 hereof.

"**Refinancing Loan**" shall have the meaning provided in Section 14A.1 hereof.

"**Refinancing Mortgage**" shall have the meaning provided in Section 14A.1 hereof.

"**Refinancing Mortgage Loan Amount**" shall have the meaning provided in Section 14A.1 hereof.

"**Rental**" or "**rental**", shall mean all payments to be made by the Lessee pursuant to any provision of this Agreement, including without limitation all payments to be made by the Lessee pursuant to Article 5 hereof and late charges.

"**Requirements**" shall mean all present and future laws, rules, orders, enactments, ordinances, resolutions, regulations, statutes, requirements, codes, directions and executive orders of any Governmental Authority and shall also mean all present and future conditions imposed in connection with the issuance of any permit applicable to the Premises by any Governmental

Authority including without limitation the Waterfront Development Permit.

"**Reserve Fund for Replacements**" shall have the meaning provided in Section 15.1 hereof.

"**Retail Space**" shall have the meaning provided in Section 5.1 hereof.

"**Rules and Regulations**" shall mean the rules and regulations from time to time in effect issued jointly by the City and the Port Authority with respect to the public areas included within the Development.

"**Sale**" shall have the meaning provided in Section 15.1 hereof.

"**Share**" shall mean each Lessee's proportionate share of Subtenant Payments based on its percentage interest in the Condominium. Prior to the creation of the Condominium, Lessee's Share shall be 100%.

"**Standard Utilities**" shall have the meaning provided in Section 7.8 hereof.

"**Sublease**" shall have the meaning provided in Section 14.1. hereof.

"**Subtenant**" shall have the meaning provided in Section 14.1 hereof.

"**Subtenant Impositions**" shall have the meaning provided in subsection 4.5.1 hereof.

"**Subtenant Payments**" shall have the meaning provided in Section 14.2.5. hereof.

"**Taxes**" shall mean ad valorem real estate taxes now or hereafter levied or assessed by the State of New Jersey, the County of Hudson and/or the City of Hoboken.

"**Tax Protection End Date**" shall have the meaning provided in subsection 4.3.6 hereof.

"**Tax Rate**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Tax Rate Percentage Increase**" shall have the meaning provided in subsection 4.3.1 hereof.

"**Temporary Interest**" shall have the meaning provided in Section 19.1 hereof.

"**Temporary Taking**" shall have the meaning provided in Section 19.1 hereof.

"**Termination Notice**" shall have the meaning provided in Section 14A.5.2 hereof.

"**Title Matters**" shall mean those exceptions, liens, encumbrances and restrictions shown on Exhibit F attached hereto and hereby made a part hereof.

"**Total Project Costs**" shall mean all Development Costs incurred through the Construction Completion Date to the extent such costs are included in the project budget approved by the prospective Recognized Mortgagee under the Construction Loan.

"**Transaction Expenses**" shall have the meaning provided in Section 15.1 hereof.

"**Transaction Receipts**" shall have the meaning provided in Section 15.1 hereof.

"**Transfer**" shall have the meaning provided in Section 14.1 hereof.

"**Unfunded Capital Improvement Amount**" shall have the meaning provided in Section 15.1 hereof.

"**Unit Owner**" shall mean each of the Hotel Unit Owner and the Hotel Residence Owners.

"**Unit Owner's Reserve**" shall have the meaning provided in Section 4.8 hereof.

"**Units**" shall mean, collectively, the Hotel Unit and the Hotel Residences.

"**Upper Scale Hotels**" shall mean hotels which are ranked as "upper scale" or better in the chain scale segment by Smith Travel Research, or hotels which are ranked in the "upscale" segment or better by JD Power and Associates North American Guest Satisfaction Index Study. If the hotel rankings published by both Smith Travel Research and JD Power and Associates North

American Guest Satisfaction Index Study are discontinued, the parties shall mutually agree upon another substantially similar publication which ranks hotel chains based upon substantially similar criteria such as performance and services.

"**Waterfront Development Permit**" shall mean the permit issued by the New Jersey Department of Environmental Protection ("NJDEP") on April 26, 1996 No. 0905-93-0002.2/.3 in response to the City's Waterfront Development Application, as it may hereafter be amended.

"**WBE**" shall have the meaning provided in Section 21.3 hereof.

ARTICLE 2. LETTING-LEASEHOLD ESTATE

Section 2.1 Letting.

2.1.1 *Letting by the City.* The City hereby rents and lets to the Lessee and the Lessee hereby hires and takes from the City, with the consent of the Port Authority, the land in the City of Hoboken, County of Hudson and State of New Jersey shown in diagonal hatching on the drawing attached hereto, hereby made a part hereof and marked Exhibit G, and as more particularly described on the metes and bounds description attached thereto and made a part hereof as Exhibit H, together with all tenements, hereditaments, appurtenances and easements and any rights to adjacent streets now or hereafter created (the "**Land**"), and together with the buildings, structures, fixtures, improvements and other property, if any, thereon or thereunder, and all other buildings, structures, fixtures, improvements, additions, facilities and other property which in accordance with the provisions of this Agreement hereafter may be located, constructed or installed thereon or thereunder.

2.1.2 *Letting by Port Authority.* The Port Authority hereby rents and lets to the Lessee and the Lessee hereby hires and takes from the Port Authority all of the air space over the Land as described in Exhibit G and Exhibit H attached hereto, together with all tenements, hereditaments, appurtenances and easements and any rights to adjacent streets now or hereafter created and together with the buildings, structures, fixtures, improvements and other property, if any, therein, and all other buildings, structures, fixtures, improvements, additions, facilities and other property which in accordance with the provisions of this Agreement hereafter may be located, constructed or installed therein, and any and all of the present

and future estate of the Port Authority in and to the Land; *provided, however,* that nothing contained in this subsection 2.1.2 shall be construed as a delegation to or an authorization of the Lessee to exercise any of the rights of the Port Authority as landlord under the Ground Lease.

2.1.3 *Premises.* The property of the City and of the Port Authority leased to the Lessee pursuant to this Agreement is herein collectively referred to as the "**Premises**".

2.1.4 *Termination of Ground Lease.* Upon the expiration or termination for any reason of the Ground Lease, this Agreement shall be deemed a direct lease between the Port Authority and the Lessee with respect to the entire Premises, including the Land, without the necessity of a further writing or amendment hereto. Notwithstanding the foregoing, each party shall within thirty (30) Business Days of the other party's written request execute and deliver an amendment to this Agreement, in reasonably satisfactory form, reflecting such direct leasing of the entire Premises.

Section 2.2 Limitations of Rights and Privileges.

The Premises are let to the Lessee and the Lessee takes the same subject to all easements, restrictions, reservations, covenants and agreements to which the Premises may be subject as of the Lease Commencement Date, consisting of the following: (i) the Title Matters; (ii) rights of the public in and to any public street; (iii) rights, if any, of any enterprise, public or private, which is engaged in furnishing lighting, power, telegraph, telephone, steam or other utility services, and of the City, and of the State of New Jersey; and (iv) permits, licenses, regulations and restrictions, if any, of the United States, the City, the State of New Jersey or of any other Governmental Authority.

Section 2.3 Condition of Premises and Delivery of Possession.

2.3.1 *Condition of Premises.* The Lessee acknowledges that the Lessee is fully familiar with the Premises, the Development Area and the Project Area, the physical condition thereof (including, without limitation, the fact that the Land includes substantial portions of landfill which may present special difficulties in the design, construction and maintenance of the Building), the Title Matters, the Ground Lease, the Plan, the Amendments and the Design Guidelines. The Lessee acknowledges and agrees that except as otherwise expressly set

forth in this Agreement, no representations, statements, or warranties, express or implied, have been made by or on behalf of the Port Authority or the City in respect of the Premises, the Development Area or the Project Area, the status of title thereof, the physical condition thereof, including without limitation, the landfill portions thereof, the zoning or other laws, regulations, rules and orders applicable thereto, Taxes, or the use that may be made of the Premises, that the Lessee has relied on no such representations, statements or warranties, and that neither the Port Authority nor the City shall in any event whatsoever be liable for any latent or patent defects in the Premises. The Lessee hereby agrees to take the Premises in the condition they are in as of the Lease Commencement Date, to assume all responsibility for any and all risks, costs and expenses of any kind whatsoever caused by, arising out of or in connection with the condition of the Premises whether any aspect of such condition existed prior to, on or after the Lease Commencement Date, including without limitation all Environmental Requirements and Environmental Damages, and to indemnify and hold harmless the Port Authority and the City for all such risks, responsibilities, costs and expenses, except with respect to claims where the alleged damage or injury was sustained prior to the Lease Commencement Date (*for example:* if a construction worker is exposed to a Hazardous Substance while working at the Premises after the Lease Commencement Date and thereafter makes a claim for damage to his health resulting from such exposure, the Lessee's foregoing indemnification obligation would apply, irrespective of the fact that the Hazardous Substance already existed at the Premises prior to the Lease Commencement Date; if, however, a dockworker working at the Premises in 1955 was exposed to a Hazardous Substance present at the Premises at that time, and made a claim subsequent to the Lease Commencement Date for damage to his health resulting from that exposure, the Lessee's indemnification obligation would not apply). The Lessee's foregoing obligations with respect to the responsibilities, risks, costs and expenses assumed by the Lessee shall survive the expiration or termination of this Agreement.

2.3.2 *Delivery of Possession.* The Port Authority and the City shall deliver possession of the Premises on the Lease Commencement Date vacant and free of occupants and tenancies, subject only to the Title Matters.

2.3.3. *Ownership/Management*. The Hotel/Hotel Unit shall at all times be owned by a Hotel Owner and operated by a Hotel Management Company.

ARTICLE 3. TERM OF LETTING AND PERMITTED USE

Section 3.1 Term.

The term of the letting under this Agreement shall commence on February 23, 2006 (the "**Lease Commencement Date**") and shall expire, unless sooner terminated in accordance with any other provisions of this Agreement, at 11:59 P.M. local time on the Expiration Date.

Section 3.2 Permitted Use.

The Premises may be used solely for the construction, use, maintenance, repair and operation of the Building, which shall be used as a Hotel and Hotel Residences, incidental retail purposes and all other permitted uses incidental thereto, and improvements ancillary thereto, including, without limitation, parking areas, as are required or permitted to be constructed in connection with the Building pursuant to the provisions of this Agreement, the Plan, the Amendments and the Design Guidelines. The Lessee shall not use or allow the use of the Premises for any other purpose or purposes whatsoever.

ARTICLE 4. RENTAL

Section 4.1 Basic Rental.

4.1.1 *Obligation to Pay Basic Rental*. Beginning on the Lease Commencement Date and continuing throughout the term of the letting under this Agreement, the Lessee shall pay to the Port Authority annual Basic Rental in the amounts set forth on Exhibit I, to be paid in advance in equal monthly installments, on the first anniversary of the Lease Commencement Date and on the first day of each calendar month thereafter.

4.1.2 *Adjustments*. Notwithstanding the foregoing, if the Lease Commencement Date occurs on a day other than the first day of a calendar month, the installment of Basic Rental payable on the first day of the calendar month following the calendar month in which the Lease Commencement Date occurs shall be an amount equal to the monthly installment of Basic Rental multiplied by a fraction of which the numerator shall be the number of days from the Lease Commencement Date through the last

day of the month in which the Lease Commencement Date occurs and the denominator shall be the actual number of days in that month. If the rental increases are effective on a day other than the first day of a calendar month, then in addition to the full monthly installment of Basic Rental payable on the first day of such month there shall be payable in advance on the date of such increase an installment of Basic Rental equal to one-twelfth (1/12) of the annual amount by which the Basic Rental is then being increased multiplied by a fraction of which the numerator shall be the number of days from the date of such increase to the last day of such calendar month (including both such days) and the denominator shall be the number of days in that calendar month.

4.1.3 *Proration for Final Month.* If the Expiration Date occurs on a date which is other than the last day of a calendar month, the Basic Rental for the Premises for the portion of the month in which the Expiration Date occurs shall be the amount of the monthly installment of Basic Rental payable for that month prorated on a daily basis over the actual number of days the letting is in effect in that month.

Section 4.2 Percentage Rental.

4.2.1 *Certain Definitions.*

(1) **"Gross Room and Parking Revenues"** shall mean any and all gross charges, fees, rentals, receipts, finders fees and all other fees, brokerage commissions and all other commissions, proceeds and amounts of any kind (and anything else of value) paid or given for the use or occupancy of each hotel room and of any parking space in the Parking Garage but excluding the proceeds of any sale or refinancing of any Hotel Residence to a Hotel Residence Owner, common charges paid by a Hotel Residence Owner, any rent received by any Hotel Residence Owner directly from a tenant, insurance proceeds, condemnation awards, and applicable sales, use, excise, hotel room or similar taxes which are collected directly from patrons or guests and are separately stated.

(2) **"Payment Period"** shall mean (x) each six (6) month period from January 1 through June 30 and from July 1 through December 31 each calendar year, (y) a period (if any) of less than six (6) months commencing on the Percentage/Participation Rental Commencement Date and ending on the following June 30 or December 31 and (z) a

period (if any) of less than six (6) months commencing on January 1 or July 1 and ending on the Expiration Date.

(3) **"Percentage/Participation Rental Commencement Date"** shall mean the date of issuance of the first Certificate of Partial Completion for any portion of the Building.

4.2.2 *Obligation to Pay Percentage Rental.* Commencing from the Percentage Participation Rental Commencement Date, and continuing throughout the term of the letting under this Agreement, the Hotel Unit Owner shall pay to the Port Authority a Percentage Rental (the "**Percentage Rental**") in an amount equal to one and a half percent (1.5%) of all Gross Room and Parking Revenues. Commencing from the Percentage/Participation Rental Commencement Date, the Hotel Unit Owner shall, at its own cost and expense, furnish to the City and the Port Authority no later than sixty (60) days after the end of each Payment Period during the term of the letting under this Agreement (and sixty (60) days following the expiration or termination of such letting), a statement, in such detail as the City and the Port Authority may require, of all Gross Room and Parking Revenues during the Payment Period then just ended. Each such statement shall be certified as complete and correct in all material respects by the Chief Financial Officer of the Hotel Unit Owner (if a corporation) or, if the Hotel Unit Owner is a partnership, the managing general partner of the Hotel Unit Owner, or by a member or manager of the Hotel Unit Owner, if a limited liability company. Each statement furnished to the City and the Port Authority pursuant to this subsection shall be accompanied by payment of the Percentage Rental, if any, due for the Payment Period for which such statement is prepared.

Section 4.3 Annual PILOT Rental.

4.3.1 *Definitions.* As used in this Section 4.3, the following terms shall have the respective meanings set forth below:

(1) **"Accrued Amount"** shall mean all or any portion of the Modified PILOT Excess Accrual (to the extent existing) which, when added to the Annual PILOT Rental, equals the Maximum Modified PILOT Rental.

(2) **"Annual PILOT Rental"** for each calendar year shall mean the product obtained by multiplying (i) the Modified PILOT Rate for that year by (ii) the DSF for the

Building to be constructed on the Premises; provided, however, that if the Tax Rate Percentage Increase (as defined below) for such calendar year is less than Four Percent (4%), Annual PILOT Rental shall be increased by the Accrued Amount (to the extent existing).

(3) **"Annual PILOT Rental Commencement Date"** shall mean the earlier of (i) the first day of the twenty fifth (25th) calendar month after the Lease Commencement Date, and (ii) the first day of the calendar month after date of issuance of the first temporary certificate of occupancy for any portion of the Building. Notwithstanding any other provisions of this Agreement, this date shall not be subject to delay or extension of time.

(4) **"Applicable PILOT Rate"** shall mean:

(i) for the calendar year in which the Annual PILOT Rental Commencement Date occurs, Two Dollars and Eight Cents ($2.08) per Development Square Foot; and

(ii) for each succeeding calendar year, an amount equal to the Applicable PILOT Rate for the immediately preceding calendar year increased by the greater of

(x) Two Percent (2%) or

(y) the percentage increase, calculated to four decimal places, in the Tax Rate in effect on January 1 of such calendar year over the Tax Rate in effect on January 1 of such immediately preceding calendar year (the **"Tax Rate Percentage Increase"**);

(5) **"Maximum Modified PILOT Rate"** shall mean:

(i) for the calendar year in which the Annual PILOT Rent Commencement Date occurs, Two Dollars and Eight Cents ($2.08) per Development Square Foot; and

(ii) for each succeeding calendar year, an amount equal to the Modified PILOT Rate for the immediately preceding calendar year increased by Four Percent (4%).

(6) "**Maximum Modified PILOT Rental**" for each calendar year shall mean the product of (x) the Maximum Modified PILOT Rate and (y) the DSF for the Building.

(7) "**Modified PILOT Excess Accrual**" shall mean the cumulative aggregate, at any time and from time to time, *of the excess (if any) in each year, of*

(i) the product of (x) the Applicable PILOT Rate for such year and (y) the DSF for the Building

over

(ii) the product of (x) the Modified PILOT Rate for such year and (y) the DSF for the Building.

(8) "**Modified PILOT Rate**" shall mean:

(i) for the calendar year in which the Annual PILOT Rental Commencement Date, Two Dollars and Eight Cents ($2.08) per Development Square Foot; and

(ii) for each succeeding calendar year, an amount equal to the Modified PILOT Rate for the immediately preceding calendar year increased by the greater of

(x) Two Percent (2%) or

(y) the lesser of (A) the Tax Rate Percentage Increase and (B) Four Percent (4%).

(9) "**Tax Rate**" shall mean the ad valorem real property tax rate established annually by the Hudson County Board of Taxation or any successor governmental entity for assessed property within the City of Hoboken, Hudson County, New Jersey, expressed as $X per $Y of assessed valuation.

4.3.2 *Obligation to Pay Annual PILOT Rental.* It is the understanding, intention and agreement of the parties hereto that throughout the term of the letting under this Agreement, the Premises shall not be subject to the imposition or payment of Taxes and that instead, from and after the Annual PILOT Rental Commencement Date and throughout the remainder of the term of the letting hereunder the Lessee shall pay to the City, as additional Rental hereunder, Annual PILOT Rental.

4.3.3 *Payment of Annual PILOT Rental.* The Annual PILOT Rental in respect of any calendar year shall be due and payable in four quarterly installments, each equal to one-quarter of such Annual PILOT Rental and with one installment payable on each February 1, May 1, August 1 and November 1 of such calendar year; provided, however, that in no event shall Annual PILOT Rental be due and payable by the Lessee until after the City has notified the Lessee of the Annual PILOT Rental due for such calendar year (which notification shall specify the Applicable PILOT Rate for such calendar year), and provided, further, that if such notice is not given prior to January 21 of any calendar year, the first quarterly installment of Annual PILOT Rental shall be due and payable not later than the twentieth (20th) calendar day following the effective date of such notice. The amount of Annual PILOT Rental for the first quarterly period of the first calendar year in which Annual PILOT Rental is to be paid shall be reduced for any portion of such quarterly period which occurs prior to the Annual PILOT Rental Commencement Date by an amount equal to the product of (x) the full amount of such quarterly installment and (y) a fraction of which the numerator shall be the number of days occurring in such quarterly period prior to the Annual PILOT Rental Commencement Date and the denominator shall be the number of days in such quarterly period. The quarterly installment for the quarterly period in which the Expiration Date occurs shall be similarly reduced for the portion of the quarterly period during which the letting under this Agreement is not in effect.

4.3.4 *Obligation to Pay Modified PILOT Excess Accrual.* Modified PILOT Excess Accrual, to the extent not fully paid pursuant to the proviso in the definition of "Annual PILOT Rental" in subsection 4.3.1 above, shall continue to constitute a monetary obligation of the Lessee and rental hereunder, provided, however, that the obligation to pay Modified PILOT Excess Accrual shall terminate upon the Lessee's commencement of payment of full real property taxes and assessments with respect

to the Premises for any reason or upon expiration of this Agreement under Section 3.1.

4.3.5 *PILOT Opt-Out; Return to City Tax and Assessment Rolls.* The Condominium Association may, on behalf of the Unit Owners, elect to terminate the PILOT payments established under this Section 4.3 and instead the Unit Owners shall pay full real estate taxes and assessments, provided (x) the Lessee is not in default or breach of this Agreement and (y) the Condominium Association gives written notice to the City at least one (1) year prior to July 1st of the year preceding the year in which the Lessee seeks to pay full real estate taxes and assessments.

4.3.6 *Tax Protection.* (a) If at any time prior to the twentieth (20th) anniversary of the Annual PILOT Rental Commencement Date (such twentieth anniversary, the "**Tax Protection End Date**") all or any portion of the Port Authority's interest in the Premises is sold, conveyed, transferred or assigned and by reason thereof the Premises become subject to the payment of Taxes prior to the Tax Protection End Date, then each Lessee may offset against up to fifty percent (50%) of its Share of the monthly installment of Basic Rental (both up to and including the Tax Protection End Date and thereafter) an amount equal to (x) the excess of (i) the amount of each installment of Taxes paid by the Lessee over (ii) the amount of the installment of Annual PILOT Rental which would have been payable by the Lessee pursuant to this Section 4.3 if the Premises had not become subject to the payment of Taxes, plus (y) interest at the Prime Rate (as defined below) on the amount described in clause (x) above from the date paid by the Lessee until reimbursed to the Lessee through the offset against Basic Rental provided for above; provided, however, that the offset provided for in this subsection 4.3.6 shall not apply to Taxes which are allocable to any period to the extent occurring on or after the Tax Protection End Date. If the amount of the offset for Taxes or any installment thereof provided for above exceeds fifty percent (50%) of a monthly installment of Basic Rental, the excess shall be carried forward, with interest at the rate provided above, and offset against subsequent monthly installments of Basic Rental; and such offset right shall remain in effect until the aggregate amount of all such excesses in respect of Taxes paid by the Lessee and allocated to periods occurring prior to the Tax Protection End Date, with interest thereon at the rate provided above, have been fully offset against fifty percent (50%) of Basic Rental installments. At the sole election and option of the Port Authority, the Port Authority may permit the

Lessee to effectuate the offset provided for in this subsection 4.3.6 against more than fifty percent (50%) of Basic Rental installments.

Section 4.4 O & M Rental.

4.4.1 *Definitions*. For the purposes of this Section and for all other purposes under this Agreement, the following terms shall have the respective meanings set forth below:

(1) "**O & M Area**" shall mean the Project Area, excepting the Development Area, the sidewalks adjacent to the Development Area and the subsurface structures of Piers A and C as more specifically shown on Exhibit J attached hereto and forming a part hereof.

(2) "**O & M Board**" shall consist of one representative of the City, one representative of each Lessee of the Development Area (which in this case of the Lessee shall be one representative of the Condominium Association) and one representative of the Port Authority, which Board shall act on behalf of an unincorporated association or a legal entity to receive payments and administer the O & M Fund and to develop a budget for the expenditure of the O & M Costs for the O & M Work. The representative of the City shall have one vote and the representative of each lessee of the Development Area shall have a fraction of one vote, of which fraction the numerator shall be the number of Development Square Feet in the building constructed or being constructed by such lessee and the denominator shall be the aggregate number of Development Square Feet in all buildings constructed or being constructed by all lessees of the Development Area (with each such representative being entitled to vote its fraction of one vote independently of all other such representatives). The Port Authority representative shall have no vote unless the City representative votes one way and all of the representatives of the lessees of the Development Area together vote another way, in which event the Port Authority representative shall cast the deciding vote.

(3) "**O & M Costs**" shall mean the following costs and expenses incurred by the O & M Board in connection with all O & M Work within the O & M Area:

(i) the costs of periodic replacement of plantings, street lighting and other electricity costs, potable and firefighter water charges and insurance;

(ii) wages, fringe benefits and other payroll costs paid to or for hourly employees for time worked at the O & M Area in connection with the O & M Work, including cleaning, operation, inspection, maintenance, repair or restoration of the O & M Area, and for time worked outside the O & M Area in connection with the O & M Work;

(iii) salaries, fringe benefits and other payroll costs paid to or for salaried employees regularly employed in connection with the O & M Work;

As used in subdivisions (i), (ii) and (iii) above:

(A) "**fringe benefits**" shall mean the items of cost which the O & M Board is obligated to pay or incur or which the O & M Board otherwise agrees to pay on the basis of wages and salaries paid to employees including, without limitation, vacation allowances, sick leave, holiday pay, birthdays, jury duty, medical checkups, lunch time, relief time, other paid time off, bonuses, pension plans, welfare and training funds, health, life, accident or other such types of insurance and any other payments made or costs incurred by agreement with such employees and personnel or in accordance with O & M Board policy with respect to such employees and personnel; and

(B) "**other payroll costs**" shall mean taxes and other payments payable pursuant to law upon the basis of wages and salaries paid to employees, including, without limitation, F.I.C.A., New Jersey State Unemployment Insurance, disability insurance and Federal Unemployment Insurance;

(iv) the cost of ordinary maintenance, repairs, improvements, alterations and changes of or to any of the O & M Area including, without limitation, payments to third party contractors for

cleaning, rubbish removal, equipment maintenance, window cleaning, exterminating and other cleaning and maintenance services furnished by contractors in the normal operation, maintenance and repair of the O & M Area;

(v) payments for electricity, water, sewer rents, fuel and other utilities and services required in connection with the O & M Area;

(vi) the cost of maintenance, repair and replacement of operating supplies, equipment and tools used in connection with the O & M Work, including, without limitation, the cost of laundry, dry-cleaning and repair of uniforms and working clothes;

(vii) the cost of any insurance carried by the O & M Board with respect to the O & M Area or with respect to any accident or casualty occurring thereon or with respect thereto, it being understood and agreed that in the event the O & M Board covers any of the foregoing by self insurance then the cost of such self insurance shall be included in O & M Costs;

(viii) payments for rental of leased equipment and supplies (including, without limitation, uniforms and work clothes) used in connection with the O & M Work;

(ix) payments to third parties for engineering, planning and other professional services related to the O & M Work, including, without limitation, payments made to an independent certified public accountancy firm for the certification of O & M Costs pursuant to the provisions of subsection 4.4.7 hereof;

(x) payments by the O & M Board of taxes, excises, levies and assessments representing direct taxes on the structures, facilities or land constituting a portion of the 0 & M Area or with respect to the operation thereof including in-lieu-of tax payments but not including corporate franchise taxes, excises, levies or assessments or any other tax, fee or charge imposed, levied or assessed upon or against the City or the O & M Board in respect of its

or their corporate existence or right to do business or against its or their income unless such taxes, excises, levies or assessments are in lieu of any tax, excise, levy or assessment which would otherwise be a direct tax on the structures, facilities or land constituting a portion of the O & M Area;

(xi) the cost of major repairs, replacements, alterations or improvements of or to the O & M Area, including interest and amortization on financing obtained by the O & M Board, the proceeds of which are used to perform such major repairs, replacement, alterations or improvements; and

(xii) any expenditure not itemized or referred to above which would be customarily and properly included as an operation and maintenance cost and as would necessarily be incurred by a prudent developer, manager or operator in the conduct of or relating to the operation of the O & M Area.

Each of the items enumerated in this definition (3) of subsection 4.4.1 shall be treated either as a current expense or shall be capitalized, and the determination of whether an item should be treated as an expense or capitalized shall be in accordance with Accounting Principles as consistently applied by the City prior to the execution of this Agreement. In no event shall any cost or expenditure be included in O & M Costs more than once even though fitting under more than one category provided for in this definition (3) of subsection 4.4.1, nor shall any cost or expenditure be included if the O & M Board has received direct reimbursement for such cost or expense from the Lessee or other Lessees in the Development Area, from the proceeds of insurance or from recoveries against any third parties.

(4) **"O & M Fund"** shall mean the fund established pursuant to the Municipal Development Agreement to pay for O & M Costs.

(5) **"O & M Work"** shall mean (a) operating, maintaining, cleaning, repairing, improving, lighting, landscaping and restoring, including replacements in, all of the O & M Area including, without limitation, periodic repair and replacement of plantings, street lighting and other electricity costs, potable and firefighter water

charges, other utility costs and insurance; (b) inspecting and maintaining the bulkhead between Newark Street and the southern edge of Pier A, as well as between the northern edge of Pier A and the southern edge of Pier C; and (c) such other work benefiting the O & M Area as is agreed to by the City and the Port Authority, provided, however, that "O & M Work" shall not include the initial installation of any O & M Area improvement provided for in the Municipal Development Agreement.

4.4.2 *Obligation to Pay Annual O & M Rental.* (a) As used in this subsection:

(1) "**Adjustment Period**" shall mean the first full calendar month following the first anniversary of the Lease Commencement Date and the same calendar month in each year thereafter during the term of the Lease.

(2) "**Annual O & M Rental**" shall mean for each year, the product obtained by multiplying the Applicable O & M Rate for that year by the DSF for the Building.

(3) "Applicable O & M Rate" shall mean (i) for the period from the Lease Commencement Date through the last day of the calendar year in which such date occurs, the applicable O & M Rate under the Block C Lease (which in June 2003 is 37¢) and (ii) for each succeeding calendar year, an amount equal to the Applicable O & M Rate for the immediately preceding year increased by the Percentage Increase.

(4) "Base Period" shall mean the first full calendar month following the Lease Commencement Date.

(5) "**O & M Rental Commencement Date**" shall mean the earlier of (i) the first day of the thirty seventh (37th) calendar month after the execution of the Exclusivity Agreement, (ii) the first day of the twenty fifth (25th) calendar month after the Lease Commencement Date and (ii) the first day of the calendar month after the date of issuance of the first temporary certificate of occupancy for any portion of the Building. Notwithstanding any other provisions of this Agreement, this date shall not be subject to delay or extension of time.

(6) "**Percentage Increase**" shall mean with respect to any calendar year, the percentage of increase in

the CPI, equal to a fraction of which the numerator shall be the CPI for the Adjustment Period immediately preceding the first day of such calendar year less the CPI for the Base Period and the denominator shall be the CPI for the Base Period; provided, however, that if such fraction is zero or less than zero, the Percentage Increase shall be zero.

(b) Commencing on the O & M Rental Commencement Date and continuing throughout the term of this Lease, Lessee shall pay to the O & M Board, Annual O & M Rental. O & M Rental shall be payable in equal monthly installments in advance on the first of each month.

4.4.3 *Use of CPI*. In the event the CPI to be used in computing any adjustment provided for in this Section has not become available by the effective date of such adjustment, the Lessee shall continue to pay Annual O & M Rental at the annual rate then in effect subject to retroactive adjustment at such time as the specified CPI becomes available; *provided, however,* that the O & M Board may at its option substitute for such CPI the latest available CPI preceding the Adjustment Period in question. In the event the Consumer Price Index shall hereafter be converted to a different standard reference base or otherwise revised or The United States Department of Labor shall cease to publish the revised Consumer Price Index, then for the purposes of this subsection there shall be substituted for the CPI such other appropriate index or indices properly reflecting changes in the value of current United States money in a manner similar to that established in the CPI used in the latest adjustment as the O & M Board may in its reasonable discretion determine. If after Annual O & M Rental shall have been fixed for any period pursuant to this subsection, the CPI used for computing such adjustment shall be changed or adjusted, then the Annual O & M Rental adjustment for such period shall be recomputed and from and after notification of the change or adjustment, the Lessee shall make payments based upon the recomputed Annual O & M Rental and upon demand shall pay any excess in Annual O & M Rental due for such period as recomputed over amounts theretofore actually paid on account of Annual O & M Rental for such period. If such change or adjustment results in a reduction in Annual O & M Rental due for any period prior to notification, the O & M Board will credit the Lessee with the difference between the amount of Annual O & M Rental actually paid and the amount of Annual O & M Rental as recomputed.

4.4.4 *Payment of Annual O & M Rental.* Annual O & M Rental shall be payable in equal monthly installments in advance on the first day of each month during the letting under this Agreement, commencing on the first day of the month specified above. If the Expiration Date occurs on a day which is other than the last day of a calendar month, the installment of Annual O & M Rental for the portion of the month in which the Expiration Date occurs shall be the amount of the installment of Annual O & M Rental payable for that month prorated on a daily basis over the actual number of days the letting is in effect in that month.

4.4.5 *O & M Area Reserve Fund.* Beginning with the Lease Commencement Date and for each calendar year during the term of the letting hereunder, if the amount of Annual O & M Rental actually paid by the Lessee and all other Lessees at the Development during any such calendar year exceeds the sum of the O & M Costs incurred during such calendar year, such excess shall be paid into an O & M Area Reserve Fund. If during any such calendar year the amount of O & M Costs incurred exceeds the amount of Annual O & M Rental actually paid by the Lessee and all other Lessees at the Development, the excess shall be paid out of the O & M Area Reserve Fund, to the extent available. If at the beginning of any such calendar year the amount in the O & M Area Reserve exceeds one-half the amount of Annual O & M Rental payable by the Lessee and all other Lessees at the Development during such calendar year, the O & M Board shall be entitled to expend such excess for such minor capital projects to enhance the O & M Area as are properly approved by the O & M Board.

4.4.6 *Lessee's Relationship to O & M Board.* The Lessee shall not be responsible for paying to the O & M Board any amounts other than those specifically provided for in subsections 4.4.2 and 4.4.3. The Lessee shall not have, solely by virtue of its being a lessee of a portion of the Development Area, (a) any responsibility for the determination of how monies in the O & M Fund and O & M Area Reserve Fund are expended or (b) any responsibility to assure that the amounts in such Fund are adequate for the purposes for which the Fund was created or (c) any responsibility to fund any excess in any year of O & M Costs over Annual 0 & M Rental paid by the Lessee and all other lessees at the Development. The Lessee shall not be included as an additional insured in any insurance maintained by the O & M Board unless it shall specifically so request and the O & M Board is able to comply with such request, in which case the

Lessee shall be responsible for paying to the O & M Board, in addition to the amounts provided for in subsections 4.4.2 and 4.4.3 above, the portion of the O & M Board's insurance premium, if any, attributable to the Lessee's being so named.

4.4.7 *O & M Board Statements.* Within one hundred twenty (120) days following the close of each calendar year during the term of the letting hereunder, the O & M Board shall render to the Condominium Association a detailed statement itemizing the O & M Costs for the calendar year for which the report is made. Such statement shall specify any payments made from the O & M Area Reserve Fund and shall also specify the amount, if any, in such Fund as of December 31, of such calendar year. Such statement shall contain a certification by an independent certified public accountancy firm of national repute, and the costs associated with such certification shall be included in O & M Costs. The O & M Board shall maintain in accordance with Accounting Principles records pertaining to O & M Costs. Such records shall be maintained for three years following the close of each calendar year occurring during the term of the letting under this Agreement. The Lessee shall have the right during normal business hours, on twenty (20) days' prior written notice to the O & M Board, to examine and audit the records of the O & M Board for all purposes of this Agreement.

4.4.8 *Survival of Obligations.* Without limiting any other term or provision of this Agreement any portion of the Lessee's obligation to pay Annual O & M Rental which shall not have been satisfied on the effective date of expiration or termination of the letting under this Agreement shall survive such expiration or termination.

Section 4.5 Subtenant Impositions.

4.5.1 *Obligation to Pay Subtenant Impositions.* It is understood and agreed that the Lessee's obligations hereunder shall include an obligation to pay all applicable Subtenant Impositions. "**Subtenant Impositions**" shall mean any of the following which are of general application in the City of Hoboken and which at any time during the term of the letting hereunder may be assessed, levied, confirmed, imposed upon or become due and payable in respect of the Premises, or which would be applicable to the Lessee were the Premises owned by and/or leased to a private corporation rather than the Port Authority and the City respectively:

(1) any applicable real property special assessments (including, without limitation, any special assessments for business improvements or imposed by any special assessment district);

(2) personal property taxes, occupancy and rent taxes, water, water meter and sewer rents, rates and charges, excises, levies and license and permit fees (other than permit fees payable pursuant to Article 4 hereof);

(3) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing; and

(4) except as otherwise expressly provided in this Agreement, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen or unforeseen, of any kind whatsoever, together with any fines and penalties and any interest or cost with respect thereto.

4.5.2 *Right to Pay in Installments.* The Condominium Association on behalf of the Unit Owners shall have the right, without the consent of the City or the Port Authority, to exercise any option granted to a taxpayer by law to pay any special assessments or other Subtenant Impositions in installments, notwithstanding the fact that interest may accrue on the unpaid installments, and if the Lessee exercises any such option it shall pay, as and when they become due, all installments which fall due during the term of the letting hereunder, together with all interest payable thereon.

4.5.3 *Right to Contest.* (a) The Condominium Association on behalf of the Unit Owners shall have the right at its sole cost and expense to challenge, contest or review by appropriate legal proceedings, or in such other manner as may be provided by law, the validity, applicability or amount of any Subtenant Imposition or other tax, assessment, levy, fee or charge which it may be required to pay pursuant to the provisions hereof, and the Lessee shall indemnify the Port Authority and the City against any claims, damages or losses that may arise or result therefrom.

(b) Such challenge, contest or review shall not, unless required by applicable law to prosecute such challenge, contest or review, be in the name of the Port Authority or the

City, and in the event such challenge, contest or review would be unavailable to the Lessee without the participation of the lessor of the Premises, the City and/or the Port Authority will join in such challenge, contest or review to the extent required for the Lessee to maintain such challenge or contest or obtain such review. The Condominium Association shall reimburse the City and/or the Port Authority for all reasonable expenses, including the reasonable cost of inside or outside legal counsel, incurred by the City and/or the Port Authority as a result of its or their participation in such challenge, contest or review.

(c) In connection with any such challenge, contest or review neither the Condominium Association nor the Lessee shall in any event raise any defense or claim involving in any way the immunity of the Port Authority, its governmental nature or the provisions of any statutes respecting the Port Authority without first obtaining in each instance the express advance consent of the General Counsel of the Port Authority.

(d) In connection with any such challenge, contest or review the Lessee shall not defer or suspend compliance with any such Requirement and shall not defer or suspend payment of any such tax, assessment, levy, fee or charge unless by law it is permissible to suspend or defer such compliance or payment and in such event the Condominium Association on behalf of the Unit Owners shall provide the Port Authority with such security as the Port Authority shall determine is reasonably appropriate to protect the Port Authority against losses or penalties which may be imposed as a result of the Lessee's actions; *provided, however,* that if any security (including regular deposits on account of Subtenant Impositions) for such suspended compliance or payment is provided to a Recognized Mortgagee, no such security need be provided to the Port Authority. In addition, in the event the Lessee is an Institutional Investor and no written notice of a default under this Agreement has been given by the Port Authority and/or the City to the Lessee which has not previously been cured, then such security shall not be required by the Port Authority.

(e) Neither the City nor the Port Authority may settle or compromise any such challenge, contest or review on behalf or in the name of the Lessee.

(f) Any refunds of Subtenant Impositions previously paid by the Lessee shall be the property of the Lessee, and

shall be promptly paid over to the Condominium Association if received by the City or the Port Authority.

4.5.4 *Nature of Obligation to Pay Subtenant Impositions.* The Lessee's obligation to pay all Subtenant Impositions shall be deemed a Rental obligation of the Lessee and from time to time upon the request of the Port Authority or the City, the Lessee through the Condominium Association shall furnish to the City and the Port Authority evidence of the payment of any Subtenant Imposition for which such evidence is requested. The Lessee agrees that in the event of any breach or default by the Lessee in payment of any Subtenant Impositions due under this Agreement, the City shall have the right to enforce payment thereof and to exercise all necessary remedies in connection therewith.

Section 4.6 Net Participation Rental.

4.6.1 *Net Participation Rental.* (a) Commencing from the Percentage/Participation Rental Commencement Date, and continuing throughout the term of this Agreement, the Hotel Unit Owner shall pay to the Port Authority a net participation rental (**"Net Participation Rental"**) in the amount of 10% of Net Revenues, subject to the prior payment to the Hotel Unit Owner of a cumulative annual return equal to 12.5% of the Total Project Cost.

(b) Net Participation Rental shall not be cumulative and shall not exceed a cap of $200,000.00 in any Lease Year, which cap shall be increased by two (2%) percent per year, compounded annually and applied after the end of every tenth Payment Period. For example, the cap starts at $200,000.00 on the Net Percentage Rental Commencement Date, remains at $200,000.00 through the end of the tenth Payment Period, escalates to $220,816.00 at the beginning of the eleventh Payment Period, remains at $220,816.00 through the end of the twentieth Payment Period and escalates to $243,799.00 at the beginning of the twenty-first Payment Period. Where a Payment Period is less than six calendar months, the cap shall be prorated accordingly.

4.6.2 *Definitions.* (a) **"Gross Revenues"** shall mean (1) any and all gross rentals, receipts, finders fees and all other fees, brokerage commissions and all other commissions, proceeds and amounts of any kind (and anything else of value) received by or for the account of the Hotel Unit Owner or any Affiliate thereof from subtenants, occupants, users, concessionaires,

licensees or permittees of the Premises for the use and occupancy of the Premises or from providers of telecommunications or other services to the Premises or otherwise directly or indirectly arising out of the Premises, any part thereof, any right or interest therein or in respect thereof, or the leasing, use, occupancy or operation of the Premises, or any part thereof, calculated in accordance with Accounting Principles and including, without limitation, the following: (A) fixed rental, minimum rental, rental computed on the basis of sales or other criteria, additional rental, escalation rental and security deposits applied in payment of any rental; (B) to the extent not included in fixed or minimum rental under subleases, charges for the providing of goods or services of any kind (including, without limitation, parking, but only if provided in the Parking Garage) by the Hotel Unit Owner or any Affiliate thereof to any subtenant, or to any other Persons in or on the Premises or in connection with the use, occupancy or operation of the Premises (even if such goods or services are provided from a location off the Premises), and amounts paid to the Hotel Unit Owner or any Affiliate thereof by third parties under concessions, licenses or other agreements granted in connection with the providing of any such goods or services; and (C) the proceeds of rental or business interruption insurance; provided, however, that "Gross Revenues" shall in all events, irrespective of any "master sublease" or other similar arrangement existing with respect to the Premises or any portion thereof, include all amounts paid for the use or occupancy of each hotel room and all fees and charges paid for the use or occupancy of each hotel room and all fees and charges paid for the use of any space in the Parking Garage. In the event that any space in the Premises is subleased to, or any goods or services of the nature described in clause (B) above are provided to, any Affiliate of the Hotel Unit Owner, there shall be included in Gross Revenues the greater of (i) the fair rental or market value of such space or goods and services and (ii) the actual rental or amount paid for such space or goods and services. In no event shall Gross Revenues include (1) amounts received as security deposits from subtenants, or the interest thereon, or administrative charges assessed in connection therewith, except when and to the extent any security deposit or interest thereon is retained by the Hotel Unit Owner and applied to rent under the sublease pursuant to which said deposit was made, (2) amounts received from subtenants or other Persons as compensation for damage done to the Premises, (3) repayments of loans (not including the interest thereon) made to subtenants or other Persons, (4) proceeds of mortgage or other

loans made to the Hotel Unit Owner or proceeds of the sale or other disposition of the Premises or any portion thereof or of interests therein or in the Hotel Unit Owner or (5) management fees received by any Affiliate of the Hotel Unit Owner in connection with the provision of management services to the Hotel Unit Owner, but excluding the proceeds of any sale or any refinance of any Hotel Residence to a Hotel Residence Owner, any rent paid directly to a Hotel Residence Owner from its own tenant, common charges paid by a Hotel Residence Owner, insurance proceeds, condemnation awards, and applicable sales, use, excise, hotel room or similar taxes which are collected directly from patrons or guests and are separately stated.

(b) **"Net Revenues"** shall mean Gross Revenues less Operating Expenses.

(c) "Operating Expenses" shall mean the following, but only as it relates to the Hotel: (i) the costs of operating and maintaining the Hotel (including, salaries, and wages, employee benefits, laundry, cleaning, operating supplies and linens;(ii) general, administrative and marketing expenses; (iii) property operation and maintenance (POM) expenses; (iv) energy and other utility costs; (v) a management fee as and to the extent any such fee is payable under the Hotel Management Agreement; (vi) the pro rata portion, properly allocable to the Hotel, of Base Rental payments, Annual PILOT Rental payments, Annual O & M Rental payments, Participation Rental payments, Taxes; (vii) insurance premiums. Operating Expenses shall expressly exclude: (x) reserves for Furniture, Fixtures and Equipment (i.e. chairs, beds dishes, glasses and other soft goods); (y) with respect to expenses paid for goods and services provided by affiliates, any amount paid in excess of market rates; and (z) debt service, any construction loan, permanent loan and/or subordinate mezzanine financing.

4.6.3 *Payment of Net Participation Rental*.

Commencing with respect to the Payment Period containing the Percentage/Participation Rental Commencement Date, the Hotel Unit Owner shall, at its own cost and expense, furnish to the Port Authority no later than sixty (60) days after the end of each Payment Period during the term of the letting under this Agreement (and sixty (60) days following the Expiration Date), a statement, in such detail as the Port Authority may require, of all Gross Revenues and Net Revenues during the Payment Period then just ended. Each such statement shall be certified as complete and correct in all material

respects by the Chief Financial Officer of the Hotel Unit Owner (if a corporation) or, if the Hotel Unit Owner is a partnership, the managing general partner of the Hotel Unit Owner, or by a member or manager of the Hotel Unit Owner, if a limited liability company. Each statement furnished to the Port Authority pursuant to this subsection shall be accompanied by payment of the Net Participation Rental, if any, due for the Payment Period for which such statement is prepared.

Section 4.7 Accounting of Net Participation and Percentage Rental.

4.7.1 *Recordkeeping.* The Hotel Unit Owner (and any Subtenant which is an Affiliate receiving Gross Revenues or Gross Room and Parking Revenues) shall keep and maintain at an office located in the State of New Jersey or New York complete and accurate books and records of account reflecting all Gross Revenues and Gross Room and Parking Revenues from which the Port Authority may verify the amounts reported on each statement furnished by the Hotel Unit Owner to the Port Authority. Notwithstanding the foregoing, the Hotel Unit Owner (and any such Subtenant) shall not be required to keep or maintain such books or records of account for any Payment Period subsequent, to five (5) years after the expiration of such Payment Period unless the Port Authority is engaged in an audit of such books and records pursuant to subsection 4.7.2 hereof, in which event such books and records shall be kept and maintained by the Hotel Unit Owner (or such Subtenant) until such audit has been completed and any amounts due as a result thereof have been paid.

4.7.2 *Inspection of Records.* The Port Authority or its designated agent shall have the right at any time and from time to time during regular business hours, upon at least five (5) Business Days' notice to the Hotel Unit Owner, at the expense of the Port Authority, to inspect and audit the Hotel Unit Owner's books and records of account for any Payment Period or Periods for the purpose of verifying the amount due as Percentage Rental and Net Participation Rental for such Payment Period or Periods. Each such inspection and audit shall be conducted at the place where the Hotel Unit Owner then regularly maintains its books and records in accordance with subsection 4.7.1 above. The Port Authority will, to the extent it is lawfully able to do so, use reasonable efforts to keep confidential and not disclose to others any information it obtains as a result of any inspection

or audit conducted by the Port Authority pursuant to this subsection 4.7.2.

4.7.3 *Underpayment.* Should any audit performed by the Port Authority or its designated agent disclose that the payment of Percentage Rental or Net Participation Rental for any Payment Period or Periods has been understated, the Port Authority shall notify the Hotel Unit Owner of the amount of the underpayment, which notification shall include a statement showing in reasonable detail the basis for the Port Authority's determination. Within ten (10) days after the Hotel Unit Owner has received such notice of underpayment from the Port Authority, the Hotel Unit Owner shall pay to the Port Authority the amount due and shall have the right, upon notice to the Port Authority within thirty (30) days after notice of the underpayment, to contest the Port Authority's determination (the "Contest Notice"). In the event an audit discloses an overpayment, a credit in the amount of the overpayment will be given against the next installment of Basic Rental due. If the parties cannot resolve any dispute with respect to the underpayment within thirty (30) days after the Port Authority receives the Contest Notice, such dispute shall be subject to the arbitration provisions set forth in Exhibit Q.

4.7.4 *Costs of Audit.* If it is determined pursuant to this Section 4.7 that any payment of Percentage Rental or Net Participation Rental was understated by more than five percent (5%), the Hotel Unit Owner shall pay the cost of the Port Authority's audit within ten (10) days of the submission to the Hotel Unit Owner of a statement in reasonable detail of such audit costs, and such payment shall constitute additional Rental hereunder; otherwise, the Port Authority shall pay the cost of the audit. For the purposes of this subsection 4.7.4, the costs of any audit by the Port Authority shall mean the fees and expenses of any outside certified public accountant engaged by the Port Authority to conduct such audit and/or the allocated payroll costs of the Port Authority personnel who perform such audit.

Section 4.8 <u>Rental Payments Through Condominium Association</u>

4.8.1 *Unit Owner's Reserve.* Each Unit Owner shall, and the Condominium Association shall require each Unit Owner to, deposit with the Condominium Association at the closing of title to its Unit a reserve equal to three months of the Unit Owner's Share of Rental (the "**Unit Owner's Reserve**"); each Unit Owner's

Reserve shall be adjusted periodically so that it shall at all times be equal to three months of such Unit Owner's Share of Rental. Together with the payment of each monthly installment of Basic Rental, the Lessee, through the Condominium Association, shall provide to the City and the Port Authority a statement setting forth as of the date of such payment, with respect to each Unit, (x) the name(s) of the Unit Owner and (y) the current balance of the Unit Owner's Reserve.

4.8.2 *Condominium Association to Hold for Benefit of City and Port Authority.* All Rental payments made by a Unit Owner to the Condominium Association pursuant to subsection 4.8.3 below, and each Unit Owner's Reserve, shall be held segregated from the other amounts paid to the Condominium Association and shall be held for the benefit of the City and the Port Authority.

4.8.3 *Payments Through Condominium Association.* Pursuant to the appointment of the Condominium Association as the Lessees' attorney-in-fact under Section 14.2.5(c) below, all payments due to the City or Port Authority under this Agreement shall, after the Condominium is created by recording the Master Deed, be paid by each Lessee to the Condominium Association, along with its share of the common expenses. The Condominium Association shall remit such payments to the City and Port Authority as and when due, utilizing each Unit Owner's Reserve, if necessary, to make timely payments of each Unit Owner's Share of Rental. If the Condominium Association has not received a Unit Owner's Share of Rental and has exhausted such Unit Owner's Reserve, the Condominium Association shall advise the City and the Port Authority of the name of the defaulting Unit Owner and the amount of such Unit Owner's deficiency.

4.8.4 *Complying Unit Owner Unaffected by Other Unit Owner's Default.* A Unit Owner who has made a timely payment of its Share of Rental due under this Agreement and maintains the balance of its Unit Owner's Reserve at the levels provided in subsection 4.8.2 above, and otherwise complies with all covenants which if violated would entitle the City or Port Authority to terminate this Agreement, shall not be affected by any other Unit Owner's failure to pay its Share of Rental or fulfill any other covenant.

ARTICLE 5. CONSTRUCTION

Section 5.1. Construction Obligation.

The Initial Developer shall, at its own cost and expense, design, construct, install and equip the Project on the Premises in accordance with the Design Controls and the terms and conditions set forth below, as follows:

(1) a "W" hotel, or substantially equivalent First Class Hotel as reasonably determined by the City and Port Authority in accordance with the Plan (such hotel, together with all associated and related systems, fixtures, furnishings, equipment, areas and facilities, and any permitted additions, modifications, and replacements, the **"Building"**; containing (x) first class retail space (the **"Retail Space"**) and (y) parking space for up to 175 but no less than 125 cars (the **"Parking Garage"**) to be substantially below grade.

(2) all lines, mains, cables, manholes, wires, conduits and other facilities required to be constructed within the Premises in connection with or relating to the mechanical, utility, electrical, storm sewer, sanitary sewer, telephone, fire alarm, fire protection, gas and other systems needed for the Building;

(3) all necessary driveways, ramps and pedestrian circulation areas (but not including contiguous sidewalks), together with all associated and related areas and facilities to the extent required for, or resulting from, the completion of the Initial Developer's construction obligations provided in this Agreement;

(4) all necessary grading and paving of ground areas and appropriate landscaping, together with all associated and related areas within the Premises, and driveway aprons serving and contiguous to the Premises.

Section 5.2 Conceptual Plan.

5.2.1 *Submission*. The Port Authority and the City have approved the Initial Developer's plan for the development of the Premises (the **"Conceptual Plan"**), including the Conceptual Design of the open space and including but not limited to, renderings and layouts of the Building, estimated commencement and completion dates and preliminary information relating to

scheduling requirements during construction, estimated times and manner of delivery of equipment and materials, and preliminary functional plans showing the proposed location of on site utility systems and all connections to utility supply lines at the perimeter of the Premises, all necessary roadways, ramps, pedestrian circulation and parking areas and appropriate landscaping (including the landscaping of open space).

5.2.2 *Review and Approval*. The Port Authority and the City have reviewed and approved the Initial Developer's Conceptual Plan for esthetic impact and compatibility in the context of the entire Development, as well as from the point of view of health, safety and traffic circulation, feasibility of construction, and consistency with the Design Guidelines.

Section 5.3 Construction Application.

5.3.1 *Designation of Design and Construction Professionals*. The Port Authority shall designate to the Initial Developer the architect or engineer for coordinating the review and processing of the Construction Application (as defined below) and inspection of construction. The Initial Developer has designated, and the Port Authority and the City have approved, the following New Jersey State licensed professional engineer or registered architect who shall be responsible for supervision of the preparation of the Construction Plans (as defined below), filing of the Construction Application and supervision of the Construction Work (the "**Initial Developer's Architect/Engineer**"): Gwathmey Siegel & Associates, 475 Tenth Avenue, New York, New York 10018.

5.3.2 *Submission*. Prior to the commencement of the Construction Work, the Initial Developer shall execute and submit to the Port Authority for approval (on behalf of itself and the City) a "Tenant Alteration Application(s)" in the form prescribed by the Port Authority (the "**Construction Application**"), which shall include final and complete plans and specifications, drawings, calculations and data (the "**Construction Plans**"), setting forth in detail the Construction Work the Initial Developer proposes to perform and the manner of and projected time periods for performing the same. Additionally, the Initial Developer's Architect/Engineer shall include in this submittal a certification that these Construction Plans are in conformance and consistent with the Design Controls and previously approved Conceptual Plans. The Construction Application, including the Construction Plans,

shall bear the seal of the Initial Developer's Architect/Engineer. The Construction Plans shall be in sufficient detail for a contractor to perform the work shown thereon and shall identify separately each item of work and shall describe in detail the systems, improvements, fixtures and equipment to be installed by the Initial Developer. The Initial Developer shall submit such additional data, detail or information as the Port Authority may request in order to complete the Initial Developer's Construction Application for Port Authority review.

5.3.3 *Port Authority Review.* (a) Following the Port Authority's receipt of the Initial Developer's Construction Application and Construction Plans, the Port Authority shall give its written approval thereto or shall request revisions or modifications thereto. The Port Authority may refuse to grant approval of the Construction Application if, in its opinion, any of the proposed Construction Work as set forth in the Construction Plans (all in such detail as may reasonably permit the Port Authority to make a determination as to whether the requirements referred to below are met) shall:

(1) be unsafe, unsound, hazardous or improper for the use and occupancy for which it is designed; or

(2) be designed for use for purposes other than those authorized under this Agreement; or

(3) be inconsistent with the approved Conceptual Plan; or

(4) be in violation or contravention of any standards, requirements or criteria set forth in the Design Controls or those conditions of the Waterfront Development Permit which relate to construction on the Premises, including, without limitation, requirements and standards with respect to radiation, noise, air pollution, water pollution and other types of pollution, or of any other provisions and terms of this Agreement; or

(5) not comply with all applicable Requirements; or

(6) not comply with all applicable rules, regulations, requirements, orders and directions of the National Fire Protection Association and the New Jersey Fire Insurance Rating Organization, and of any other board

or organization exercising or which may exercise similar functions; or

(7) not conform to the standards set forth in the "Tenant Construction Review Manual", a copy of which has been delivered to the Initial Developer.

(b) If revisions or modifications are requested by the Port Authority in accordance with the foregoing paragraph (a), the Initial Developer shall promptly revise and modify its Construction Plans accordingly. Until the Port Authority has approved the Construction Application, the Initial Developer shall continue to resubmit revised Construction Plans or additional information as required by the Port Authority.

(c) The Port Authority shall complete its initial review of the Construction Application as soon as possible, but not later than thirty (30) Business Days after the Port Authority's receipt of a Construction Application deemed by the Port Authority to be complete, and shall complete its review of each revision with twenty (20) Business Days of the Port Authority's receipt of a complete revision.

5.3.4 *Final Approval.* (a) Upon the Port Authority's approval of the Initial Developer's Construction Application, and in any event within three (3) Business Days of such approval, the Port Authority shall certify to the City that the Construction Application is approved and shall provide to the Initial Developer a construction permit (the "**Construction Permit**"). Subject to the provisions below relating to Partial Approval Work, no portion of the Initial Developer's Construction Work shall be commenced on any portion of the Premises until the Port Authority has approved the Construction Application and has issued the Construction Permit.

(b) Upon final approval of the Construction Application and issuance of the Construction Permit, the Initial Developer shall promptly commence construction so as to complete construction of the Project in accordance with the construction schedule set forth in the Initial Developer's approved Conceptual Plan, but in all events not later than the first day of the thirty sixth (36th) month following the Lease Commencement Date (the "**Construction Completion Deadline**"). The Port and the City may, at their reasonable discretion, extend the Construction Completion Deadline upon the reasonable request of Initial Developer and review of reasons for such request.

5.3.5 *This Agreement Controls.* The Initial Developer shall comply with all the terms and provisions of the approved Construction Application, *provided, however,* that in the event of any inconsistency between the terms of the Construction Application and the terms of this Agreement, the terms of this Agreement shall prevail and control.

5.3.6 Initial Developer Solely Responsible. The Initial Developer agrees to be solely responsible for any plans and specifications used by it and for any loss or damages resulting from the use thereof, notwithstanding that the same have been approved by the Port Authority or the City and notwithstanding the incorporation therein of Port Authority or City recommendations or requirements. In no event shall approval by the Port Authority of any plans, whether the Conceptual Plan, Construction Plans, Partial Approval Plans or otherwise, impose any liability on the Port Authority or the City to the Initial Developer or any other Person for any errors or defects contained in such plans or for the failure of the Building or work provided for such plans to comply with any Requirements, any such liability to be that of the Initial Developer and/or the professionals who prepared such plans. The obligations assumed by the Initial Developer in this Article, as well as elsewhere in this Agreement, shall not be limited, affected, impaired or in any manner modified by the Port Authority's approval of any Construction Application and supporting plans, specifications and contracts covering Construction Work.

5.3.7 *Effect of Transfer of Port Authority's Interest.* The Initial Developer shall have no obligation to secure from the City, and the City shall have no right to require the Initial Developer to obtain (other than as provided herein) any Construction Plan approvals or any construction, building or occupancy permit(s) with respect to the construction of the Project or occupancy of the Premises. In the event that at any time during the term of this Agreement the Port Authority for any reason ceases to have any interest in the Premises, all approvals of plans, building permits, occupancy permits and other actions theretofore issued or taken by the Port Authority pursuant to this Agreement shall remain in full force and effect and shall not in any way be affected or impaired, and thereupon the City shall become the Person which approves the Initial Developer's plans and issues building and occupancy permits in accordance with the practices and procedures generally applicable to construction work in the City of Hoboken.

5.3.8 Notwithstanding the foregoing, any Construction Plans, Construction Applications or Partial Construction Plans relating to food service shall be submitted to the City's Health Department in sufficient detail for its review. The provisions of Section 5.3 and 5.4 shall be applicable to the construction of food services except that the City shall be substituted for the Port Authority. The Initial Developer shall pay any licensing fees of the City in connection with the issuance of sanitary licenses for food services.

Section 5.4 Partial Approval Work.

The Initial Developer may wish to commence construction and installation of portions of the Construction Work prior to the Port Authority's approval of the Construction Application for all of the Construction Work for the Project. In such event the Initial Developer shall submit to the Port Authority a written request covering each portion of the Construction Work the Initial Developer wishes to commence prior to the Port Authority's approval of the complete Construction Application for all of the Construction Work for the Project (the portions of the Initial Developer's Construction Work which the Initial Developer proposes to commence prior to the Port Authority's approval of the complete Construction Application for all of the Construction Work for the Project being hereafter referred to as the "**Partial Approval Work**") together with a Construction Application covering each item of Partial Approval Work which the Initial Developer proposes to perform, to be accompanied by final and complete plans, specifications, drawings, and data with respect thereto (such final and complete plans, specifications, drawings, and data, the "**Partial Approval Plans**") setting forth in detail the Partial Approval Work to be performed. Upon the Port Authority's approval of the Construction Application covering the Partial Approval Work the Port Authority shall certify to the City that the Partial Approval Plans have been approved and shall issue to the Initial Developer a construction permit covering the Partial Approval Work (a "**Partial Construction Permit**"). The Initial Developer may thereupon proceed to perform the Partial Approval Work covered by the Partial Construction Permit, subject to and in accordance. with the following terms and conditions:

(a) The Initial Developer's performance of any item of Partial Approval Work in accordance with the Port Authority's approval shall be at its sole risk and if for any reason the Construction Plans for the balance of the Initial Developer's

Construction Work for the Project, or any part thereof, are not approved by the Port Authority or if the approval thereof calls for modifications or changes in the Partial Approval Work undertaken by the Initial Developer under any approval granted by the Port Authority pursuant to this Section, the Initial Developer shall, as directed by the Port Authority, and at the Initial Developer's sole cost and expense, either restore the portion of the Premises affected to the condition existing prior to the commencement of such item of Partial Approval Work or make such modifications and changes to such work as may be reasonably required by the Port Authority.

(b) Nothing contained in any approval given pursuant to this Section shall constitute a determination or indication by the Port Authority that the Initial Developer has complied with any Requirements which may pertain to the Partial Approval Work, and no such approval shall constitute a waiver of the Initial Developer's obligation hereunder to comply with Requirements.

(c) Each item of Partial Approval Work shall be performed in accordance with and subject to the terms and provisions of this Agreement covering Construction Work and in accordance with the approved Construction Application covering such item of Partial Approval Work, and subject to any requirements, stipulations, and provisions which the Port Authority may impose in its approval of the performance of the such item of Partial Approval Work.

(d) No Partial Approval Work performed by the Initial Developer pursuant to the provisions of this Section shall affect or limit the obligations of the Initial Developer under any prior approvals it may have obtained with respect to any Construction Work.

(e) The fact that the Initial Developer has performed any item of Partial Approval Work and that the Port Authority has consented to the performance thereof shall not affect or limit the obligations of the Initial Developer under this Agreement with respect to Construction Work. The Initial Developer specifically understands that neither the Port Authority's approval of any Construction Application covering any item of Partial Approval Work nor the performance by the Initial Developer of any item of Partial Approval Work pursuant to such approval shall obligate the Port Authority to approve any subsequent Construction Application for the balance of the Construction Work for the Project or shall create or be deemed

to create any obligation on the part of the Port Authority to permit the performance of subsequent proposed Partial Approval Work.

(f) Without limiting the generality of the provisions of this Section, it is specifically understood that the Port Authority may withhold its approval of a Construction Application and the accompanying Partial Approval Plans covering any item of Partial Approval Work if the Port Authority determines that review of subsequent items of Partial Approval Work is required before the Port Authority can approve, reject, or comment upon the Construction Application covering the proposed Partial Approval Work in question.

(g) If in the opinion of the Port Authority the Initial Developer, at any time during the performance of any portion of any item of Partial Approval Work approved pursuant to this Section, fails to comply with, or is in breach of, (x) any of the provisions of this Agreement with respect to Construction Work, (y) the provisions of the Construction Application covering such Partial Approval Work or (z) any requirements, stipulations, or provisions imposed by the Port Authority in its approval of the Construction Application covering such Partial Approval Work, the Port Authority shall have the right to cause the Initial Developer to cease all of such item of Partial Approval Work or such part of such item of Partial Approval Work as is being performed in violation of this Agreement, the Construction Application or the conditions of the Port Authority's approval. Upon written direction from the Port Authority, the Initial Developer shall promptly cease performance of all or a portion of such item Partial Approval Work, as specified. The Initial Developer shall thereupon submit to the Port Authority for its written approval the Initial Developer's proposal for making modifications, corrections or changes in or to the item of Partial Approval Work that has been or is to be performed so that the same will comply with the provisions of this Agreement, the Construction Application or the conditions of the Port Authority's approval. The Initial Developer shall not commence the Construction Work that has been halted pursuant to the foregoing until the Initial Developer has received written approval of the proposed modifications, corrections or changes.

(h) It is hereby expressly understood and agreed that neither the Port Authority nor the City has any duty or obligation of any kind whatsoever to inspect or police the

performance of any Partial Approval Work, and the rights granted hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Port Authority has not exercised its right to require the Initial Developer to cease performance of all or any part of an item of Partial Approval Work shall not constitute an agreement or acknowledgment on the part of the Port Authority that the Initial Developer has in fact performed such work in accordance with the terms of this Agreement, the Construction Application covering such work, or any of the conditions imposed in connection with the approval of such work, nor shall such fact constitute a waiver by the Port Authority of any of the requirements of this Agreement with respect to such work, or any of the requirements of the Construction Application covering such work, or any of the conditions imposed in connection with the approval of such Construction Application.

Section 5.5 Fees for Port Authority Review.

5.5.1 *Fee for Review of Construction Application*. The Initial Developer shall pay to the Port Authority a fee in connection with the Port Authority's review and approval of any Construction Application. Such fee shall be in lieu of any other building permit or other similar fee customarily charged by the City or the Port Authority for similar reviews or approvals, and shall be equal to 0.615 of one percent of the estimated cost of the Construction Work, which estimate shall be certified in the Construction Application by the Initial Developer's contractor, construction manager or the Initial Developer's Architect/Engineer. The foregoing fee shall be payable to the Port Authority at the time the Construction Application is submitted to the Port Authority for approval.

5.5.2 *Fee for Review of Changes, Modifications or Revisions*. The Initial Developer agrees to pay an additional fee in connection with any review for approval of any changes, modifications or revisions of the Construction Application which may be proposed by the Initial Developer for the Port Authority's approval, in an amount equal to 0.615 of one percent of the estimated amount (certified as provided in subsection 5.5.1) by which the cost of the Construction Work is increased or decreased by reason of such changes, modifications or revisions. The foregoing fee shall be payable to the Port Authority at the time the changes, modifications or revisions proposed by the Initial Developer are submitted to the Port Authority for approval.

Section 5.6 Contractors and Subcontractors.

5.6.1 *Lists.* The Initial Developer has heretofore provided to the City and the Port Authority listings of contractors and subcontractors from which listings the Initial Developer expects to select the contractors and subcontractors to perform the Construction Work. The listings include for each contractor and subcontractor, its name, business address and telephone number. Annexed hereto as Exhibit K and made a part hereof is a copy of such listings on which are listed contractors and subcontractors which are acceptable to the City and the Port Authority. The Initial Developer shall be free to use any and all contractors and subcontractors on such lists without further referral to or approval by the City or the Port Authority, provided only that the Initial Developer shall notify the City and Port Authority of the name and, if not previously provided, the business address and federal identification number of each contractor or subcontractor from such lists which will be utilized in the performance of Construction Work. Such notification shall be provided to the City and Port Authority prior to the commencement by the contractor or subcontractor of any part of the Construction Work.

5.6.2 *Unlisted Contractors and Subcontractors.* If at any time after the date hereof the Initial Developer determines that it may need to utilize a contractor or subcontractor not included on the lists referred to in the preceding subsection, the Initial Developer shall submit the firm name, business address and federal identification number of such contractor or subcontractor to the City and Port Authority, and shall identify the specific contract work contemplated to be performed, no later than seven (7) days prior to the contemplated date of use of such contractor or subcontractor. The City shall advise the Port Authority of any objections it may have to such contractor or subcontractor no later than three (3) days after receipt from the Initial Developer of the name of such contractor or subcontractor. The City shall thereafter advise the Initial Developer whether or not it deems such contractor or subcontractor unacceptable no later than five (5) days after its receipt from the Initial Developer of the firm's name. If no such notification is given within such five (5) day period, such contractor or subcontractor shall be deemed acceptable. If such contractor or subcontractor is not objected to or is approved by the City within the aforementioned five (5)-day period, the Initial Developer shall notify the City and Port Authority prior to the start of work by such contractor or subcontractor. The

City and the Port Authority agree not to unreasonably object to any contractor or subcontractor provided such contractor or subcontractor is not a Prohibited Party.

5.6.3 *Required Insurance.* In retaining each and every contractor and/or subcontractor, the Initial Developer shall ensure that there is included as a requirement of the contract between the Initial Developer and the contractor and/or between the contractor and subcontractor that there be submitted to the Initial Developer evidence of the insurance coverage in force which is described in the Section of this Article entitled "Insurance" and is made applicable to contractors or subcontractors.

5.6.4 *No Right of Action.* Nothing contained in this Agreement shall grant or be deemed to grant any contractor, architect, supplier, subcontractor or any other Person engaged by the Initial Developer or any of its contractors in the performance of any part of the Construction Work any right of action or claim against the City or the Port Authority or any of the other Indemnified Parties with respect to any work any of them may do in connection with the Construction Work.

5.6.5 *No Relationship.* Nothing contained herein shall create or be deemed to create any relationship between the City or the Port Authority and any such contractor, architect, supplier, subcontractor or any other Person engaged by the Initial Developer or any of its contractors in the performance of any part of the Construction Work and neither the City nor the Port Authority shall be responsible to any of the foregoing for any payments due or alleged to be due thereto for any Construction Work performed or materials purchased in connection with the Construction Work.

5.6.6 *Warranties for Benefit of Port Authority and City.* Any warranties contained in any construction contract entered into by the Initial Developer for the performance of any Construction Work which are freely assignable and have not been assigned to a Recognized Mortgagee shall be for the benefit of the Port Authority and the City, as well as the Initial Developer and shall be enforceable by the Initial Developer, the Port Authority and the City.

5.6.7 *No Contractor Rights against Port Authority or City.* Nothing contained in this Agreement shall grant or be deemed to grant any contractor, architect, supplier, subcontractor or any other person engaged by the Initial

Developer or any of its contractors in the performance of any part of the Construction Work any right of action or claim against any Indemnified Party with respect to any work any of them may do in connection with the Construction Work. Nothing contained herein shall create or be deemed to create any relationship between the Port Authority or the City and any such contractor, architect, supplier, subcontractor or any other person engaged by the Initial Developer or any of its contractors in the performance of any part of the Construction Work and neither the Port Authority nor the City shall be responsible to any of the foregoing for any payments due or alleged to be due for any work performed or materials purchased in connection with the Construction Work.

5.6.8 *No Port Authority or City Liability.* Notwithstanding any rights the Port Authority or the City may have reserved to itself hereunder, the Port Authority and the City shall have no liabilities or obligations of any kind to any contractors engaged by the Initial Developer or for any other matter in connection therewith and the Initial Developer hereby releases and discharges the Indemnified Parties of and from any and all liability, claims for damages or losses of any kind, whether legal or equitable, or from any action or cause of action arising or alleged to arise out of the performance of any Construction Work pursuant to the contracts between the Initial Developer and its contractors.

5.6.9 *Initial Developer's Payment of Contractors' Claims.* The Initial Developer shall pay or cause to be paid all claims lawfully made against it by its contractors, subcontractors, materialmen and workmen, and all claims lawfully made against it by other third persons arising out of or in connection with or because of the performance of any Construction Work, and shall cause its contractors and subcontractors to pay all such claims lawfully made against them, *provided, however,* that nothing herein contained shall be construed to limit the right of the Initial Developer to contest any claim or lien of any contractor, subcontractor, materialmen, workman or other person and no such claim shall be considered to be an obligation of the Initial Developer within the meaning of this subsection unless and until the same shall have been finally adjudicated. Subject to the foregoing, the Initial Developer shall promptly commence and diligently and continuously pursue resolution of any such claims and shall keep the Port Authority and the City fully informed of its actions with respect thereto.

5.6.10 *Performance Bonds.* The Lessee shall furnish to the Port Authority no later than fifteen (15) days prior to the commencement of any Construction Work on the Premises one or more performance bonds with respect to construction of the Project, in standard form and reasonably satisfactory to the Port Authority, issued by a reputable surety company. Such bond or bonds may be provided by the Lessee's contractor and shall also name each of the Lessee and the lender holding the mortgage (if any) on the Lessee's interest in this Agreement as an obligee. Notwithstanding the foregoing, the Initial Developer shall not be required to provide a performance bond with respect to initial construction of the Project if it delivers a guaranty of completion and an unconditional letter of credit for $9,000,000.00, both in form and substance and from entities acceptable to the Port Authority.

Section 5.7 Commencement of Construction.

The Initial Developer shall give the Port Authority at least fifteen (15) days' notice prior to the commencement of construction.

Section 5.8 Quality of Work.

5.8.1 *Quality of Work.* All Construction Work, including workmanship and materials, shall be of first class quality.

5.8.2 *Construction Standards.* All Construction Work shall be performed (x) in accordance with and subject to the terms and provisions of this Agreement covering the Construction Work, (y) substantially in accordance with the approved Construction Application and (z) subject to any reasonable requirements, stipulations and provisions which the Port Authority may impose in its approval of the performance of such Construction Work. For the purposes of this subsection 5.8.2, Construction Work shall be deemed to have been performed "substantially in accordance with the approved Construction Application" if (A) such Construction Work has been performed in compliance with all Requirements, (B) all life safety and fire protection systems included in such Construction Work, if any, have been completed and installed in accordance with the approved Construction Application for such work and (C) such Construction Work has otherwise been performed in accordance with the approved Construction Application for such work, subject to minor deviations therefrom which do not affect the quality of the Construction Work, the structural integrity of

the Building, the functioning of any Building systems or the compliance of the Building with the Design Controls and Requirements. The Initial Developer shall redo, replace or construct at its own cost and expense, any Construction Work not done substantially in accordance with the approved Construction Application or the provisions of this Agreement.

Section 5.9 Construction Supervision and Inspection.

5.9.1 *Initial Developer's On-Site Engineer.* During the performance of the Construction Work for the Project, including any Partial Approval Work, the Initial Developer shall provide a State of New Jersey licensed engineer or registered architect employed by the Initial Developer's Architect/Engineer to perform on-site construction supervision of the Construction Work and witness all special inspections required under the New Jersey Uniform Construction Code sufficient to enable the Initial Developer's Architect/Engineer to issue the Initial Developer Certificate, as required below in the Section entitled "Completion".

5.9.2 *Port Authority Field Engineer.* (a) The Port Authority will assign a field engineer(s) exclusively to the Project Area commencing upon the start of the Construction Work and, at all times thereafter during the construction period of the base building.

(b) The appointment of any such engineer shall not give the Port Authority any rights, powers or obligations not otherwise herein provided for and, without limiting the generality of the foregoing, shall not affect any of the other provisions of this Article or any rights of the City or the Port Authority hereunder. It is expressly understood and agreed that the Port Authority's field engineer assigned pursuant to this subsection has no authority to approve (x) any change or modification to the approved Construction Application with respect to any portion of the Construction Work, (y) the construction by the Initial Developer of any portion of the Construction Work which is not in accordance with the Construction Application approved by the Port Authority or (z) any variation by the Initial Developer from compliance with the terms of this Agreement, nor does such field engineer have authority to certify that the Construction Work has been performed in accordance with the approved Construction Application covering such Construction. It is hereby further understood and agreed that should such field engineer give any directions or approvals with respect to the Initial Developer's

performance of any portion of the Construction Work which are contrary to the provisions of this Agreement or the approved Construction Application, such directions or approvals shall not affect the obligations of the Initial Developer as set forth herein, nor release or relieve the Initial Developer from compliance therewith.

5.9.3 *Port Authority's Right of Inspection.* The Port Authority shall have the right, through its duly designated representatives, to inspect the Construction Work and the plans and specifications thereof, at any and all reasonable times during the progress thereof and from time to time, in its discretion, to take samples and perform testing in any part of the Construction Work.

5.9.4 *Non-Compliance.* (a) In the event that the Port Authority shall determine that the Initial Developer has failed at any time during the performance of any portion of the Construction Work under this Agreement to comply with the requirements of the approved Construction Application or the provisions of this Agreement relating to the Construction Work, the Initial Developer shall, at the Port Authority's direction, submit to the Port Authority for its written approval the Initial Developer's proposal for making modifications, corrections, or changes or to the Construction Work that has been or is to be performed so that the same will comply with the provisions of this Agreement.

(b) In the event that such non-compliance is material and substantial, the Port Authority shall have the right to cause the Initial Developer to cease such part of the Construction Work as is being performed in violation of this Agreement. Upon direction from the Port Authority (which need not be in writing in the event of an emergency, including without limitation any non-compliance involving life safety issues) specifying the reasons therefor in reasonable detail, the Initial Developer shall promptly cease construction of the portion of the Construction Work specified.

(c) The Port Authority shall review such modifications, corrections or changes proposed by the Initial Developer within the time frames provided in Section 5.3.3 with respect to revisions, *provided, however,* that if the scope of any such modifications, corrections or changes would be substantially equivalent to an alteration under Section 6.1 or 6.2 below, the Port Authority shall review the same within the

time frames provided in Section 5.3.3 for an initial review of a Construction Application.

(d) If the Port Authority has required the Hotel Lessee to cease performance of the construction work in accordance with paragraph (b) above, the Initial Developer shall not resume construction of any portion of the Construction Work that has been so halted until it has received the Port Authority's written approval of the modifications, corrections or changes in or to the Construction Work that the Initial Developer proposes to make.

5.9.5 *No Duty to Police*. Notwithstanding the foregoing, it is hereby understood and agreed that the Port Authority has no duty or obligation of any kind whatsoever to inspect or police the performance of the Construction Work, and the rights granted to the Port Authority hereunder shall not create or be deemed to create such a duty or obligation. Accordingly, the fact that the Port Authority has not required the Initial Developer to submit a proposal pursuant to paragraph 5.9.4(a), or has not exercised its right to require the Initial Developer to cease its construction of all or any part of the Construction Work pursuant to paragraph 5.9.4(b), shall not constitute an agreement or acknowledgment on the part of the Port Authority that the Lessee has in fact performed such work in accordance with the terms of this Agreement and the approved Construction Application, nor shall such fact constitute a waiver by the Port Authority of the requirement of compliance by the Lessee in all material respects with the provisions of this Agreement and the approved Construction Application.

Section 5.10 Studies and Forecasts.

5.10.1 *Engineering Studies*. Prior to the commencement of construction and at all times during construction, the Initial Developer shall submit to the Port Authority all engineering studies with respect to construction and samples of construction materials as may be required at any time and from time to time by the Port Authority. In addition, except under emergency circumstances, the Initial Developer shall notify the Port Authority prior to the Initial Developer's reporting to any governmental authority any Hazardous Substances discovered in connection with or arising out of the performance of the Construction Work.

5.10.2 *Construction Period Forecasts*. Prior to the commencement of construction and upon the request of the Port

Authority from time to time thereafter, the Initial Developer shall submit to the Port Authority its forecasts of the number of people who will be working at various times during the period of construction and the term of the letting hereunder at the Premises, the expected utility demands, noise profiles and such other information as the Port Authority may reasonably require. The Initial Developer shall keep the Port Authority currently advised as to any material changes in the foregoing information.

Section 5.11 Risk of Loss, Indemnification.

5.11.1 *Indemnification*. The Initial Developer hereby assumes the risk of loss or damage to all of the Construction Work prior to the completion thereof and the risk of loss or damage to all property of the Port Authority, the City or others and injury (including death) to persons directly or indirectly arising out of or in connection with the performance of the Construction Work, including without limitation any and all Environmental Requirements and Environmental Damages. The Initial Developer shall itself and shall also require its contractors to indemnify the City and the Port Authority, the Mayor of the City, each Commissioner of the Port Authority and each officer, director, agent, elected official, attorney for, employee and representative of the City and the Port Authority (each, an "**Indemnified Party**", and collectively, the "**Indemnified Parties**"), against the following damages and claims or losses arising out of the performance of the Construction Work, whether such risks and claims or losses arise from the acts or omissions of the Initial Developer, any contractors of the Initial Developer, any Indemnified Party, third persons, acts of God or the public enemy or otherwise, excepting only risks, claims or losses which result solely from the intentional misconduct or gross negligence of any Indemnified Party with respect to the Construction Work:

(1) risks of loss or damage to all or any part of the Construction Work prior to the completion thereof, it being understood and agreed that in the event of any such loss or damage, the Initial Developer shall forthwith repair, replace and make good the work without cost or expense to the City or the Port Authority; and

(2) risk of loss or damage to any property of the City or the Port Authority arising out of or in connection with the performance of the Construction Work, it being understood and agreed that the Initial Developer

shall indemnify the City and the Port Authority and hold each of them harmless from all such loss or damage; and

(3) risk of all claims and demands, just or unjust, of third Persons arising or alleged to arise out of the performance of the Construction Work, it being understood and agreed that the Initial Developer shall indemnify and hold harmless each Indemnified Party against and from all such claims and demands, and for all expenses (including reasonable attorneys' fees) incurred by any Indemnified Party in the defense, settlement or satisfaction thereof, including without limitation claims and demands for death, for personal injury or for property damage, direct or consequential.

5.11.2 *Defense of Claims.* (a) If so directed, the Initial Developer (or its contractor) shall at its own expense defend any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining the express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provision of any statutes respecting suits against the Port Authority.

(b) In the event that any action or proceeding is brought against the Port Authority or the City by reason of any claims covered by the foregoing indemnity, the Initial Developer shall, upon notice from the Port Authority and/or the City (as applicable), resist or defend such action or proceeding by counsel reasonably satisfactory to the Port Authority and/or the City (as applicable). Notwithstanding the foregoing, if such claim is covered by insurance, then defense counsel appointed by the applicable insurer shall be deemed to be satisfactory so long as the insurer has not reserved rights or disclaimed coverage as to part or all of such claim. The Port Authority and/or the City, as applicable, will give reasonably prompt notice to the Initial Developer of any action or proceeding brought against the Port Authority and/or the City (as applicable) by reason of any claims covered by the foregoing indemnity, together with copies of any documents served on the Port Authority and/or the City (as applicable) in connection therewith. The Port Authority and/or the City (as applicable)

shall not defend such action or proceeding so long as the Initial Developer is diligently and competently doing so.

(c) In no event shall any Indemnified Party have the right independently to settle any such claim without the consent of the Initial Developer; provided, however, that upon at least ten (10) days' prior written notice from any Indemnified Party to the Initial Developer, such Indemnified Party may settle any such claim if (i) the City and the Port Authority, on behalf of themselves and all other Indemnified Parties, each release the Initial Developer in writing of its obligation to indemnify the Indemnified Parties in respect of such claim and (ii) within such ten (10) day period the Initial Developer does not give written notice to the City and the Port Authority objecting to such settlement on the ground that it will prejudice the Initial Developer in the defense of such claim on its own behalf. The Initial Developer shall have the right to settle any such claim without the approval of any Indemnified Parties provided that the Initial Developer (where such claim is not covered by insurance) has the financial ability to pay such settlement in full and makes adequate provision for the payment of such settlement. Any such settlement must fully release the Indemnified Parties from any liability for or in respect of the claim in question. In the case of any such claim which is not covered by insurance, the Initial Developer shall keep the Port Authority and the City apprised of any such settlement negotiations.

Section 5.12 Insurance.

5.12.1 *Liability Insurance.* (a) In addition to all policies of insurance otherwise required in this Agreement, the Initial Developer in its own name as insured and with the Indemnified Parties as additional insureds shall procure and maintain a policy or policies of Commercial General Liability Insurance, including without limitation coverage with a broad form property damage endorsement, premises-operations, products liability/completed—operations (for a minimum of three (3) years after the Construction Completion Date) and explosion, collapse and underground property damages coverage, personal injury and independent contractors and providing for the coverage in the limit set forth below; and Commercial Automobile Liability Insurance covering owned, non—owned and hired vehicles, automatically covering newly acquired vehicles, and providing for coverage in the limit set forth below; with contractual liability endorsements covering the obligations assumed by the

Initial Developer hereunder, including without limitation the Initial Developer's indemnification obligations and the indemnification obligations required of the Initial Developer's contractors pursuant to Section 5.11.

(b) The foregoing insurance shall be in not less than the following amounts:

Minimum Limits	
Commercial General Liability Insurance:	
Combined single limit per occurrence for death, bodily injury and property damage liability	$10,000,000.00
Commercial Automobile Liability Insurance (covering owned, non-owned and hired vehicles):	
Combined single limit per occurrence for death, bodily injury and property damage liability	$10,000,000.00

(c) In addition to the foregoing, the Initial Developer shall provide the foregoing insurance by requiring each contractor engaged by it for the Construction Work to procure and maintain such insurance in the contractor's name as insured and with the Port Authority, the City and the Initial Developer as additional insureds, including contractual liability endorsements referred to in paragraph (a) above.

(d) The foregoing insurance shall not contain any care, custody or control exclusions, or any exclusion for bodily injury to or sickness, disease or death of any employee of the Initial Developer or of any of its contractors which would conflict with or in any way impair the coverages resulting from the City's and the Port Authority's status as additional insureds or coverage under the contractual liability endorsement.

(e) Each policy of liability insurance shall also provide or contain an endorsement providing that the protections afforded the named insured thereunder with respect to any claim or action against the named insured by a third person shall pertain and apply with like effect with respect to any claim or

action against the Initial Developer by an Indemnified Party, but such endorsement shall not limit, vary, change, or affect the protections afforded the Indemnified Parties thereunder as additional insureds. In addition, each policy of insurance shall also provide or contain an endorsement providing that the protections afforded the Indemnified Parties thereunder with respect to any claim or action against any Indemnified Party by the Initial Developer or its contractor(s) shall be the same as the protections afforded the named insured thereunder with respect to any claim or action against the named insured by a third person, as if the Indemnified Parties were the named insureds thereunder.

(f) Each policy of liability insurance shall also provide or contain an endorsement providing that the insurer shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of any tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

5.12.2 *Workers' Compensation Insurance*. The Initial Developer shall procure and maintain Workers' Compensation Insurance in accordance with the requirements of law.

5.12.3 *Builder's Risk Insurance*. The Initial Developer shall procure and maintain, or cause to be procured and maintained, Builder's Risk (All Risk) Completed Value Insurance, including coverage for flood and earthquake, on a complete value form covering the Construction Work during the performance thereof including material delivered to the Premises but not attached to the realty, or existing property, until the Construction Work is completed. Such policy shall name the Recognized Mortgagee, the Port Authority and the City as insureds, as their interests may appear, with loss payable to the Recognized Mortgagee and adjusted by the Recognized Mortgagee. If there is no Recognized Mortgagee, losses shall be payable to the Port Authority, and the policy shall provide that the loss shall be adjusted with the City, the Port Authority and the Initial Developer. The proceeds of such insurance shall be used solely for the repair, replacement, rebuilding or other performance of the Construction Work.

5.12.4 *General Requirements*. (a) The insurance required hereunder shall be maintained in effect during the performance

of the Construction Work and shall be in compliance with and subject to the provisions of Article 10 hereof, entitled "Insurance".

(b) Any property insurance policy provided for in this Section may be carried in blanket form and any liability insurance may be carried in the form of a primary and one or more umbrella policies.

Section 5.13 Relocation of Connection Points.

If, after the points of connection for the Standard Utilities have been fixed, as set forth in an approved Construction Application, there are then changes or modifications to any of the Construction Plans requiring the relocation of any or all lines, mains, conduits, pipes, cables, wires, manholes, fittings and other items which service the Premises, then the Initial Developer shall be solely responsible for the cost of such relocation to the extent that (x) any work theretofore performed at the expense of the Port Authority or the City has to be changed, altered or replaced and/or (y) the cost of installation of any of the foregoing by and at the expense of the Port Authority or the City is increased by reason of such relocation.

Section 5.14 Pollution to be Minimized; Safety.

Prior to and during the performance of the Construction Work the Initial Developer shall take appropriate measures to prevent erosion of the soil and the blowing of sand or materials and if necessary shall erect fencing or partitioning and cover open areas with asphaltic emulsion or similar materials. The Construction Work shall be performed in such a manner that there will be at all times during construction a minimum of air pollution, water pollution or any other type of pollution and a minimum of noise emanating from, arising out of or resulting from such construction. Subject to the provisions of this Agreement, the Initial Developer shall construct such customary structures, fences, equipment, devices and other facilities as the Port Authority shall deem reasonably necessary or appropriate to accomplish the objectives set forth in this Section. In addition to its other obligations under this Section, the Initial Developer shall take appropriate measures to (x) safeguard the work so as to avoid, to the extent possible, injury or damage to persons or property and (y) control rodents and insects during the performance of the

Construction Work, and shall provide extermination services as required.

Section 5.15 Soil Issues.

5.15.1 *Disposition of Matter.* The Initial Developer, subject to complying with all Requirements, including all Environmental Laws, shall be permitted to use, in the performance of the Construction Work on the Premises, any soil, dirt, sand or other matter (in this subsection, collectively, the "**Matter**") excavated by the Initial Developer during the course of the Construction Work. Any Matter not so used by the Initial Developer shall, if requested by the City prior to the disposition thereof by the Initial Developer, be delivered by the Initial Developer, at the Initial Developer's expense, to such location within the Project Area as shall be designated by the City. The Initial Developer shall have no interest in the proceeds, if any, of the sale or other disposition of any Matter as to which the City has delivered such a request to the Initial Developer. Unless the City requests delivery of any Matter to it as provided above, the Initial Developer shall dispose of the same at its expense without further instruction from the City, subject to the Initial Developer's compliance with Requirements and its obligations under the following subsection.

5.15.2 *Disposition of Hazardous Substances.* Without limiting any other term or provision of this Agreement, the Initial Developer shall be fully responsible, at its sole cost and expense, for the remediation and final disposition, with the Initial Developer named as the generator, of any Hazardous Substance discovered, tested or sampled as part of the Construction Work. All such testing or sampling shall be performed by a laboratory duly approved or certified by a governmental agency having jurisdiction. Prior to final disposition of any such Hazardous Substance, the Initial Developer shall submit to the Port Authority certifications stating the type and amount of material disposed, the method of disposal, the owner and the location of the proposed disposal facility and the name and address of the transporter. The format of such certifications, including the appropriate operating permits of the disposal facility and the transporter, shall follow the requirements of the governmental agencies having jurisdiction.

5.15.3 *Remedial Action Workplan/Report and Deed Notice.* The Initial Developer shall work with the City's environmental consultant to prepare and secure NJDEP approval of an amendment

to the approved Remedial Action Workplan (the "**RAW**"), describing the Initial Developer's plan to comply with the provision of the NJDEP Waterfront Development Permit for the Hoboken Waterfront Development Project requiring that the Premises be "capped" with concrete or equivalent clean fill material. Upon NJDEP's approval of the RAW amendment, the Initial Developer shall work with the City's environmental consultant to prepare a "Remedial Action Report", describing and documenting the work actually done pursuant to the RAW, as so amended, which Report will also include a proposed "Deed Notice" for Port Authority signature and filing. The Initial Developer shall abide by and perform all the pertinent provisions of the Deed Notice as approved by NJDEP, including the preparation and filing of the required Biennial Certifications with NJDEP.

Section 5.16 Completion.

5.16.1 *Initial Developer Certificate.* When the construction of the Project is completed and the Building is ready for use, the Initial Developer shall advise the Port Authority to such effect and shall deliver to the Port Authority a certificate signed and sealed by the Initial Developer's Architect/Engineer, certifying that the Construction Work has been constructed in accordance with the approved Construction Application and the provisions of this Agreement and that all life safety systems have been completed in accordance with the approved Construction Application, and in compliance with all applicable Requirements (such certificate, the "**Initial Developer Certificate**").

5.16.2 *Additional Documentation.* Together with the Initial Developer Certificate, the Initial Developer shall deliver to the Port Authority

> complete copies of (w) the Initial Developer's Architect/Engineer's final inspection reports, (x) drawings and analysis of the fire sprinkler/protection systems constructed pursuant to the approved Construction Application, (y) HVAC balancing reports and (z) all equipment manuals and warranties. Within 120 days of the issuance of the Certificate of Completion (as defined below), Initial Developer shall deliver to the Port Authority two (2) sets of "as built" drawings of the Construction Work, together with one copy of such "as built" drawings in an electronic CADD data file (Autocad Release 13 or later).

5.16.3 *Certificate of Completion*. Within three (3) Business Days of the date of the Port Authority's receipt of the Initial Developer Certificate, the Port Authority shall inspect the Construction Work, and if the same has been completed as certified in the Initial Developer Certificate, the Port Authority within three (3) Business Days thereafter will issue a "Permit to Occupy or Use" (the "**Certificate of Completion**") with respect to the Construction Work, subject to the condition that all risks with respect to the Building, as well as the Construction Work and any liability therefor, for negligence or other reason, shall be borne by the Initial Developer. The Initial Developer shall not use or permit the use of the Building until the Initial Developer has received the Certificate of Completion. The date of the Certificate of Completion shall be referred to as the "**Construction Completion Date**". With respect to the initial Construction Work, the Initial Developer shall not have any obligation to secure a Certificate of Occupancy or permit to occupy or use from the City except with respect to sanitary licenses for food services.

5.16.4 *Partial Occupancy*. (a) The Initial Developer may wish to occupy a portion of the Building prior to the Construction Completion Date. In addition to and without affecting the foregoing obligations of the Initial Developer and provided that the Construction Application has been approved by the Port Authority, when an integral and material portion of the Construction Work is substantially completed and is properly usable, the Initial Developer may advise the Port Authority to such effect and may deliver to the Port Authority a certificate of an authorized officer of the Initial Developer and of the Initial Developer's Architect/Engineer certifying that such portion of the Construction Work has been constructed in accordance with the approved Construction Application and the provisions of this Agreement, and in compliance with all applicable Requirements and that all life safety systems have been completed in accordance with the approved Construction Application and in compliance with all applicable Requirements, and specifying that such portion of the Construction Work can be properly and safely used even though the Construction Work has not been completed, and that the Initial Developer desires such use (the "**Partial Occupancy Request**").

(b) Within five (5) Business Days of the date of the Port Authority's receipt of the Partial Occupancy Request, the Port Authority shall inspect the portion of the Construction Work identified in the Partial Occupancy Request, and if the

same has been completed as certified by the Initial Developer, the Port Authority, within three (3) Business Days thereafter, may in its sole discretion issue a partial approval with respect to such portion of the Construction Work, permitting the use of such portion of the Building for the purposes set forth in this Agreement (each such document, a "**Certificate of Partial Completion**"), subject to the condition that all risks thereafter in connection with such portion of the Building and the construction and installation of the same, and any liability therefor for negligence or other reason, shall be borne by the Initial Developer, and subject to such further conditions, restrictions and requirements as the Port Authority may at that time impose.

(c) If at any time prior to the Construction Completion Date the Port Authority reasonably determines that such portion of the Building or the use thereof is unsafe or in violation of the provisions of this Agreement, the Initial Developer shall promptly, upon receipt of a written notice from the Port Authority, cease the use of such portion of the Building which had been in use pursuant to the Certificate of Partial Completion.

Section 5.17 Title to Construction Work.

Title to all the Construction Work shall pass to the Port Authority as the same or any part thereof is erected, constructed or installed and becomes a part of the Premises. The Lessee shall execute and deliver such instruments as the Port Authority may reasonably require to effect the aforesaid passage of title. Notwithstanding the foregoing, however, after the Construction Completion Date and issuance of a Certificate of Completion by the Port Authority, the Lessee may elect to retain title to the Building, improvements and fixtures so long as this Agreement is in full force and effect and the Lessee is not then under a notice of termination from the City or the Port Authority. The Lessee's title to the Building (other than personal property, but including improvements and fixtures), shall obtain after construction thereof is completed as aforesaid, and then only during the term of the letting under this Agreement and upon the cessation by expiration or termination of the letting under this Agreement, such title to the Building, improvements and fixtures shall immediately and automatically vest in the Port Authority without the doing of any other or further act, absolutely and free and clear of any encumbrances, liens or third party interests therein.

Notwithstanding the Lessee's retention of title, the Building, improvements and fixtures shall be and constitute a part of the Premises under this Agreement, subject to all of the terms and provisions of this Agreement, and the Lessee shall not have the right to remove any portion of the Building at any time during the term of the letting under this Agreement or thereafter. Neither the City nor the Port Authority makes any statements or representations about the potential tax consequences of the Lessee's retention of title to the Building.

Section 5.18 Certain Infrastructure Work.

If requested by the Port Authority, the Initial Developer shall install, at the expense of the Port Authority in accordance with subsection 5.18.1 below, the sidewalks, street trees and irrigation system outside the Premises in accordance with the design specifications approved for Block C (excepting that the pavers will be placed on a concrete base instead of sand base).

5.18.1 The foregoing reimbursement will be paid to the Initial Developer following completion of such work, as follows:

(a) Upon the receipt by the Port Authority of the Initial Developer Certificate (as defined in subsection 5.16.1 of the Lease) and the delivery by the Port Authority to the Initial Developer of the subsequent Certificate of Completion for the sidewalk work (as defined in subsection 5.16.3 of the Lease), the Initial Developer shall furnish to the Port Authority a full statement of the cost of the work, certified by a responsible officer of the Initial Developer.

(b) After examination and approval of such certified statement and after such further examination of the records and books of account of the Initial Developer as the Port Authority may deem reasonable, the Port Authority will pay to the Initial Developer an amount equal to the actual cost of the work, provided that the amount of such reimbursement shall not exceed $400,000.00.

Section 5.19 Open Space. Initial Developer acknowledges the need to ensure that all open spaces in connection with the Project are functional and accessible to the public and agrees to use a Nationally Recognized Landscape Architect (as hereinafter defined). "Nationally Recognized Architect" shall mean a landscape architect which has been commissioned nationally and has been recognized through awards from state

chapters of the American Society of Landscape Architects or has been nominated or confirmed as a fellow in the American Society of Landscape Architects.

Section 5.20 Coordination of Construction.

5.20.1 Initial Developer acknowledges and is aware that construction activities of other developers will be in progress on Parcels 5 and 6 in Block B, including, without limitation the construction of a common service entrance on River Street, the canopy over such entrance, and the sidewalks adjacent to both buildings. Initial Developer shall coordinate its construction activities at the Premises with other construction activities taking place on Block B. In addition, Developer's construction activities shall not obstruct or hinder ingress to or egress from Parcel 5 and 6 of Block B.

5.20.2 Initial Developer agrees to refrain from generating any construction related noise between the hours of 8:00 p.m. and 8:00 a.m. Monday-Friday and the hours of 8:00 p.m. and 9:00 a.m. on Saturdays and Sundays.

Section 5.21 Staging Areas.

The Initial Developer shall be permitted to use for staging its construction activities for the Building those areas which have been agreed upon by the City's Mayor, through its Department of Community Development, as shown on Exhibit L, and as can reasonably be made available for staging construction activities, subject to the Port Authority's review and the Developer's taking measures with respect to construction and safety issues. Initial Developer shall pay the City a fee of $10,000.00 for the use of such staging areas for each six month period.

Actual use of the staging areas by the Initial Developer during its Construction activities shall be subject to the review of the Port Authority's Chief Engineer with respect to construction and safety issues.

ARTICLE 6. ALTERATIONS AND IMPROVEMENTS

Section 6.1 Alterations Which Require Consent.

Following issuance of the Certificate of Completion, the Lessee shall not, without the prior written consent in each instance of the Port Authority, do any of the following:

(i) make any alteration or change in the exterior of the Building or make any change or alteration which would be in violation of the Design Controls; (ii) demolish the Building in whole or in part; (iii) make any change or alteration which affects the foundations or load-bearing structure of the Building; or (iv) erect any additional buildings or improvements on the Premises. If the Lessee shall desire to perform any work of the nature described in this Section 6.1, the Lessee shall, to the extent such provisions are not patently inapplicable to the work being performed, comply with the applicable provisions of Article 5 in connection therewith. In the event any work which requires the consent of the Port Authority under this Section 6.1 is performed by the Lessee without such consent, upon reasonable notice so to do from the Port Authority, the Lessee shall remove the unauthorized installation, construction, improvement, alteration, modification or addition or, at the option of the Port Authority, cause such unauthorized installation, construction, improvement, alteration, modification or addition to be changed to the reasonable satisfaction of the Port Authority. In the event the Lessee fails to comply with any such direction, the Port Authority may remove or change such unauthorized installation, construction, improvement, alteration, modification or addition and the Lessee shall pay to the Port Authority on demand one hundred thirty percent (130%) of the cost of such removal or change.

Section 6.2 Alterations and Work Not Requiring Consent.

Except as provided in Section 6.1, but subject to the requirements of Section 6.3, the Lessee shall have the right, without the consent of the City or the Port Authority, to make any and all alterations or changes in or to the Building and/or the Premises (including, without limitation, interior alterations and changes to prepare space in the Building for occupancy by subtenants), to make repairs and replacements in or to the Building and to perform other work in and about the Premises. The Lessee may also permit subtenants to perform interior work within the space leased by them without the consent of the Port Authority or the City except to the extent that such consent is required under Section 6.1 hereof and subject to the provisions of Section 6.3 hereof. All work performed pursuant to this Section 6.2 (whether by the Lessee or any subtenant) shall be performed in good and workmanlike manner and in compliance with all Requirements and with all applicable rules, regulations, requirements, orders and directions of the National Board of Fire Underwriters and the Insurance Services

Office of New Jersey, and of any other board or organization exercising or which may exercise similar functions.

Section 6.3 Review and Approval Procedures.

Whether or not Section 6.1 requires the Port Authority's consent to any of the work proposed to be performed by the Lessee or any subtenant, if such work requires the filing and approval of plans under any Requirements, then the following specific provisions (without limiting the generality of all other applicable provisions of this Agreement) shall apply to review of plans and inspection and approval of the Construction Work: Section 5.3 (relating to Construction Applications), Section 5.5 (relating to fees), subsection 5.9.1 (relating to supervision and inspection of construction) and subsections 5.16.1, 5.16.2 and 5.16.3 (relating to completion of construction), with all certification and sealing to be done by a State of New Jersey licensed professional engineer or registered architect retained by the Lessee or the subtenant, as the case may be.

ARTICLE 7. SERVICES AND UTILITIES

Section 7.1 City Services.

7.1.1 *Services Provided Without Additional Compensation.* The City shall furnish to the Premises in substantially the same manner as elsewhere in Hoboken generally and without additional compensation, all municipal services it provides without additional compensation to other commercial properties in Hoboken, including without limitation the following services, it being understood that the City's obligation to deliver such services will be in accordance with the City's ordinances and laws generally applicable elsewhere in Hoboken, as the same may be amended from time to time: (i) fire protection service, (ii) sanitation service, including pick up and disposal of garbage from commercial premises but only to the extent made available in the City of Hoboken for comparable commercial properties, excluding therefrom any and all construction debris, residue or materials, and (iii) normal police services.

Notwithstanding anything to the contrary, the foregoing provisions shall be an obligation of each Lessee performing work and/or alterations. The Condominium Association shall be responsible for the compliance by the Lessee of all obligations

hereunder and shall coordinate all necessary review, approval and payment of fees among the Port Authority and Lessee.

7.1.2 *Snow Removal*. Notwithstanding the aforesaid, snow removal for all areas within the Premises and for all contiguous sidewalk areas outside of the Premises shall be the responsibility of the Lessee.

7.1.3 *Utilities*. The City shall cause to be provided or assist in causing to be provided to the Premises potable water and sewerage service (including treatment and disposal thereof) on generally the same terms and conditions and at the same rates and charges as are applicable and are charged to other users for the same type, class and amount of consumption or service in the City of Hoboken generally.

Section 7.2 Grant of Rights of Way.

The City, in its capacity as landlord hereunder or as a municipality, as applicable, hereby agrees to grant (if requested to do so by the Lessee) to recognized public utilities (or, in the case of cable television or other services, responsible companies which possess City franchises to operate in Hoboken where such franchises are required) who are suppliers of water, gas, electricity, telephone, cable television services, alarm services or other similar types of services operating in the vicinity, a right of way or rights of way under the Project Area from the public streets outside the Project Area to the Premises for the sole purpose of supplying such service or services to the Premises. No charge shall be made by the City either to the Lessee or any such utility or supplier for the granting of any such easement.

Section 7.3 No City Responsibility.

Except as expressly provided in this Agreement, the City, in its capacity as lessor under this Agreement (as opposed to its capacity as a municipality), and the Port Authority shall have no obligations or responsibility whatsoever with respect to the performance of any services or providing, supplying or furnishing to the Lessee or to any subtenant or to the Premises any utilities or services.

Section 7.4 Payment for Utilities.

7.4.1 *Generally*. The utility providers or the City shall meter or caused to be metered the services in a manner

similar to the practice elsewhere in the City of Hoboken for like properties now or in the future and shall bill or cause to be billed the Lessee directly therefor, and it shall be the Lessee's responsibility to pay the charges therefor.

7.4.2 *Water and Sewer Bills*. The Lessee shall promptly pay all water and sewer bills covering its own consumption, including without limitation consumption during the construction period. Such payment shall include any factors which may have been included by the appropriate Governmental Authority as a sewer rent or other charge for the use of a sewer system. In the event that any such water/sewer bills shall remain unpaid for a period of two (2) months after the bill therefor becomes due and payable, or in the event that any such bill remains unpaid at the expiration or earlier termination of the letting under this Agreement, the City or the Port Authority may pay such bill and any interest or penalties thereon, and the total payment or payments at any time so made shall constitute additional Rental, payable to the City or the Port Authority, as the case may be, on demand. The foregoing shall not be deemed to limit in any way the rights or remedies of the City and the Port Authority under this Agreement or otherwise.

Section 7.5 Heating of Building.

The Lessee agrees to heat the enclosed portions of the Building to a sufficient temperature so that the plumbing, fire-protection and sprinkler systems, if any, will not be damaged by reason of low temperatures.

Section 7.6 Lessee Responsible For Systems.

Without limiting or affecting any other term or provision of this Agreement, the Lessee shall be solely responsible for the design, adequacy and operation of all equipment, systems, piping systems, tie-ins, utility lines and connections, mechanical, electrical, communications and other systems which are located within the boundaries of and service the Premises or any portions thereof, and neither the City nor the Port Authority shall have any responsibility for heating or cooling the Building, for electrical distribution therein or for the maintenance of any specified temperature or comfort level or electrical usage.

Section 7.7 Effect of Delay or Failure to Provide Services.

No failure, delay, interruption or reduction in any service, whether such service is supplied by the City or by others, shall relieve or be construed to relieve the Lessee of any of its obligations to pay any Rental or other charges payable pursuant to this Agreement or shall entitle the Lessee to any abatement or offset against any Rental or such charges.

Section 7.8 Standard Utilities and Physical Infrastructure.

7.8.1 *Definitions.*

(1) "**Physical Infrastructure**" shall mean those lines, mains, conduits, pipes, cables, wires, manholes, fittings and/or such other facilities for the delivery of Standard Utilities as are required for the proper operation and use of the Building, are allowed by the Design Guidelines and are required by the approved Construction Application.

(2) "**Standard Utilities**" shall mean electricity, natural gas, domestic water, storm and sanitary sewers, telephone services and the franchise cable television service (if any).

7.8.2 *Bringing of Infrastructure to Premises.* (a) The Port Authority, at no cost to the Initial Developer, has furnished, from outside of the Premises to one or more locations in the bed of a street or streets adjacent to the perimeter of the Premises, Physical Infrastructure for storm and sanitary sewers. The cost of the actual connections from the Premises to such location(s) shall be the responsibility of the Lessee.

(b) With respect to Standard Utilities other than storm and sanitary sewers, the City, the Port Authority and the Initial Developer hereby mutually agree to cooperate fully and participate in discussions with Standard Utility providers in connection with the development of the Project. However, it shall be the responsibility of the Initial Developer to make arrangements with the relevant individual utility or other entities with respect to the installation of and connection to the Physical Infrastructure for such other Standard Utilities. It shall also be the Initial Developer's responsibility to reach agreement with the relevant entities for the actual supply and the costs of energy such as gas or electric, services such as

domestic water and sewage and other products or services furnished or provided by utilities.

ARTICLE 8. LESSEE'S OPERATIONS

Section 8.1 Vibration and Sound.

The Lessee shall take all appropriate measures to eliminate vibrations originating in the Building which may damage any equipment, structure, building or portion of a building located off the Premises and to keep the sound level of its operations within reasonably low levels so as not unreasonably to disturb others located off the Premises.

Section 8.2 Badges.

If requested by the City or the Port Authority, the Lessee, for security and safety reasons, shall require its employees to wear or carry badges or other suitable means of identification while present at the Premises.

Section 8.3 Storage of Waste Materials.

The Lessee shall store on the Premises in a manner approved by the City all garbage, debris and other waste materials (whether solid or liquid) arising out of its occupancy of the Premises or out of its operations. Any such material which may be temporarily stored in the open shall be kept in suitable garbage and waste receptacles, the same to be made of metal or other suitable material and equipped with tight-fitting covers, and to be designed to safely and properly contain whatever material may be placed therein. No such garbage, debris or other waste materials shall be or be permitted to be thrown, discharged or deposited into or upon any waters or any wetland areas.

Section 8.4 Fire Protection Equipment.

Without limiting the Lessee's law compliance obligations as elsewhere set forth in this Agreement, the Lessee shall maintain in good condition and in adequate quantities fire protection equipment and other safety equipment as may be required to comply with the requirements of this Agreement, including this Article. The Initial Developer shall install in the Building a fire alarm system and an automatic sprinkler and fire extinguishing system in accordance with the City's Requirements regardless of whether such Requirements are applicable to the

Premises or would be applicable if the City or the Port Authority were a private corporation. The Lessee shall maintain such systems in good working order. From time to time and as often as reasonably required by the City, the Lessee through the Condominium Association shall conduct pressure, water-flow and other appropriate tests of such systems. If requested by the City, the Lessee through the Condominium Association shall furnish the City with a copy of the written reports of such tests. The Lessee through the Condominium Association shall at all times maintain on the Premises adequate stocks of fresh, usable chemicals or other materials for use of such systems and shall train its employees in the use thereof, including in such training periodic drills. The Lessee's obligations hereunder shall in no way create any obligation whatsoever on the part of the City or the Port Authority.

Section 8.5 No Nuisance.

The Lessee shall not commit any nuisance on the Premises, or do or permit to be done anything which results in the creation or commission of a nuisance on the Premises, and the Lessee shall not cause or permit to be caused or produced upon the Premises, or to emanate therefrom, any smoke, gases, vapor or odors in violation of any Environmental Laws or other Requirements. The Lessee shall not, and shall not permit anyone to, dispose of, release or discharge any Hazardous Substance on the Premises or in the Project Area. Any Hazardous Substance disposed of, released or discharged, or permitted to be disposed of, released or discharged, by the Lessee on the Premises or in the Project Area, shall upon notice by the Port Authority to the Lessee, be completely removed and/or remediated by the Lessee. The foregoing obligations of the Lessee shall survive the expiration or termination of this Agreement.

Section 8.6 No Overloading.

The Lessee's operation, use and maintenance of the Premises, including the Building:

(1) shall not cause an overloading of the capacity of any existing or future utility, mechanical, electrical, communication or other systems or portions thereof serving the Building, the Premises and other portions of the Development Area. Overloading of such systems resulting from operations of others at the Development Area shall not be deemed to be the responsibility of the Lessee so long as the Lessee's use of

such systems conforms to the capacity thereof expressly reserved for use or operation of the Building; and

(2) shall not overload any floor, roadway, passageway, pavement or other surface, wall, partition, column, supporting member or elevator or other conveyance located in the Building, which overload would invalidate or conflict with any requirements of any insurance policy(ies) covering the Premises or any part thereof. The Lessee shall repair any damage caused by any such overloading.

Section 8.7 Compliance with Underwriters Requirements.

The Lessee shall promptly observe, comply with and execute the provisions of any and all present and future rules and regulations, requirements, orders and directions of the National Board of Underwriters and the Insurance Services Office of New Jersey and of any other organization exercising, or which may exercise, similar functions, which may pertain or apply to the operations of the Lessee on the Premises. If by reason of any failure on the part of the Lessee to comply with the provisions of this Agreement any insurance rate on the Development or any part thereof shall at any time be higher than it otherwise would be, then the Lessee shall pay to the City, as an item of additional Rental, that part of all insurance premiums paid by the City which shall have been charged because of such violation or failure by the Lessee, but no such payment shall relieve the Lessee of its other obligations under this Section. The Lessee shall have the same right to contest any such rule, regulation, requirement, order or direction as provided for in Section 4.5 hereof, but subject to compliance by the Lessee with the terms and conditions of such Section.

Section 8.8 No Offensive Use.

The Lessee shall not use or allow the use of the Premises for any purposes which are in violation of law or which reasonable Persons would deem to be pornographic or similarly offensive.

Section 8.9 Test Results, etc.

Without limiting any other of the Lessee's obligations under the Lease, the Lessee at its own cost shall provide the Port Authority with such information, documentation, records, correspondence, notices, reports, test results, and certifications and any other information as the Port Authority

shall request in connection with any Environmental Requirements or Environmental Damages, and the Lessee shall promptly acknowledge, swear to, sign or otherwise fully execute the same. The Lessee agrees that any of the foregoing may be filed by the Port Authority with the appropriate governmental authority on behalf of the Lessee at the Lessee's cost and expense. Further, the Lessee agrees unless directed otherwise by the Port Authority, to provide the Port Authority with copies of all information, documentation, records, correspondence, notices, certifications, reports, test results and all other submissions provided by the Lessee to a governmental authority and by a governmental authority to the Lessee within two (2) Business Days that the same are made available to or received by the Lessee with respect to any Environmental Requirements. In the event any Hazardous Substance is discovered on the Premises, the Lessee in reporting such Hazardous Substance shall direct such report to the attention of such individual at the subject governmental authority as the Port Authority shall require.

Section 8.9 Requirements of Plan and Design Guidelines.

In addition to its law compliance obligations as set forth elsewhere in this Agreement, the Lessee agrees that throughout the term of the letting under this Agreement it will comply with the requirements of the Plan and the Design Guidelines regarding air pollution, water pollution, noise or any other type of pollution arising out of or resulting from the operation, use or maintenance of the Premises by the Lessee.

ARTICLE 9. MAINTENANCE AND REPAIR

Section 9.1. Duty of Maintenance and Repair.

Throughout the term of the letting under this Agreement, Lessee shall assume the entire responsibility for, and shall relieve the City and the Port Authority from all responsibility for, all care, maintenance, repair and rebuilding whatsoever in the Premises. After the Master Deed is recorded, the Unit Owners collectively through the Condominium Association shall be responsible for the care, maintenance and repair of the "common elements" as defined in the Master Deed and each Unit Owner will be responsible for the care, maintenance and repair of its respective Unit. Without limiting the generality of the foregoing, throughout the term of the letting hereunder the Lessee or the Condominium Association on behalf of the Unit Owners, as the case may be, shall:

(1) remove snow and ice from the pedestrian walkways and driveways located on the Premises, from the sidewalks contiguous to the Premises and from the vehicular roadways located on the Premises;

(2) maintain and make all necessary repairs and replacements to the foundations, exterior walls and the structural supporting frame and roof of the Building and make all other necessary structural repairs to the Building, and maintain and make necessary repairs to all utility lines and systems located on the Premises where the responsibility to repair such utility lines and systems is not that of utility companies or other third parties;

(3) take good care of the Premises and the Building and all parts thereof and make all structural or non-structural, ordinary or extraordinary repairs thereto and maintain the same in good condition and perform all necessary preventive maintenance, including, but not limited to, painting if required (with the exterior of the Building, to the extent it requires painting, to be painted only in colors which have been approved by the City) as the necessity arises therefor regardless of the cause of the condition requiring the same, and perform periodic inspections of the Building and its facilities for the purpose of determining whether any repairs or maintenance are required, so that at the expiration or termination of the letting and all times during the letting hereunder, the Building (or a reconstruction of all or any part thereof) will be in as good condition as it was upon the completion of the construction (or reconstruction) thereof, or, in the case of improvements made during the letting hereunder (other than improvements made to prepare space in the Building for occupancy by any subtenant), in as good condition as at the time of the installation or construction thereof, in each case except for reasonable wear and tear which does not adversely affect the watertight condition or structural integrity of the Building or other structures on the Premises or adversely affect the permitted use of the Building or such structures;

(4) repair any damage to the paving or other exterior surfaces of the Premises; and

(5) supply (where required by reason of food service operations), replace, install, repair, maintain and

keep clean, or cause the same to be done, all grease traps in all drainage pipes used exclusively in connection with the operation of the Building, whether such pipes are located on the Premises or elsewhere.

9.1.2 Lessee shall coordinate with the developer/ lessee of the southern portion of Block B the care, maintenance and repair of the common service entrance, and any other common areas of Block B.

Section 9.2 Self-Help by Port Authority.

In the event the Lessee fails to perform its obligations under Section 9.1 within ten (10) Business Days after notice from the Port Authority to do so (except in the case of an emergency) or, where such obligation by its nature is not susceptible of complete performance within such period, the Lessee has commenced within such period but fails diligently and continuously to perform such obligation to completion, the Port Authority may, at its option, perform the Lessee's obligations under Section 9.1 in addition to any other remedy available to it, and an amount equal to 130% of the actual cost of such work shall be payable by the Lessee to the Port Authority on demand, and shall constitute and be deemed additional Rental hereunder. Any work to be performed by the Port Authority, its agents, employees or contractors in accordance with this Section shall be performed, except in an emergency requiring immediate action, on reasonable prior notice, at reasonable hours, and subject to reasonable security requirements of subtenants. Nothing contained herein shall or shall be deemed to obligate the City or the Port Authority to perform any work which the Lessee is required to perform pursuant to the provisions of this Agreement, and the Lessee shall be solely responsible for any failure to perform any such work.

ARTICLE 10. INSURANCE

Section 10.1 Required Insurance.

10.1.1 *Lessee to Secure and Maintain.* In addition to any other insurance provided for or required under this Agreement, the Lessee, and after the Master Deed is recorded, the Lessee through the Condominium Association, shall secure and maintain the policies of insurance set forth below in this Section, which policies shall be effective on the Lease Commencement Date (to the extent then applicable) and throughout the term of the letting under this Agreement.

10.1.2 *Property.* All-risk property damage insurance, including coverage for flood and earthquake, covering the full replacement cost of the Building and any other improvement constructed by the Lessee pursuant to this Agreement and all structures, improvements, fixtures and equipment, furnishings and physical property owned, leased or within the care, custody or control of the Lessee and now or in the future located on or constituting a part of the Premises. Full replacement cost shall be determined by an appraiser selected by the Lessee and acceptable to the City and the Port Authority as of the Construction Completion Date and thereafter, at the request of the City or the Port Authority, from time to time, but not more frequently than once every ten years; provided, however, that the replacement cost determined by Lessee for property insurance purposes upon completion of construction of the Project may, subject to the Port Authority's concurrence, be used as the full replacement cost as of the Construction Completion Date in lieu of the foregoing determination by appraisal; and provided, further, that the amount constituting full replacement cost, as established by each such periodic appraisal (or Lessee's determination, in the case of the initial such amount), shall be adjusted annually following each such appraisal (or Lessee's determination) and until the next such appraisal by applying a recognized construction cost index to the cost of construction of the Building (exclusive of foundation and pilings). No omission on the part of the City or the Port Authority to request any such appraisal shall relieve the Lessee of its obligations to maintain the appropriate insurance under this subsection.

10.1.3 *Boiler and Machinery.* Boiler and machinery insurance covering all boilers, pressure-vessels and air conditioning and any other related equipment operated by the Lessee in or on the Building, including expedited expense, the policy to be effective throughout the term of the letting in such amounts as to sufficiently cover the replacement cost of such boilers, pressure-vessels and air conditioning and other related equipment and to be in the form as may now or in the future be prescribed as of the effective date of said insurance by the rating organization having jurisdiction and/or the Superintendent of Insurance of the State of New Jersey.

10.1.4 *Business Interruption Insurance.* Business interruption insurance on an actual loss sustained basis written on an "all risks of physical loss" basis in an amount equal to the greater of (x) the gross rents payable by subtenants of the

Premises for a period of two (2) years and (y) the aggregate amount of Basic Rental, Percentage Rental, Annual PILOT Rental, Annual O & M Rental and Subtenant Impositions payable by the Lessee hereunder for a two (2) year period. The proceeds of such insurance shall be payable to the Port Authority, which shall apply such proceeds to the Rental obligations of the Lessee, with any remaining balance to be paid to the Lessee.

10.1.5 *Liability*. (a) The Lessee, in its own name as insured and including the Indemnified Parties as additional insureds, shall maintain and pay the premiums on a policy or policies of Commercial General Liability Insurance, including products/completed operations, premises—operations, explosion, collapse and underground property damage independent contractors coverage and broad form property damage coverage, and covering bodily injury, including death, and property damage liability, broadened to include or equivalent separate policies covering sprinkler leakage legal liability and water damage legal liability (including damage caused by water and any other substance discharged from any part of the fire protective equipment for the Building or the collapse or fall of tanks forming part thereof, or the component parts or supports of such tanks), none of the foregoing to contain care, custody or control exclusions, and providing for coverage in the limits set forth below; and Commercial Automobile Liability Insurance covering owned, non-owned and hired vehicles and including automatic coverage for newly acquired vehicles and providing for coverage in the limit set forth below; provided, that if parking operations or repair operations (including without limitation car washing) will be conducted on the Premises, the foregoing policies shall be broadened to cover garage liability exposure. When applicable, the Lessee shall also carry a minimum of $2 million in Garagekeepers Legal Liability Insurance with comprehensive and collision coverage covering at least the number of vehicles constituting the maximum capacity of the Parking Garage.

<u>Minimum Limits</u>

Commercial General Liability

Combined single limit per occurrence for death, bodily injury and property damage liability:	$10,000,000.00

Commercial Automobile Liability
(covering owned, non-owned and
hired vehicles)

Combined single limit per occurrence
for death, bodily injury and property
damage liability: $10,000,000.00

In the event the Lessee maintains the foregoing insurance in limits greater than aforesaid, the Indemnified Parties shall be included therein as additional insureds to the full extent of all such insurance in accordance with all the terms and provisions hereof.

(b) The policy of Commercial General Liability insurance required under this subsection shall contain a contractual liability coverage covering the insurable obligations assumed by the Lessee under any indemnification provisions set forth in this Agreement and an endorsement providing that the protection afforded the Lessee thereunder with respect to any claim or action against the Lessee by a third Person shall obtain and apply with like effect with respect to any claim or action against the Lessee by the City or the Port Authority, and against the City or the Port Authority by the Lessee, but such endorsement shall not limit, vary, change or affect the protections afforded the Indemnified Parties, as additional insureds.

(c) Each policy of liability insurance required under this subsection shall contain a provision that in any action or proceeding under or in connection with such policy, the insurance carrier shall not without obtaining express advance consent from the General Counsel of the Port Authority and the City Attorney of Hoboken raise any defense involving in any way the immunity of the Port Authority or the City of Hoboken, their Commissioners, elected officials, officers, agents or employees, the governmental nature of the Port Authority, the provisions of any statutes respecting suits against the Port Authority or the jurisdiction of the tribunal over the person of the Port Authority, or applicable tort claims laws.

(d) The limits of coverage shall not be reduced without the Port Authority's prior written consent.

10.1.6 *Workers' Compensation Insurance*. The Lessee, and after the Master Deed is recorded, the Condominium Association,

shall procure and maintain Workers' Compensation Insurance in accordance with applicable State Compensation Laws.

10.1.7 *Other*. Such other insurance, in such amounts, as from time to time may be required by the City or the Port Authority.

Section 10.2 Other Requirements as to Policies.

10.2.1 *Insureds under Property Policies*. All property damage insurance policies required under this Agreement shall name the Recognized Mortgagee (if any), the Hotel Management Company, the Lessee and the City and the Port Authority (with insurance clauses consistent with the provisions of this Agreement) as the named insureds, as their respective interests may appear.

10.2.2 *Certificates, etc*. With respect to all insurance required under this Agreement, an original certificate of insurance, or binders, shall be delivered to The Port Authority of New York and New Jersey, General Manager, Risk Management, 225 Park Avenue South, 12 Floor, New York, New York 10003, attention: Agreement Certificate Review (or to such other address as the Port Authority may direct by notice hereunder), with a copy to the Director of Human Resources of the City, not later than the Lease Commencement Date. In the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance. A certificate of insurance or binder with respect to a renewal policy shall be delivered to the City and the Port Authority at least sixty (60) days prior to the expiration date of each expiring policy, except for any policy expiring after the date of expiration of the letting under this Agreement, and in the event any binder is delivered, it shall be replaced within thirty (30) days by a certificate of insurance.

10.2.3 *Certain Endorsements*. Each policy required under this Agreement shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified (other than to effectuate an increase in coverage) without giving at least thirty (30) days written advance notice thereof to the Recognized Mortgagee of the Hotel Premises and/or the Hotel Unit (if any), the City and the Port Authority, and an endorsement to the effect that the insurance as to the interests of all Recognized Mortgagees (if any), the City and the Port Authority shall not be invalidated by any act or negligence of the Lessee or any other insured.

10.2.4 *Blanket Policies, etc.* Property insurance policies required under this Agreement may be written in the form of blanket policies and policies of liability insurance may be written in the form of a primary policy and one or more umbrella policies. On request of the City and/or the Port Authority, which may be made at any time and from time to time, the Lessee shall furnish to the party or parties making such request a true copy of each of the insurance policies which the Lessee is required to carry under this Agreement; provided, however, that if any such insurance is carried in the form of a blanket policy, the Lessee need not furnish to the City and/or the Port Authority the portions of such policy which relate to properties other than the Premises.

Section 10.3 Nature of Insurers.

All insurance provided for in this Agreement shall be issued by insurance carriers authorized to do business in the State of New Jersey or subject to service of process in the State of New Jersey and having an A.M. Best Rating of at least A- (A minus) or an equivalent rating by a comparable insurance rating agency.

Section 10.4 Port Authority Review.

All insurance coverages required under this Agreement may be reviewed by the Port Authority for adequacy of terms, conditions, coverages and limits of coverage at any time and from time to time during the term of the letting hereunder. The Port Authority may, at any such time, require an increase in the minimum limits, or additions, deletions, amendments or modifications to the above-scheduled insurance requirements, or may require such other and additional insurance, in such reasonable amounts and, to the extent available on a commercially reasonable basis, against such other insurable hazards, as the Port Authority may reasonably deem required and the Lessee shall promptly comply therewith.

Section 10.5 Settlement of Losses.

Losses, if any, under any of the policies mentioned and provided for in this Agreement (except Commercial General Liability Insurance and Workers' Compensation Insurance) shall be adjusted with the Recognized Mortgagees or if there are no Recognized Mortgagees, with the Port Authority. Except as otherwise provided herein, the proceeds shall be payable to the Recognized Mortgagee or if there is no Recognized Mortgagee to

the Port Authority to be held in trust for the benefit of the Lessee. Except as otherwise provided herein, all said proceeds shall be used for the repair, replacement or rebuilding of the Premises. Said proceeds shall be disbursed upon the Condominium Association's request, or upon the request of an entity obligated to repair, replace or rebuild, provided that the Lessee or such entity has obtained the necessary approvals from the Port Authority to repair, replace or rebuild in accordance with the relevant provisions of this Agreement.

Section 10.6 Separate Insurance.

The Lessee shall not carry separate insurance concurrent in form or contributing in the event of loss with that required under this Agreement, unless the Port Authority and the City are included therein as named insured, with loss payable as provided in this Agreement. The Lessee shall immediately notify the Port Authority of the carrying of any such separate insurance and, at the Port Authority's request, shall deliver to the Port Authority and/or the City the policies therefor or duplicate originals thereof.

Section 10.7 Condominium Insurance.

Notwithstanding anything to the contrary contained in this Agreement, after the Master Deed is recorded and the first unit conveyed from the Initial Developer to a third party, the Condominium Association shall be responsible for procuring the insurance required under the Master Deed for the benefit of the Unit Owners and the proceeds of any such insurance shall be held and disbursed in accordance with the provisions of the Master Deed to the extent not inconsistent with the terms of this Agreement.

ARTICLE 11. CASUALTY

Section 11.1 Repair of Damage.

If the Premises, or the Building or any other structures, improvements, fixtures and equipment, furnishings and physical property located thereon, or any part thereof, shall be damaged or destroyed by fire, the elements, the public enemy or other casualty, or by reason of any cause whatsoever and whether partial or total, the Lessee and, after the Condominium is created, the Condominium Association, shall at its sole cost and expense and, whether or not such damage or destruction is covered by insurance proceeds sufficient for the purpose, remove

all debris resulting from such damage or destruction, and shall rebuild, restore, repair and replace the Premises, and the Building and any structures, improvements, fixtures and equipment, furnishings and physical property located thereon, in accordance with the plans and specifications for the same as they existed prior to such damage or destruction or, with the consent in writing of the Port Authority make such other repairs, replacements, changes or alterations as is mutually agreed to by the Port Authority and the Lessee. Such rebuilding, restoration, repairs, replacements, or alterations shall be commenced promptly and shall proceed with all due diligence subject to the terms and conditions of this Agreement, including, without limitation, the terms and provisions of the Article of this Agreement entitled "Alterations and Improvements".

Section 11.2 Destruction at End of Term.

11.2.1 *Lessee's Options*. Notwithstanding the provisions of Section 11.1 above, if such damage or destruction occurs during the last ten (10) years of the term of the letting and the cost of rebuilding, restoration, repair or replacement shall exceed fifty percent (50%) of the then full insurable value on a replacement cost basis of the Building immediately prior to such damage or destruction, the Condominium Association on behalf of the Lessees shall have the option of either:

(1) performing all rebuilding, restoration, repairs, replacements or alterations required, in accordance with the provisions of this Agreement, or

(2) terminating the letting under this Agreement in its entirety by written notice to the Port Authority and the City given within thirty (30) days after the occurrence of such damage or destruction, provided, that there shall be in force and effect the required insurance valid and subsisting and adequate to cover such damage or destruction without any defenses to the payment by the insurance carriers based upon acts or omissions of the Lessee or of any other insureds other than the Port Authority and the City and *provided, further,* that both at the time of the giving of notice and on the effective date thereof: (x) the Lessee is not in default under any of the provisions of this Agreement or under notice of termination from the Port Authority or the City, and (y) this Agreement and any buildings, structures, improvements, fixtures and equipment, furnishings and physical property located on the

Premises are unencumbered by any mortgage, security interest, judgments, or other liens (to be evidenced by a search made by a title company acceptable to the Port Authority and to be furnished by the Lessee at its sole cost and expense) and free from any pending matters that might develop into additional rent unless the Lessee shall secure payment and discharge of such mortgages, security interests, judgments or other liens and the payment of such additional rent to the Port Authority in a manner satisfactory to the Port Authority.

11.2.2 *Insurance Proceeds*. In the event of termination pursuant to the provisions of subsection 11.2.1 above, each Lessee shall pay, through the Condominium Association, the Port Authority and the City all Rental payable up to and including the date of termination. The insurance proceeds shall be (w) first, at the City and Port Authority's option, used to demolish any remaining portion of the Improvements and grade and fence the Land, (x) second, paid to the Recognized Mortgagees, (y) third, to the Port Authority, so much of the remaining proceeds as are equal to the value of the Port Authority's reversionary interest in the part of the Improvements damages or destroyed, as such value existed on the date immediately preceding the damage or destruction and (z) then the balance, if any, to the Condominium Association for distribution to the Unit Owners, subject to payments made to a Unit Owner's Recognized Mortgagee in accordance with the applicable provisions of the Master Deed.

11.2.3 *Surrender of Premises*. Upon the effective date of such termination, the Lessee shall surrender and deliver up the Premises, including the Building and all structures, improvements, fixtures and equipment, furnishings and other property located on the Premises, into the possession and use of the Port Authority and the City in the manner specified in the Article of this Agreement entitled "Surrender", subject, however, to the physical condition and state of repair thereof. Subject to the foregoing, the Lessee upon such termination, surrender and removal, shall be released and discharged from any and all obligations under this Agreement other than those which have accrued prior to the date of such termination or shall mature on such date.

Section 11.3 <u>No Surrender</u>.

Except as provided in Section 11.2 above, no destruction of or damage to the whole or any part of the Premises, or to any part of the Building or any other structures, improvements,

fixtures, and equipment thereon, or any other casualty, cause or condition shall permit the Lessee to surrender or terminate this Agreement or shall relieve the Lessee from its liability to make payment of any monies, charges, fees or rentals or additional rentals payable under this Agreement or from any of its other obligations hereunder. The Lessee waives any rights now or hereafter conferred upon the Lessee by statute or otherwise to quit or surrender the Premises and terminate this Agreement or any part thereof, or to any suspension, diminution, abatement or reduction of rent on account of any destruction or damage. The parties stipulate that neither the provisions of Title 46:8-6 and 46:8-7 of the revised statutes of New Jersey nor those of any other similar statute shall extend or apply to this Agreement.

Section 11.4 Application of Insurance Proceeds.

If such damage or destruction as is described in Section 11.1 above is covered by insurance, then (unless the Condominium Association elects to terminate this Agreement pursuant to Section 11.2 above) such proceeds shall be made available for and applied to the payment of the cost of the rebuilding, restoration repair, replacement and alteration work required to be performed by the Condominium Association on behalf of the Unit Owners under the provisions of this Agreement.

ARTICLE 12. INDEMNITY

Section 12.1 Landlord not Liable for Injury or Damage, Etc.

12.1.1 Neither the City nor the Port Authority shall be liable for any injury or damage to the Lessee, the Condominium Association or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to the Lessee or to any other Person that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Project Area (including, but not limited to, any of the common areas, hatches, openings, installations, stairways or hallways or other common facilities within the Premises, and the streets, sidewalk or other public areas within the Project Area) or that may arise from any other cause whatsoever unless arising solely from the willful misconduct or gross negligence of the City or of the Port Authority.

12.1.2 Neither the City nor the Port Authority shall be liable to the Lessee, the Condominium Association or to any Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of the Lessee or of any Person or to any portion of the Premises caused by or resulting from gasoline, oil, steam, gas, electricity, or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Project Area or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work.

12.1.3 In no event shall the City or the Port Authority be liable to the Lessee, the Condominium Association or to any other Person for any injury or damage to any property of the Lessee or any other Person, or to the Premises, arising out of any sinking, shifting, movement, subsidence, failure in loss-bearing capacity of, or other matter or difficulty related to, the soil, or other surface or subsurface materials, on the Premises or in the Project Area, it being agreed that the Lessee shall assume and bear all risk of loss with respect thereto.

Section 12.2 Indemnification.

12.2.1 *Obligation to Indemnify.* The Lessee shall indemnify and hold harmless the Indemnified Parties from (and shall reimburse the Indemnified Parties for their respective costs or expenses including reasonable legal expenses incurred in connection with the defense of) all claims and demands of third Persons, including but not limited to those for death, personal injuries or property damages, arising out of any default of the Lessee in performing or observing any term or provision of this Agreement, or out of the use or occupancy of the Premises or out of the acts or omissions of the Lessee, its officers, members, employers, agents (including the Condominium Association), representatives, contractors, customers, guests or invitees where such acts or omissions are on the Premises, or arising out of any acts or omissions of such Lessee, its officers, members, employees, agents (including the Condominium Association) and representatives, where such acts or omissions are elsewhere at the Project Area.

12.2.2 *Defense of Claims.* (a) If so directed, the Lessee shall at its own expense defend, with counsel reasonably

acceptable to the Indemnified Party, any suit based upon any such claim or demand (even if such suit, claim or demand is groundless, false or fraudulent), and in handling such it shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority.

(b) In the event that any action or proceeding is brought against the Port Authority or the City by reason of any claims covered by the foregoing indemnity, the Lessee shall, upon notice from the Port Authority and/or the City (as applicable), resist or defend such action or proceeding by counsel reasonably satisfactory to the Port Authority and/or the City (as applicable). Notwithstanding the foregoing, if such claim is covered by insurance, then defense counsel appointed by the applicable insurer shall be deemed to be satisfactory so long as the insurer has not reserved rights or disclaimed coverage as to part or all of such claim. The Port Authority and/or the City, as applicable, will give reasonably prompt notice to the Lessee of any action or proceeding brought against the Port Authority and/or the City (as applicable) by reason of any claims covered by the foregoing indemnity, together with copies of any documents served on the Port Authority and/or the City (as applicable) in connection therewith. The Port Authority and/or the City (as applicable) shall not defend such action or proceeding so long as the Lessee is diligently and competently doing so.

ARTICLE 13. RIGHT TO PERFORM COVENANTS

Section 13.1 Right to Perform Lessee's Covenants.

If (x) any Lessee or the Condominium Association fail to perform any of its respective obligations hereunder (including without limitation any payment of insurance premiums but not including the Lessee's obligations under Section 9.1 above) within (except in the case of an emergency) five (5) Business Days after notice, for obligations involving the payment of money, and thirty (30) days, for other obligations, or (y) with respect to obligations which by their nature are not susceptible of complete performance within the foregoing notice periods, if the Lessee or the Condominium Association has commenced performance within the relevant notice period but fails

diligently and continuously to perform such obligation to completion, then, in such event, the Port Authority and the City, in addition to all other remedies available to them, shall have the right to perform any of such obligations without further notice. Nothing in this Agreement, including this Article, shall be construed as imposing any duty on the City or the Port Authority to perform any obligation required to be performed by the Lessee or the Condominium Association hereunder and the performance of any such obligation by the City or the Port Authority shall not constitute a waiver of the Lessee's default in failing to perform the same.

Section 13.2 Reimbursement by Lessee.

An amount equal to 130% of all reasonable sums paid by the City or the Port Authority and all costs and expenses reasonably incurred by them in connection with their performance of any obligation of the Lessee or the Condominium Association pursuant to this Article 13, together with interest thereon at the Involuntary Rate from the respective dates of the making of each such payment or incurring of each such sum, cost, expense, charge or payment until the date of actual repayment to the City or the Port Authority, as the case may be, shall be paid by the Lessee or the Condominium Association as applicable to the City or the Port Authority, as the case may be, within thirty (30) days of receipt by the Lessee of the City's or the Port Authority's written notice, with a statement in reasonable detail of such costs, expenses and other items and evidence of payment thereof, and such payment due from the Lessee to the City or the Port Authority shall constitute additional Rental under this Agreement.

ARTICLE 14. ASSIGNMENT, TRANSFER, MORTGAGE AND SUBLETTING

Section 14.1 Definitions.

"**Assignment**" shall mean any sale, conveyance, transfer, exchange, assignment or other disposition, but not including any Mortgage, of all or any portion of the Initial Developer's or Hotel Unit Owner's interest in this Agreement or the leasehold estate created hereby, whether by operation of law or otherwise. Assignment shall not include any Hotel Residence Assignment.

"**Condominium**" shall have the meaning provided in Section 14.2.5.

"**Condominium Association**" shall mean the nonprofit corporation formed to administer/manage and operate the common affairs of the Condominium and to maintain, repair and replace the common elements of the Condominium to be created within the Premises.

"**Control**" shall have the meaning provided in the definition of "Affiliate" set forth in Article 1 above.

"**Mortgage**" shall mean any mortgage or deed of trust, a deed to secure debt or other security instrument by which a Lessee's leasehold estate created hereunder is mortgaged, conveyed, assigned or otherwise transferred to secure a debt or other obligation, and all extensions, modifications and amendments thereto.

"**Hotel Residence Assignment**" shall mean any sale, conveyance, transfer, exchange, assignment or other disposition of all or any portion of Initial Developer's interest in the Hotel Residences or any Hotel Residence Owner's interest in a Hotel Residence, but not including any Hotel Residence Mortgage.

"**Hotel Residence Owner**" shall mean any owner of a Hotel Residence.

"**Hotel Residences**" shall mean no more than 50 residential leasehold condominium units to be constructed in the Building in the locations set forth on the approved conceptual plan and to the extent permitted by the Plan; each unit shall be referred to as a "Hotel Residence".

"**Hotel Unit**" shall mean the one leasehold condominium unit, containing the Hotel, to be constructed in the Building.

"**Sublease**" shall mean any sublease (including a sub-sublease or any further level of subletting) and any occupancy, license, franchise or concession agreement applicable to the Premises or any portion thereof.

"**Subtenant**" shall mean any subtenant (including a sub-subtenant or any further level of subtenant), operator, licensee, franchisee, concessionaire or other occupant, pursuant to a Sublease.

"**Transfer**" shall mean the transfer, sale, assignment, pledge, hypothecation or other disposition of any interest in the Hotel Unit Owner or in any direct or indirect constituent

entity of the Lessee, where such disposition (whether by itself or cumulatively with other transactions) directly or indirectly produces any change in the direct or indirect beneficial ownership of an interest in, or Control of, the Hotel Unit Owner, and shall include but not be limited to (1) the sale, assignment, redemption or transfer of outstanding stock of or membership interest in, respectively, any corporation or any limited liability company that is the Hotel Unit Owner or that is the general partner of any partnership that is the Hotel Unit Owner, (2) the issuance of additional stock or membership interest in, respectively, any corporation or limited liability company that is the Hotel Unit Owner or that is the general partner of any partnership that is the Hotel Unit Owner, and (3) the sale, assignment, redemption or transfer of any general or limited partner's interest in, or the admission of a new partner to, a partnership that is the Hotel Unit Owner or that is a general or limited partner of any partnership that is the Hotel Unit Owner. For purposes of the foregoing, a "change in Control of the Hotel Unit Owner" shall be deemed specifically to include, without limitation, any transfer of fifty—one percent (51%) or more of the members interests in the Hotel Unit Owner and any transaction prior to the tenth (10th) anniversary of the Lease Commencement Date resulting in Michael Barry and/or David Barry legally and beneficially owning less than fifty-one percent (51%) of the equity interest in the member of the Hotel Unit Owner.

Section 14.2 Consent Required.

14.2.1 *No Assignment, etc. Without Consent.* Except as otherwise expressly provided in this Agreement, no Assignment, Transfer, Sublease or Mortgage of the Hotel Unit may be made without the prior written consent in each instance of the Port Authority and the City, and any Assignment, Transfer, Sublease or Mortgage of the Hotel Unit made without such consent shall constitute a material default under this Agreement, giving rise to a right of termination by the Port Authority and/or the City under the Article hereof entitled "Termination".

14.2.2 *Certain Assignments and Transfers Following Completion Not Requiring Consent.* (a) Notwithstanding the provisions of subsection 14.2.1, following the Construction Completion Date and the Hotel Unit Owner's entering into a hotel management agreement with a Hotel Management Company, the following proposed Assignment, or Transfer resulting in a change in Control of the Hotel Unit Owner, shall not require the

consent of the Port Authority or the City, provided that the Hotel Unit Owner shall notify the City and the Port Authority, within ten (10) Business Days of the effective date of such Transfer or Assignment, of the nature of the Transfer or Assignment and the ownership structure of the new lessee, and shall provide the City and the Port Authority with such additional information as the City and the Port Authority may request:

(1) Assignment or Transfer to an Institutional Investor which has retained a Hotel Management Company to manage the Hotel Unit; or

(2) Assignment or Transfer to a real estate investment trust or other owner or manager of hotels, provided such entity meets the requirements of a Hotel Owner and Hotel Management Company or meets the requirements of a Hotel Owner and retains a Hotel Management Company to manage the Hotel Unit;

(b) Notwithstanding the provisions of subsection 14.2.1, the following Transfers shall not require the consent of the Port Authority or the City, provided that the Hotel Unit Owner shall notify the City and the Port Authority, within ten (10) Business Days of the effective date of such Transfer, of the nature of the Transfer and the resulting change in the ownership structure of the Hotel Unit Owner, and shall provide the City and the Port Authority with such additional information as the City and the Port Authority may request:

(1) at any time, Transfers which involve only Initial Owners and which do not result in a change in Control of the Lessee;

(2) following the Construction Completion Date and the Hotel Unit Owner's entering into of a hotel management agreement, any Transfers which do not result in a change in Control of the Lessee; and

(3) any change in Control resulting from the death or incapacity of any individual holding an interest in Hotel Unit Owner;

provided that in (1) (2) and (3) above, the Hotel Unit Owner meets the requirements of a Hotel Owner and Hotel Management Company or meets the requirements of a

Hotel Owner and retains a Hotel Management Company to manage the Hotel Unit.

(c) Notwithstanding the provisions of subsection 14.2.1, no Hotel Residence Assignment shall require the prior written consent of the Port Authority or the City.

14.2.3 *Certain Mortgages.* (a) Notwithstanding the provisions of subsection 14.2.1, the Lessee may make certain Mortgages, as provided in Article 14A.

14.2.4 *Retail Subleases.* (a) Notwithstanding the provisions of subsection 14.2.1, the Hotel Unit Owner may enter into Nonresidential Subleases with respect to the Retail Space, provided that the Hotel Unit Owner shall, and shall ensure that all Subtenants shall, comply with the Design Guidelines, including without limitation the use restrictions contained therein. In addition, Hotel Unit Owner may not enter into Nonresidential Subleases with respect to any part of the Premises for any of the following uses:

(1) flea market;

(2) massage parlor;

(3) funeral home;

(4) facility for the sale of paraphernalia for use with illicit drugs;

(5) facility for the sale or display of pornographic material;

(6) off-track betting parlor;

(7) carnival, amusement park or circus;

(8) gas station, car wash or auto repair or body shop;

(9) facility for the sale of new or used motor vehicles, trailers, trucks, recreational vehicles or mobile homes;

(10) facility for any use which is illegal or dangerous or constitutes a nuisance;

(11) facility for the sale or rental of used goods (other than video rentals) or liquidation of goods (including thrift shops, job-lot, odd-lot, secondhand or consignment stores, but not including fine antique shops);

(12) central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in Hoboken.

(b) Notwithstanding subclause (a) of this 14.2.5, Hotel Unit Owner may enter into Nonresidential Subleases with respect to the Retail Space for any of the following uses: spa, laundry services and game rooms supporting the hotel operations, restaurants, bars and cocktail lounges.

Section 14.2.5 Leasehold Condominium Submission

(a) The Lessee shall submit its leasehold estate to the condominium form of ownership consisting of up to 50 Hotel Residences, the Hotel Unit and the common elements appurtenant thereto (the "**Condominium**"). The Master Deed for the Condominium will be executed by the Lessee, City and Port Authority and recorded in the Hudson County Register's Office. Thereupon, each of the Hotel Residences and the Hotel Unit will be owned by the Lessee. After the issuance of the Certificate of Completion, the Lessee shall be permitted to convey the Hotel Unit to Hoboken Hotel, L.L.C. whose members shall be as set forth on Exhibit O annexed hereto and made hereof, **as certified by Lessee at the time of the conveyance, and** which entity must meet the requirements of a Hotel Unit Owner. Any conveyance of ownership of the Hotel Unit by assignment of the Lessee's leasehold interest in this Agreement other than the Assignment to Hoboken Hotel, L.L.C. shall be subject to Section 14.2 and the Hotel Unit Owner must meet the requirements of a Hotel Owner and a Hotel Management Company or meet the requirements of a Hotel Owner and retain a Hotel Management Company to manage the Hotel Unit.

(b) Ownership of the Hotel Residences will be conveyed to purchasers by an assignment of the Lessee's interest or a leasehold condominium deed (as required by the Lessee's title insurer) in the Hotel Residences. Upon submission of the leasehold estate to the condominium form of ownership, the members of the Condominium Association shall be the Hotel Unit

Owner and the Hotel Residence Owners, which shall each be responsible to pay its Share of O & MBasic Rental, Annual O & M Rental, Annual PILOT Rental and any Subtenant Impositions and other fees and charges which are assessed against the Premises as a whole ("**Subtenant Payments**"). Each Unit Owner shall be responsible to pay its Share of payments to the Condominium Association, which will, in turn, make the Subtenant Payments to the City and Port Authority. Neither the City or the Port Authority or their respective successors in interest may terminate the leasehold interest of a Unit Owner who makes timely payment of its Share of Subtenant Payments and otherwise complies with all covenants which, if violated, would entitle the City or the Port Authority to terminate this Agreement. A Unit Owner's leasehold interest shall not be affected by failure of any other Unit Owner to pay its Share of Subtenant Payments or fulfill any other covenant of this Agreement.

(c) It is understood and agreed that each Subtenant Payment shall be made as one payment for 100% of the amount due and payable and shall not be paid as separate payments from the Hotel Residence Owners (individually or collectively) and/or the Hotel Unit Owner. The Condominium Association shall be appointed as attorney-in-fact for the Hotel Unit Owner and Hotel Residence Owners to make all Subtenant Payments and to deal directly with the Port Authority and City on their behalf. If the Condominium Association is unable to pay 100% of the Subtenant Payments to the Port Authority and the City, as and when due after utilizing any reserves it holds on behalf of a Unit Owner as described in Section 4.8, it will notify the Port Authority in writing of the identity and Unit which is in default of its obligations. Once the Condominium has become effective, the Hotel Unit Owner and the Hotel Residence Owners shall, and hereby do, appoint the Condominium Association as their attorney-in-fact to receive all notices under this Agreement, including without limitation any and all notices of default required under this Agreement.

(d) The instrument assigning the Lessee's rights in this Agreement to each Hotel Residence Owner shall provide that the Hotel Residence Owners will not acquire any right or cause of action against the Port Authority or the City by reason of any termination prior to the expiration of the 98-year term of this Agreement in accordance with its terms, and will irrevocably appoint the Condominium Association as attorney-in-fact to pursue all rights and remedies available to them under this Agreement. Furthermore, by the acceptance of the assignment, each Hotel Residence Owner will automatically and

irrevocably appoint and confirm the Port Authority, its successors and assigns, as attorney-in-fact to execute and file, upon the termination of this Agreement and to the extent necessary, a deed of revocation in the Office of the Hudson County Register.

(e) The master deed, bylaws and all other condominium documents shall be subject to the approval of the City and Port Authority, which approval shall not be unreasonably withheld, conditioned or delayed. Once the documents are approved, the City and Port Authority shall execute the master deed as required under the Condominium Act. Any amendments to the condominium documents which affect any of the City's or the Port Authority's rights and/or obligations hereunder shall be subject to the City's and Port Authority's approval. The formation of the condominium shall comply with all applicable laws, which shall be Lessee's sole responsibility. The City's and the Port Authority's approval of the condominium documents shall not be construed to be or relied on by Lessee, any Hotel Residence Owner, any Recognized Mortgagee or any other person, as a determination that the City or the Port Authority have participated in the offering or formation of the Condominium. The City and the Port Authority make no representations and warranties concerning the Condominium, its formation or existence, and express no opinion as to the value of the Hotel Residences or the Hotel Unit.

(f) The City and the Port Authority shall make reasonable changes to this Agreement, required by the New Jersey Department of Community Affairs, the Lessee's title company or any lenders financing construction of the Building, provided the changes do not adversely affect the Port Authority's and the City's rights under this Agreement.

(g) Prior to the effectiveness of the condominium form of ownership, Lessee shall provide the City and Port Authority with the Hotel Unit Owner's full unconditional guaranty in form reasonably satisfactory to the City and Port Authority which guaranties the payment of the Hotel Residence Owners Share of Basic Rental, Annual O & M Rental and Annual Pilot Rental due under this Agreement for the entire term, including late charges (if any).

(h) Notwithstanding anything to the contrary, prior to the issuance of the Certificate of Completion, no Assignment/Transfer of the Hotel Unit may be made without the prior written consent of the Port Authority and the City.

Section 14.3 Submission of Documents and Information.

Whenever the Lessee desires to effect an Assignment, any Hotel Residence Assignment, Transfer or a Sublease, the Lessee shall, and as a condition to the effectiveness thereof, prior to the effective date of such proposed transaction, notify the City and the Port Authority of such proposed transaction and submit to the City and the Port Authority the following documents (which may be unexecuted but shall be in substantially final form) and information:

(1) in the case of an Assignment, (x) a copy of the proposed instrument(s) of assignment, containing, inter alia, the name, address and telephone number of the proposed assignee, (y) a copy of the agreement with assignment and assumption referred to in Section 14.6 below and (z) an affidavit of the assignee or an authorized officer or general partner thereof, setting forth the following:

(i) in the case of a partnership, the names and addresses of all general partners and of all other partners having a five percent (5%) or greater ownership interest in the assignee,

(ii) in the case of a corporation, the names and addresses of all directors and officers and of all Persons having a five percent (5%) or greater ownership interest in the assignee, and

(iii) in the case of a limited liability company or other entity, the names and addresses of all managers or other Persons charged with the direction or management of its affairs and of all Persons having a five percent (5%) or greater ownership interest in the assignee;

(2) in the case of a Transfer, (x) a copy of the proposed instrument(s) effecting the Transfer, containing, inter alia, the name, address and telephone number of the proposed Transferee, and (y) an affidavit of an authorized officer or general partner of the Lessee, setting forth the same information as is required with respect to assignees in subparagraph (1) (z) above;

(3) in the case of a Sublease, (x) a copy of the proposed sublease, containing, inter alia, the name,

address and telephone number of the proposed Sublessee, and (y) an affidavit of an authorized officer or general partner of the Lessee or such proposed Sublessee, setting forth the same information as is required with respect to assignees in subparagraph (1) (z) above; and

(4) In the case of any Hotel Residence Assignment, (x) a copy of the proposed instrument of assignment and (y) evidence of the consideration for such assignment.

(5) in all such cases, such other documents and information as the City and the Port Authority may reasonably request to permit the evaluation of such Assignment, Initial Hotel Residence Assignment, Hotel Residence Assignment, Transfer or Sublease.

Section 14.4 Conditions to Effectiveness of Transactions.

Notwithstanding any other provision of this Agreement, and notwithstanding that the consent of the City and the Port Authority may not be required or may have been given, in no event shall the Lessee enter into an Assignment, Transfer or Nonresidential Sublease, or any Hotel Residence Assignment and any such purported assignment, Transfer or Nonresidential Sublease shall be void and of no effect, if:

(1) in the case of an Assignment or a Transfer resulting in a change in Control of the Hotel Unit Owner, the assignee or the Hotel Unit Owner (following such Transfer), in the opinion of the City and the Port Authority, lacks the requisite experience and expertise to operate the Hotel, unless the Hotel Unit Owner shall have delivered to the City and the Port Authority an executed hotel management agreement with a Hotel Management Company that is binding on such assignee or the Hotel Unit Owner, as the case may be, and such assignee or the Hotel Unit Owner, as the case may be, agrees to keep such agreement in effect with such Hotel Management Company or a similar agreement in effect with a successor Hotel Management Company,

(2) on the proposed effective date of such Assignment, Hotel Residence Assignment, Transfer or Sublease (x) there exists an Event of Default by the Assignor, transferor or sublessor, as the case may be, which remains uncured, (y) this Agreement shall not then be

in full force and effect or (z) there is then in effect any notice of termination to the Assignor, transferor or sublessor served by the City or the Port Authority to the Assignor, transferor or sublessor pursuant to Article 17 of this Agreement, or

(3) the proposed Assignment, Hotel Residence Assignment, Transfer or Sublease is to any Person (or an Affiliate of any Person) (each such Person or Affiliate, a "**Prohibited Party**") (x) who, or whose officers, directors, general partners, management employees or significant equity participants, is currently under indictment for or convicted of a crime in any jurisdiction, or is then the target of a grand jury investigation therefor, or has been suspended or otherwise disqualified from entering into contracts with any governmental agency; or (y) who has had a development agreement with the Port Authority or the City terminated for willful default or breach, has had a contract terminated by a governmental agency in the States of New York or New Jersey for willful breach or default or has had a contract terminated for any cause relating to an indictment or conviction of such Person or its principals.

(4) in the case of an Assignment or Transfer resulting in a change in the ownership of the Hotel Unit Owner, the new Hotel Unit Owner has not executed the guaranty provided in the last paragraph of Section 14.2.5.

Section 14.5 Conflicts of Interest.

In all events, and notwithstanding any other provision of this Agreement, no Assignment, Hotel Residence Assignment, Transfer, Mortgage or Sublease shall be permitted that would entail a violation of the Port Authority Code of Ethics or the relevant conflict of interest rules, or any conflict of interest rules of the City.

Section 14.6 Assumption Agreement.

In all events, and notwithstanding any other provision of this Agreement, no Assignment shall be effective until an agreement of assignment with assumption in the form annexed hereto, hereby made a part of this Agreement and marked Exhibit M has been executed and delivered by the Hotel Unit Owner and the assignee; upon such execution and delivery, the assignor shall be relieved of all liabilities and obligations accruing under this Agreement from and after the effective date

of such assignment. Nothing contained herein shall be construed to release the assignor under such assignment from any liabilities or obligations which shall have accrued prior to the effective date of such assignment. Notwithstanding the foregoing, Modified PILOT Excess Accrual shall become the obligation of the assignee and the assignor shall be relieved of any further liability therefor upon such assignment.

Section 14.7 No Waiver.

14.7.1 *Violations*. The Port Authority and the City may collect or authorize the Condominium Association to collect all rentals and fees due hereunder from any assignee or Subtenant or other party claiming a right under this Agreement or letting or occupying the Premises pursuant to an Assignment, Transfer or Sublease entered into in violation of the foregoing Sections, and the Port Authority shall apply the net amount collected to the rentals and fees herein reserved; but no such collection shall be deemed a waiver by the Port Authority of the prohibitions contained in the foregoing Sections or an acceptance by the Port Authority of any such assignee, Subtenant, claimant or occupant as Lessee, nor a release of the Lessee by the Port Authority from the further performance by the Lessee of the covenants contained herein.

14.7.2 *Consents*. Any consent granted by the Port Authority and the City to any Assignment, Transfer, Mortgage or Sublease pursuant to the provisions hereof shall not be construed or deemed to release, relieve or discharge any succeeding proposed Assignment, Transfer, Mortgage or Sublease from the requirement of having the prior written consent of the Port Authority and the City.

Section 14.8 Certain Sublease Requirements.

14.8.1 *Hotel Unit Owner's Name*. The Hotel Unit Owner shall enter into all Subleases in its own name.

14.8.2 *Term*. The Hotel Unit Owner shall not enter into any Sublease for a term (including renewal options) which expires after the ninety-eighth (98th) anniversary of the Lease Commencement Date without the prior written consent of the City and the Port Authority.

14.8.3 *Required Provisions*. Every Sublease entered into by the Hotel Unit Owner shall provide as follows:

(1) It is subordinate and subject to this Agreement.

(2) Except for security deposits and any other amounts deposited with the Hotel Unit Owner or with any Recognized Mortgagee in connection with the payment of insurance premiums, real property taxes and assessments and other similar charges or expenses, the Subtenant shall not pay rent or other sums payable under the Sublease to the Lessee for more than one (1) month in advance (unless the Port Authority and the City give their consent to a longer period).

(3) In the event the Port Authority and the City shall not have entered into a nondisturbance agreement with such Subtenant pursuant to the provisions of this Section 14.8, then at the option of the Port Authority and the City, on the termination of this Agreement pursuant to Article 17, the Subtenant shall attorn to, or shall enter into a direct lease on terms identical to its Sublease with, the Port Authority and the City for the balance of the unexpired term of the Sublease.

(4) With respect to any Sublease providing for the payment of percentage rent by the Subtenant to the Hotel Unit Owner, the Subtenant shall maintain full and accurate books of account and records of the Subtenant's business operation or enterprise, which books and records shall be so kept and maintained for at least five (5) years after the end of each lease year.

14.8.4 *Subtenant Obligations*. The Hotel Unit Owner shall use its best efforts to cause all Subtenants to comply with their obligations under their Subleases. A violation or breach of any of the terms, provisions or conditions of this Agreement that results from, or is caused by, an act or omission by a Subtenant shall not relieve the Hotel Unit Owner of the Hotel Unit Owner's obligation to cure such violation or breach.

14.8.5 *Collection of Subrent by the Port Authority and the City*. After an Event of Default relating to the Hotel Unit Owner's monetary obligations hereunder, the Port Authority and the City may, subject to the rights of any Recognized Mortgagee, collect rent and all other sums due under any Subleases and apply the net amount collected to the Rental payable by the Hotel Unit Owner hereunder. No such collection shall be, or shall be deemed to be, a waiver of any agreement, term, covenant

or condition of this Agreement nor the recognition by the Port Authority or the City of any Subtenant as a direct tenant of the Port Authority and the City nor a release of the Lessee from performance by the Hotel Unit Owner of its obligations under this Agreement.

14.8.6 *Sublease Assignment.* (a) As additional security for the full performance of all of the Hotel Unit Owner's obligations hereunder, the Hotel Unit Owner hereby assigns, transfers and sets over unto the Port Authority and the City, subject to any assignment of Subleases and/or rents to a Recognized Mortgagee made in connection with its Mortgage, all of the Hotel Unit Owner's right, title and interest in and to all Subleases, and hereby confers upon the Port Authority and the City, their agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and ensure the collection by the Port Authority and the City of all sums payable under such Subleases, and enforcement of all other rights of the Hotel Unit Owner under such Subleases. The exercise of such right of entry and qualified possession by the Port Authority and the City shall not constitute an eviction of the Lessee from the Premises or any portion thereof. If such right of entry and possession is denied to the Port Authority and the City, their agents or representatives, the Port Authority and the City, in the exercise of this right, may use all requisite force to gain and enjoy the Premises with neither responsibility for nor liability to the Lessee, its servants, employees, guests or invitees, or any Person whatsoever.

(b) On June 30 and December 31 of each year during the term of this Agreement, commencing with the year in which the Building is first occupied by any Subtenant, the Hotel Unit Owner shall deliver to the City and the Port Authority (x) a schedule of all Subleases, giving the names of all Subtenants, a description of the space that has been sublet (or licensed, etc.) expiration dates, rentals and other fees and such other information as Landlord reasonably may request, and (y) a photostatic copy of all Subleases, licenses and franchise and concession agreements (however, after the first demand therefor only those executed, amended or assigned since the previous demand, and with respect to sub-subleases, etc., and all further levels of sub- subleasing, only those of which the Hotel Unit Owner is aware). Upon reasonable request of the Port Authority or the City, the Hotel Unit Owner shall permit the Port Authority and the City and their agents and representatives to inspect original counterparts of all Subleases.

14.9 Role of Condominium Association. It is the express understanding of the parties hereto that, notwithstanding that various obligations under this Agreement may be performed by the Lessees through the Condominium Association, the Lessees shall remain liable for the performance of all such obligations.

ARTICLE 14A. PERMITTED MORTGAGES

Section 14A.1 Definitions. For the purposes of this Article 14A, the following terms shall have the respective meanings set forth below:

"**Construction Loan**" shall mean the loan obtained to provide financing for the construction of the Project.

"**Construction Mortgage**" shall mean the Mortgage securing the Construction Loan.

"**Construction Mortgage Loan Amount**" shall mean an amount not in excess of ninety percent (90%) of Total Project Costs.

"**Hotel Residence Mortgage**" shall mean any mortgage encumbering a Hotel Residence to secure a loan to a Hotel Residence Owner.

"**Hotel Residence Mortgagee**" shall mean the holder of a Hotel Residence Mortgage.

"**Institutional Investor**" shall mean any of the following: (i) a commercial bank, a savings and loan association, a savings bank, a trust company, a national banking association, an investment bank, a real estate investment trust, a credit union or a commercial credit corporation, whether acting for its own account or in a fiduciary capacity, including as trustee in connection with a securitization of commercial mortgage loans or as a manager of any fund; (ii) an insurance company or a pension and/or annuity company, whether acting for its own account or in a fiduciary capacity; (iii) a pension, retirement or profit sharing trust, plan or fund; (iv) a public employees' pension or retirement system; (v) a governmental agency, body or entity or (vi) any entity, all of the equity or beneficial owners of which are one or more of the entities listed in the preceding clauses (i) through (vi); *provided, however,* that any entity described in clauses (i) through (vi) above must have assets in excess of Three

Hundred Million Dollars ($300,000,000.00) at the time it extends mortgage financing to the Lessee and at least five (5) years of experience by a principal, officer or director within the firm (whether such experience was gained at the firm or in previous positions outside the firm) with respect to financing comparable development projects at such time; *and provided, further,* that the foregoing dollar amounts shall be increased every ten (10) years after the Lease Commencement Date by the percentage increase in the CPI during the preceding ten (10) year period.

"**Mortgage Amount**" shall mean (x) in the case of the Construction Loan, the Construction Mortgage Loan Amount; (y) in the case of the Permanent Loan, the Permanent Mortgage Loan Amount; and (z) in the case of a Refinancing Loan, the Refinancing Mortgage Loan Amount.

"**Permanent Loan**" shall mean the loan obtained to pay and satisfy the Construction Loan.

"**Permanent Mortgage**" shall mean the Mortgage securing the Permanent Loan.

"**Permanent Mortgage Loan Amount**" shall mean the greater of (x) the amount required to pay in full the outstanding principal amount of and all interest and other amounts then due under the Construction Loan and the expenses of obtaining and closing the Permanent Loan or (y) an amount not in excess of 90% of the value of the leasehold estate created hereunder (assuming the leasehold estate is not encumbered by any outstanding financing) at the time the Permanent Mortgage Loan is funded, as established by an appraisal approved by the Recognized Mortgagee holding the Permanent Mortgage.

"**Recognized Hotel Mortgagee**" shall mean a holder of a Mortgage on the Hotel Unit in respect to which the notice provided for by Section 14A.3 of this Article has been given by the Port Authority acknowledging that the benefits of this Article 14A apply to such Mortgage.

"**Recognized Mortgagee**" shall mean a Recognized Hotel Mortgagee or a Recognized Residential Mortgagee.

"**Recognized Residential Mortgagee**" shall mean a holder of a Hotel Residence Mortgage on a Hotel Residence in respect to which the Condominium Association has given

notice to the Port Authority and the City acknowledging that such holder is an "Eligible Mortgage Holder" as defined in the Master Deed of the Condominium together with the name and address of such Eligible Mortgage Holder.

"**Refinancing Loan**" shall mean any subsequent mortgage loan obtained to refinance the Permanent Loan or to refinance any such subsequent mortgage loan.

"**Refinancing Mortgage**" shall mean the Mortgage securing a Refinancing Loan.

"**Refinancing Mortgage Loan Amount**" shall mean the greater of (x) the amount required to pay in full the outstanding principal amount of and all interest and other amounts then due under the Permanent Loan or existing Refinancing Loan, as the case may be, and the expenses of obtaining and closing the new Refinancing Loan and (y) an amount not in excess of 90% of the value of the leasehold estate (assuming that the leasehold estate is not encumbered by any outstanding financing) at the time the new Refinancing Loan is funded as established by an appraisal approved by the Recognized Mortgagee holding the new Refinancing Mortgage.

Section 14A.2 Mortgage Authorized.

14A.2.1 *Mortgage Authorized.* (a) Notwithstanding the provisions of Article 14 of this Agreement, if this Agreement is then in full force and effect, the Hotel Unit Owner may, without the consent of the City or the Port Authority, at any time and from time to time, make a Mortgage in an amount not in excess of the applicable Mortgage Amount, provided such Mortgage:

(1) is made to an Institution Investor as defined in this Article;

(2) does not cover property other than the Premises;

(3) is not cross-defaulted or cross-collateralized with agreements covering any other property; and

(4) at the time such Mortgage is closed no Event of Default shall have occurred and be continuing hereunder

and no notice of termination shall have been given pursuant to Article 17 of this Agreement and be in effect.

(b) Each Hotel Residence Owner may, without the consent of the City or Port Authority, at any time and from time to time, make a Hotel Residence Mortgage.

14A.2.2 *More Than One Mortgage*. A loan or loans may be secured by more than one Mortgage, and all such Mortgages as shall secure such loan(s) shall collectively be referred to herein as the "**Mortgage**".

14A.2.3 *Mortgage Amounts*. In the event the Hotel Unit Owner obtains a Permanent Loan with respect to the Premises or the Hotel Unit, the Hotel Unit Owner shall first apply the proceeds of the Permanent Loan to discharge in full the Construction Loan; provided, however, that in the event the Hotel Unit Owner, acting diligently and in good faith, is unable to obtain a Permanent Loan in an amount at least equal to the amount of the Construction Loan or in the event that the proceeds of the Permanent Loan obtained by the Hotel Unit Owner are made available to the Hotel Unit Owner in stages so that the Hotel Unit Owner is unable to fully discharge the Construction Loan until the Hotel Unit Owner has received the full proceeds of such Permanent Loan, then, in either or both of such events only, the Hotel Unit Owner shall have the right to obtain a Permanent Loan without paying and satisfying the Construction Loan in full; provided, however, that the aggregate amount of any and all Mortgages at any one time outstanding shall not exceed the Permanent Mortgage Loan Amount. The provisions of this subsection shall also apply in respect of a Refinancing Loan which, for either of the reasons set forth above, does not provide proceeds sufficient to discharge the then-existing Mortgage, provided that the aggregate amount of all Mortgages at any one time outstanding in such circumstances shall not exceed the Refinancing Mortgage Loan Amount.

14A.2.4 *Assignment*. No Mortgage, other than a Hotel Residence Mortgage, shall be assigned, except to an Institutional Investor.

Section 14A.3 <u>Recognized Mortgagees</u>.

14A.3.1 *Notice*. If the Hotel Unit Owner intends to mortgage (x) its leasehold estate or (y) the Hotel Unit to a Person meeting the requirements of subsection 14A.2.1(1), and if the proposed holder of such Mortgage shall provide the City and

the Port Authority with notice of its name and address together with a true and complete copy of such Mortgage, a certification that such holder is a Person meeting the requirements of subsection 14A.2.1(l) and an appraisal or other evidence that the amount of the loan secured by such Mortgage is not in excess of the applicable Mortgage Amount, then and in that event the City and the Port Authority agree that, following receipt of such notice by the City and the Port Authority, the remaining provisions of this Article 14A shall apply in respect to such Mortgage.

14A.3.2 *Acknowledgment.* The Port Authority (which in this Article 14A will act on behalf of itself and the City) shall within twenty (20) Business Days after receipt of the notice provided in subsection 14A.3.1 above, acknowledge in writing that the holder of the Mortgage on the Hotel Unit described in the notice is a Recognized Mortgagee, entitled to the benefits of this Article 14A. If the Port Authority reasonably determines in good faith, the holder of a mortgage on the Hotel Unit is not entitled to such benefits, the Port Authority shall set forth the reasons therefor in reasonable detail. The Port Authority's determination with respect to the proposed Mortgagee of the Hotel Unit under this subsection 14A.3.2 shall be based solely upon (x) whether or not the holder of such Mortgage is an Institutional Investor and (y) whether or not the amount of the Mortgage will exceed the applicable Mortgage Amount.

14A.3.3 *No More Than Two Recognized Mortgagees.* In all events, and notwithstanding any other provision of this Agreement or elsewhere, at any one time there shall not be more than two (2) Recognized Hotel Mortgagees with respect to the Hotel Unit and one (1) Recognized Residential Mortgagee with respect to each Hotel Residence.

Section 14A.4 Consent of Recognized Mortgagee Required.

No cancellation, surrender or modification of this Agreement or a Unit Owner's interest in this Agreement shall be effective unless consented to in writing by the applicable Recognized Hotel Mortgagee senior in lien (such consent not to be unreasonably withheld or delayed), and no cancellation, surrender or modification of this Agreement effectuated without the prior written consent of such Recognized Mortgagee shall be binding on such Recognized Hotel Mortgagee.

Section 14A.5 Default and Termination.

14A.5.1 *Default Notices.* (a) Upon giving the Hotel Unit Owner any notice of (x) a default under this Agreement, or (y) a termination of the Hotel Unit Owner's interest in this Agreement, or (z) a matter on which the Port Authority and the City may predicate or claim a default by the Hotel Unit Owner, the Port Authority and the City shall at the same time give a copy of such notice to every Recognized Hotel Mortgagee holding a lien on the Hotel Unit. No such notice by the Port Authority and/or the City to the Hotel Unit Owner shall be deemed to have been duly given unless and until a copy thereof has been so given to each Recognized Hotel Mortgagee holding a lien on the Hotel Unit at its address last provided by such Recognized Mortgagee to the Port Authority pursuant to the provisions of this Article. The Port Authority and the City shall also give a copy of such notice to the Condominium Association at the address provided in writing to the Port Authority and the City, but failure to deliver such a notice shall not affect the effectiveness of the notice to the Hotel Unit Owner.

(b) As provided in Section 14.2.5, the Condominium Association shall receive all notices of default with respect to each Hotel Residence Owner. The Condominium Association pursuant to the condominium documents shall be obligated to provide copies of such notices of default to the applicable Recognized Residential Mortgagee. In no event shall the Port Authority or City have any obligation to provide any notice of default directly to any Recognized Residential Mortgagee.

(c) From and after the date on which (i) the Port Authority and City give such notice to a Recognized Hotel Mortgagee with respect to the Hotel Unit Owner or (ii) the Port Authority and City give such notice to the Condominium Association with respect to a Hotel Residence Owner, such Recognized Mortgagee shall have the same period, for remedying any default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given to the Lessee after the giving of such notice to the Lessee plus, in each instance, the additional periods of time specified in subsection 14A.5.3 hereof to remedy, commence remedying or cause to be remedied the defaults or acts or omissions which are the subject matter of such notice. The Port Authority and the City shall accept such performance by or at the instigation of such Recognized Mortgagee as if the same had been done by the Lessee. The Lessee shall authorize each Recognized Mortgagee to take any

such action at such Recognized Mortgagee's option and shall authorize entry upon the Premises by the Recognized Mortgagee for such purpose.

14A.5.2 *Termination Notices.* (a) Anything contained in this Agreement to the contrary notwithstanding, if any default shall occur and continue for such period as entitles the Port Authority and/or the City to terminate a Lessee's interest in this Agreement and the letting hereunder, neither the Port Authority nor the City shall have the right to effectuate such termination unless, following the expiration of the period of time given the Lessee to cure such default or the act or omission which gave rise to such default, the Port Authority and the City shall notify every Recognized Mortgagee holding a lien on the defaulting Lessee's Unit of the Port Authority's and the City's intent to so terminate the Lessee's leasehold interest in its Unit (the **"Termination Notice"**) at least twenty (20) Business Days in advance of the proposed effective date of such termination if such default is capable of being cured solely by the payment of money, and at least forty five (45) Business Days in advance of the proposed effective date of such termination if such default is not capable of being cured solely by the payment of money.

(b) The provisions of subsection 14A.5.3 below shall apply if, during such twenty (20) or forty-five (45) Business Day "Termination Notice Period", any Recognized Hotel Mortgagee or Recognized Residential Mortgagee, as applicable:

(i) notifies the Port Authority and the City of such mortgagee's desire to nullify such notice; and

(ii) pays or causes to be paid to the City and the Port Authority, as applicable, all Rentals and other payments then due and in arrears as specified in the Termination Notice with respect to the defaulting Unit Owner, as well as (x) with respect to the Hotel Unit Owner, all Rentals and other payments which may become due from the Hotel Unit Owner during the Termination Notice Period and of which the Recognized Mortgagee is given written notice by the Port Authority or the City and (y) with respect to the Hotel Residence Owners, all Rental and other payment which may become due from the defaulting Hotel Residence Owner during the Termination Notice Period and of which the Unit's Recognized Residential

Mortgagee is given written notice by the Condominium Association; and

(iii) complies or in good faith, with reasonable diligence and continuity, commences to comply with all nonmonetary requirements of this Agreement then in default and reasonably susceptible of being complied with by such Recognized Mortgagee. If the curing of any nonmonetary default requires the Recognized Mortgagee to obtain possession of the Premises, then the Recognized Mortgagee shall be deemed to have commenced in good faith to comply with the obligation of the Lessee which is in default with reasonable diligence and continuity, subject to the effects of any stay which may prevent it from so doing, if it has commenced and is prosecuting with due diligence proceedings to obtain such possession, whether through foreclosure of its Mortgage, an application for the appointment of a receiver or otherwise or, having obtained such possession, is then undertaking to comply with such obligation with due diligence.

14A.5.3 *Procedure on Default.* (a) If the Port Authority and/or the City elects to terminate a Lessee's leasehold interest in its Unit by reason of any default of the Lessee, and a Recognized Mortgagee shall have proceeded in the manner provided for by subsection 14A.5.2 above, the specified date for the termination of the Unit Owner's leasehold interest as fixed by the Port Authority and/or the City in its Termination Notice shall be extended for a period of six (6) months, provided that such Recognized Mortgagee shall, during such six (6) month period, pay or cause to be paid the Rentals and other monetary obligations of the Lessee under this Agreement as the same become due and continue its good faith efforts to perform all of the Lessee's other obligations under this Agreement as and to the extent provided in subsection 14A.5.2 above, subject to the effects of any stay which may prevent it from doing so.

(b) If at the end of such six (6) month period such Recognized Mortgagee is complying with subsection 14A.5.2 above, then, provided that such Recognized Mortgagee continues so to comply, this Agreement shall not then terminate, and the time for completion by such Recognized Mortgagee of the actions being taken by it pursuant to subsection 14A.5.2 (iii) shall be extended for such additional period of time as may be required

for the completion thereof with all due diligence, taking into account the effect of any stay which may prevent the Recognized Mortgagee from proceeding with such actions. Nothing in this Article 14A, however, shall be construed to extend the term of the letting hereunder beyond the Expiration Date or to require a Recognized Mortgagee to continue any foreclosure proceedings after the default in respect of which the Termination Notice was issued has been cured. If such default shall be cured and the Recognized Mortgagee shall discontinue such foreclosure proceedings, this Agreement shall continue in full force and effect as if the Lessee had not defaulted under this Agreement.

14A.5.4 *Recognized Mortgagee Need Not Cure Specified Defaults*. Nothing herein contained shall require any Recognized Mortgagee or its designee, as a condition to its exercise of its rights under this Article, or any purchaser at a foreclosure sale, to cure any non-monetary default of the Lessee not reasonably susceptible of being cured by such Recognized Mortgagee, designee or purchaser in order to comply with the provisions of this Section 14A.5.

Section 14A.6 Eminent Domain.

The Lessee's share, as provided in Article 19 of this Agreement, of the proceeds arising from an exercise of the power of eminent domain shall, subject to the provisions of such Article, be disposed of as provided for by the Master Deed. Unless prohibited by applicable law, each Recognized Mortgagee shall have the right to be a party in any condemnation or eminent domain proceeding affecting the Premises and/or the Building for the purpose of protecting its interest in such proceeding.

Section 14A.7 Casualty Loss.

A standard mortgagee clause naming each Recognized Mortgagee may be added to any and all casualty insurance policies required to be carried by the Lessee hereunder on condition that the insurance proceeds are to be applied in the manner specified in this Agreement, and the Mortgage shall so provide; provided, however, that the Mortgage may provide a manner for the disposition of such proceeds, if any, otherwise payable directly to the Lessee.

Section 14A.8 No Merger.

So long as any Mortgage held by a Recognized Mortgagee is in existence, unless all Recognized Mortgagees shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of the Lessee herein created shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by the Port Authority and/or the City or by the Lessee or by a third party, by purchase or otherwise.

Section 14A.9 Estoppel Certificate.

The Port Authority and the City shall, without charge, at any time and from time to time hereafter, but not more frequently than twice in any one-year period (or more frequently if such request is made in connection with any sale or mortgaging of the Hotel Unit Owner's leasehold interest), within thirty (30) Business Days after written request by the Hotel Unit Owner to do so, certify to the Recognized Mortgagee or purchaser, or proposed Recognized Mortgagee or proposed purchaser of the Hotel Residence or any other Person specified in such request, by written instrument duly executed and acknowledged by the Port Authority and the City, as follows: (A) as to whether this Agreement has been supplemented or amended, and if so, the date and substance of each such supplement or amendment; (B) as to the validity, force and effect of this Agreement, as amended, in accordance with its tenor; (C) as to whether any notice has been sent, pursuant to Section 17.1 hereof, by reason of the occurrence of an Event or Default hereunder; (D) as to the existence of any offsets, counterclaims or defenses hereto on the part of the Lessee known to the Port Authority or the City; (E) as to the commencement and expiration dates of the term of this Agreement; and (F) as to any other matters as may be reasonably so requested including, without limitation, the annual amounts of Basic Rental, Annual PILOT Rental and Annual O & M Rental then payable. Notwithstanding the foregoing, all estoppel certificates given in connection with a Hotel Residence shall be addressed and delivered only to the Condominium Association, and shall not provide information that is specific to the particular Hotel Residence, such as, for example, the amount of that Unit's Share of Basic Rental, which information is readily available from the Condominium Association.

Section 14A.10 Notices.

14A.10.1 *Address.* Notices from the Port Authority and/or the City to a Recognized Mortgagee shall be mailed to the address furnished to the Port Authority and the City pursuant to subsection 14A.3.1 above, and those from the Recognized Mortgagee to the Port Authority and the City shall be mailed to the address designated in or pursuant to the provisions of Article 24 hereof. In the event of any assignment of a Mortgage or in the event of a change of address of a Recognized Mortgagee or of an assignee thereof, notice of the new name and address shall be provided to the City and the Port Authority. Notices from the Condominium Association to a Recognized Residential Mortgagee shall be mailed to the last address provided by the Recognized Residential Mortgagee to the Condominium Association in accordance with the provisions of the Master Deed.

14A.10.2 *Manner.* Such notices, demands and requests shall be given in the manner described in Article 24 and shall be governed by the provisions of that Article.

Section 14A.11 New Lease.

14A.11.1 *New Lease.* In the event of a termination of a Unit Owner's leasehold interest, notwithstanding the fact that the Recognized Mortgagee may have had and did not exercise or properly exercise the right under Section 14A.5 hereof to prevent such termination, the Port Authority and the City shall, in addition to any notice provided for in Section 14A.5 hereof, provide each Recognized Mortgagee with written notice that this Agreement has been terminated with respect to such Unit, together with a statement of all sums which would at that time be due by the Unit Owner under this Agreement but for such termination, and of all other defaults, if any, hereunder then known to the Port Authority and the City. The Port Authority and the City agree to enter into a new lease (the "**New Lease**") of the Unit with such Recognized Mortgagee or for the remainder of the term of this Agreement, effective as of the date of termination of this Agreement as to such Unit, at the Rentals and upon the terms, covenants and conditions (excluding requirements which are not applicable or which have already been fulfilled) of this Agreement, provided that:

(i) such Recognized Mortgagee shall make written request upon the Port Authority and the City for such New Lease within sixty (60) days after the date such Recognized Mortgagee receives the Port

Authority's and the City's Notice of Termination of the Unit Owner's Interest in this Agreement given pursuant to this subsection 14A.11.1; and

(ii) such Recognized Mortgagee or its designee shall pay or cause to be paid to the Port Authority and the City at the time of the execution and delivery of such New Lease any and all sums which would at the time of execution and delivery thereof be due pursuant to this Agreement but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorney's fees, which the Port Authority and the City shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by the Port Authority and the City from the Lessee. The Port Authority and the City shall give such Recognized Mortgagee written notice of all such sums, in reasonable detail, and neither the Recognized Mortgagee nor its designee shall be responsible for paying any such sum until it has been so notified of the amount thereof.

14A.11.2 *Priority*. Any New Lease made pursuant to this Section 14A.11 shall be prior to any mortgage or other lien, charge or encumbrance on the Unit and shall be prior to the underlying Ground Lease between the City and the Port Authority and the lessee under such New Lease shall have the same right, title and interest in and to the Premises and the Building thereon as the Lessee had under this Agreement.

14A.11.3 *More Than One Recognized Mortgagee*. If more than one Recognized Mortgagee shall request a New Lease pursuant to subsection 14.11.1 above, the Port Authority and the City shall enter into such New Lease with the Recognized Mortgagee whose mortgage is prior in lien, or with the designee of such Recognized Mortgagee. The Port Authority and the City, without liability to the Lessee or any Recognized Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy or title certificate issued by a responsible title insurance company doing business within the State of New Jersey as the basis for determining the appropriate Recognized Mortgagee which is entitled to such New Lease.

14A.11.4 *Space Leases*. Following the termination of the Unit Owner's leasehold interest in its Unit, and until the right

of a Recognized Mortgagee to obtain a New Lease pursuant to this Section 14A.11 has expired without being exercised, neither the Port Authority or the City shall terminate any sublease of space in the Building without the prior written consent of such Recognized Mortgagee.

Section 14A.12 Subordination.

Notwithstanding anything contained in any Mortgage or in this Article 14A, it is understood and agreed that the rights of the holder of any Mortgage, including a Recognized Mortgagee, shall be subject and subordinate to this Agreement. The terms, covenants, conditions and provisions of this Agreement shall govern as between the City, the Port Authority, the Unit Owners and any Recognized Mortgagee, and in the event of any inconsistency between the terms, covenants, conditions and provisions of this Agreement and the terms, covenants, conditions and provisions of a Mortgage, the terms, covenants, conditions, and provisions of this Agreement shall control. Notwithstanding any provisions of any Mortgage to the contrary, the Lessee for all purposes shall be deemed to be the Lessee hereunder unless and until a Recognized Mortgagee shall have acquired the Lessee's interest herein or a New Lease has been executed pursuant to this Article, as the case may be. Any Mortgage of the Hotel Unit granted hereunder shall make reference to the provisions of this Agreement and shall provide that the Hotel Unit Mortgage and the rights of the Recognized Mortgagee thereunder are and shall be in all respects subject to all provisions of this Agreement. Without limiting the generality of the foregoing, each Mortgage of the Hotel Unit shall contain the following provision:

> "This mortgage is executed upon the condition (i) that no purchaser at any foreclosure sale shall acquire any right, title or interest in or to the Unit hereby mortgaged (the "**Lease**") unless such purchaser, or the person, firm or corporation to whom or to which such purchaser's right has been assigned, in the instrument transferring to such purchaser or to such assignee the interest of the Hotel Unit Owner under the Lease, assumes and agrees to perform all of the terms, covenants and conditions of the Lease thereafter to be observed or performed on the part of such Lessee, (ii) that no further or additional mortgage or assignment of the Hotel Unit shall be made except in accordance with the provisions of the Lease and (iii) that a duplicate original of the instrument containing such

assumption agreement, duly executed and acknowledged by purchaser or assignee and in recordable form, is delivered to each of the Port Authority and the City of Hoboken promptly after the consummation of such sale or assignment."

"The mortgagee agrees to have the proceeds of any insurance or the proceeds any condemnation award applied to the repair or restoration of the Mortgaged Premises to the extent such application is required by the provisions of the Lease."

Section 14A.13 Assignment by Recognized Mortgagee.

A Recognized Mortgagee which holds a mortgage on the Hotel Unit shall have the right, at any time and without the consent of the City or the Port Authority, to assign the Mortgage held by it to another Institutional Investor or to grant participations in its Mortgage so long as a single Institutional Investor continues to act as the Recognized Mortgagee thereunder, and the City and the Port Authority will be obligated to give notices to and otherwise deal with only the one Institutional Investor that acts as such Recognized Mortgagee. A Recognized Residential Mortgagee shall have the right at any time without the consent of the City or Port Authority to assign its Hotel Residence Mortgage.

ARTICLE 15. LANDLORD'S PARTICIPATION IN PROCEEDS

Section 15.1 Definitions.

(a) "**Sale**" shall mean any Assignment, Transfer, Major Sublease, license, unsecured loan, sale (including without limitation, resale or sale among shareholders, partners or members), syndication, or other transfer of part or all of the Lessee's interest in this Agreement or the leasehold estate created hereby, any Hotel Residence Assignment, or any Alternative Disposition.

(b) "**Initial Hotel Residence Sale**" shall mean the first Hotel Residence Assignment for each Hotel Residence from the initial Lessee to a Hotel Residence Owner.

(c) "**Alternative Disposition**" shall mean any transaction which, by virtue of transfer of Control or other incidents of ownership, would allow (i) the Hotel Unit Owner or the Hotel Unit Owner, or the beneficial owners of the Hotel Unit

Owner or the Hotel Unit Owner to realize appreciation in the value of the leasehold estate created by this Agreement or would constitute the functional equivalent of a Sale, or (ii) the Hotel Residence Owner or the beneficial owners of the Hotel Residence to realize appreciation in the value of a Hotel Residence or would otherwise constitute the functional equivalent of a Hotel Residence Assignment.

(d) "**Financing**" shall mean (x) any Mortgage or other financing secured by the Hotel Unit Owner's interest in all or any part of this Agreement or the leasehold estate created hereby, or (y) any refinancing, assignment, or restructuring of any such Mortgage or financing or (z) a Hotel Residence Financing; *provided, however,* that neither the Construction Loan nor the Permanent Loan shall be deemed to be a Financing unless the amount of either Loan exceeds the Development Costs of the Project, in which case such excess amount shall be deemed a Financing.

(e) "**Hotel Residence Financing**" shall mean (x) any Hotel Residence Mortgage or other financing secured by a Hotel Residence Owner's interest in all or part of a Hotel Residence or (y) any refinancing, assignment or restructuring of any such Hotel Residence Mortgage or financing; provided that the foregoing shall not be deemed to be a Hotel Residence Financing unless the Hotel Residence Owner, together with its affiliates, owns four (4) or more Hotel Residences.

(f) "**Major Sublease**" shall mean any Sublease for fifty percent (50%) or more of the Gross Square Footage of the Hotel Unit or of the Gross Square Footage of the Building excluding any Sublease of a Hotel Residence.

(g) "**Transaction Receipts**" shall mean:

(1) in the case of a Sale other than a Major Sublease, the aggregate of the following amounts, computed as of the closing date of such Sale, received as, or deemed to be, consideration for the Sale: (A) all cash or cash equivalent proceeds, (B) the fair market value of any property, other than cash, cash-equivalents or debt obligations made in connection with the Sale, (C) the Present Value of any Mortgages or Hotel Residence Mortgages or other debt assumed or satisfied by the purchaser at such Sale or to which the Sale is made subject, or a Proportionate Share of such Mortgage or Hotel Residence Mortgage or debt in the case of a Sale affecting only a

portion of the leasehold estate or the Hotel Residence or a less than one hundred percent (100%) interest in the Lessee or the Hotel Residence (a "**Partial Sale**"), (D) the Present Value of any purchase money note or debt obligation made in connection with such Sale and (E) any other consideration for the Sale (e.g., debt forbearance), if, as, and when received from each Sale, or at such time as the transferor is relieved of a Mortgage, Hotel Residence Mortgage or other debt obligation;

(2) in the case of a Financing, the cash proceeds received in connection with the Financing; and

(3) in the case of a Major Sublease, the rental and any other amounts paid to the Lessee under such Major Sublease for each month during the term thereof.

(h) "**Development Costs**" for the construction of the Project or a Capital Improvement shall mean the actual hard and soft costs of construction incurred after May 27, 2003. Soft costs shall be defined as: planning and design, general contractor's and construction management fees (which shall, if paid to an Affiliate, be no more than twenty percent (20%) of the total Development Costs for the Project or Capital Improvement, as applicable), professional fees, premiums and fees for construction period insurance, construction financing fees and expenses (including construction period interest), and the Lessee's reasonable salary and overhead costs. In no event, however, shall Development Costs include (i) amounts contributed to reserve funds unless and until such amounts are actually expended for purposes which would otherwise constitute Development Costs, (ii) developer fees of any kind paid, incurred or imputed to the Lessee or an Affiliate, (iii) any amounts paid or owed to an Affiliate to the extent such are in excess of that which would have been paid to an unrelated party in an arms-length transaction, (iv) principal payments or, to the extent the Lessee or its beneficial owners realize the benefit of currently deducting interest expenses for income tax purposes (*i.e.*, dollar tax savings), interest payments on Mortgages, and (v) any expense for which the Lessee is reimbursed, directly or indirectly, including, without limitation, by the City, the State, other public entities, or any Subtenant. "**Capital Improvement**" shall mean any improvement, replacement, alteration or addition made to the Premises subsequent to the Construction Completion Date that would constitute capital expenditures under Accounting Principles.

(i) "**Basis**" shall mean:

(1) In the case of a Sale (other than a Major Sublease), (x) if the transferor of the interest being sold is the Initial Developer, the Development Costs incurred prior to the date of such Sale, or (y) if the transferor of the interest being sold is not the Initial Developer, the amount of cash and cash-equivalents and the fair market value of any other property (other than debt obligations made in connection with the Sale) paid or conveyed for the acquisition of such interest plus the principal balance of any Mortgage or Hotel Residence Mortgage which was assumed by the transferor, or to which the transferor took subject, if any, at the time of the transferor's acquisition of the interest, the principal amount of any purchase money note or debt obligation made in connection with such Sale, and any Capital Improvements made between (p) the date such transferor of the interest being sold acquired title to such interest and (q) the date of the transaction giving rise to an obligation under this Agreement to make Proceeds Payment.

(2) In the case of a Partial Sale or a Sale by an Initial Owner, a Proportionate Share of the amount determined pursuant to subdivision (x) or (y), as applicable, of subparagraph (1) above.

(3) In the case of a Financing, the sum of (x) the outstanding principal amount of any Mortgage or Hotel Residence Mortgage being satisfied, refinanced, assigned or restructured in connection with the Financing (and if there is no such Mortgage or Hotel Residence Mortgage or other financing being so satisfied, refinanced, assigned or restructured, the amount of this subdivision (x) shall be the amount of cash and cash equivalent and the fair market value of any property paid or conveyed for the Unit Owner's interest in the Premises) and (y) the Unfunded Capital Improvement Amount; provided, however, that in the case of the Financing being obtained to pay and satisfy the Initial Permanent Loan, the Basis shall equal the Development Costs of the Project.

(4) In the case of a Major Sublease, the Basic Rental payable by the Hotel Unit Owner hereunder with respect to the subleased space, for the term of the Major Sublease, together with all operating expenses paid by the Lessee (to the extent not reimbursed and, if paid to an

Affiliate, only to the extent reasonable and customary) and a proportionate share of debt service paid by the Hotel Unit Owner.

(5) In no event shall any portion of the Basis attributable to amounts paid to any Affiliate exceed amounts that would be commercially reasonable in an arms length transaction, nor shall the same expenditure be included more than once in the Basis.

(j) "**Initial Developer**" shall mean 225 River Street LLC or any successor to its interest hereunder.

(k) "**Initial Owner**" shall mean any Person shown on **Exhibit O** other than the Initial Developer.

(l) "**Transaction Expenses**" shall mean all reasonable and customary expenses of the pertinent transaction, which expenses shall include, without limitation, attorneys' fees and disbursements, accountants', appraisers', consultants', and other professional fees, title insurance premiums, transfer and recording taxes, real property transfer gains taxes, mortgage recording taxes, brokerage fees, origination fees, institutional lender participations, and prepayment penalties; provided, however, that with respect to such expenses paid to any Affiliate of the transferor, such amounts shall be no more than would have been paid to an unrelated party in an arms-length transaction.

(m) "**Net Proceeds**" shall mean the amount by which the Transaction Receipts of a transaction exceed the sum (without duplication of any item) of the transferor's Basis and Transaction Expenses applicable to the transaction.

(n) "**Proportionate Share**" of any item included in the Basis or Transaction Receipts, with respect to a particular transaction, shall be equal to the percentage of the entire leasehold interest, or total ownership interest in the Lessee or its constituent entity, that is being sold.

(o) "**Unfunded Capital Improvement Amount**" shall mean, at any time and from time to time, the then outstanding cost (as adjusted in accordance with the following sentence) of all Capital Improvements theretofore made, to the extent not paid for or reimbursed out of the Reserve Fund for Replacements, *but only to the extent that,* with respect to the cost of any particular Capital Improvement theretofore made, the balance of

the Reserve Fund for Replacements shall first have been exhausted. Upon a Financing, the Unfunded Capital Improvement Amount shall be reduced to the extent it has been used in calculating Basis, in connection with such Financing, pursuant to paragraph (g) (3) of this Section 15.1.

(p) "**Reserve Fund for Replacements**" shall mean any reserve fund for replacements required by any Mortgagee.

Section 15.2 Payments.

15.2.1 *Proceeds Payments*. In the event of any Sale or Financing, the Lessee (i.e., the Hotel Unit Owner or a Hotel Residence Owner, as the case may be) shall pay or cause to be paid to the Condominium Association for payment to the Port Authority and the City, simultaneously with the consummation of each such Sale (except as provided in subsection 15.2.2 below and subject to the provisions of subsection 15.2.4 below and except as otherwise provided below in the case of a Major Sublease) or Financing, a payment (a "**Proceeds Payment**") in a total amount equal to ten percent (10%) of the Net Proceeds. The Lessee shall make the Proceeds Payments in the manner specified in this Article regardless of whether Transaction Receipts are received in a lump sum or stream of payments and whether based on a fixed price or a formula or index and whether received directly or indirectly. One half of the Proceeds Payment shall be paid to the Port Authority and one half paid to the City.

15.2.2 *Certain Sales Exempt*. Notwithstanding subsection 15.2.1 above, no Proceeds Payment shall be due to the Port Authority or the City by reason of a Transfer that is both (x) made solely between Initial Owners and (y) consummated prior to the tenth (10th) anniversary of the Lease Commencement Date.

15.2.3 *Distribution of Net Proceeds*. Net Proceeds shall be distributed first, to the Port Authority and the City, in the amount of the Proceeds Payment, and then, to the Lessee, in the amount of the remaining balance of the Net Proceeds.

15.2.4 *Special Proceeds Payment Deferral*. Notwithstanding that Section 15.2.1 above provides that Proceeds Payments required pursuant to this Article 15 shall be made simultaneously with the consummation of each applicable Sale or Financing, the Initial Developer may elect, by notice to the Port Authority and the City at least ten (10) days prior to the consummation of the first occurring Initial Hotel Residence

Sale, to defer payment of the aggregate Proceeds Payments relating to all Initial Hotel Residence Sales. If the Initial Developer elects to defer such aggregate Proceeds Payments, the amount so deferred:

(i) shall be payable in full, with interest as provided below, upon (x) the first Sale or Financing of the Hotel Unit Owner's interest in this Agreement to occur following, or (y) the tenth anniversary of, the date of the first occurring Initial Hotel Residence Sale, whichever of (x) or (y) is earlier; and

(ii) shall, from the various dates of each of the individual Initial Hotel Residence Sales to the date of payment in full pursuant to the foregoing subparagraph (i), accrue interest at an annually compounded rate equal to (x) for each twelve-month period with respect to which each Proceeds Payment is deferred, the twelve-month average (or, for each period of less than twelve months, the average over such period) of the weekly Index of 25 Revenue Bonds, as published in The Bond Buyer, plus (y) one hundred seventy five basis points.

Section 15.3 Determination of Development Costs.

No later than ninety (90) days after the Construction Completion Date, and no later than ninety (90) days prior to every Sale, Lessee shall deliver to the Port Authority and the City a statement of the Development Costs expended up to that time, certified by an authorized corporate officer, general partner or manager (if the Lessee is a limited liability company) of Lessee, as the case may be, as being accurate in all material respects and audited by the Certified Public Accountant (who shall give an opinion thereon that is qualified only to the extent prescribed for any comparable audit of this kind by generally accepted auditing standards) and listing in reasonable detail the components thereof. Within a period of one hundred eighty (180) days after receipt of such statement, the Port Authority and/or the City may examine and audit the records, account books and other data of the Lessee used as the basis for such certified statement, all of which the Lessee shall make available to the Port Authority and the City. If such audit shall establish that such Development Costs were overstated, then such Development Costs for purposes of this Agreement shall be reduced accordingly. The audit, if any, shall be conducted at the expense of the Port Authority and/or the City unless it shall be established that the Lessee overstated such Development Costs by more than one percent (1%), in which case the Lessee

shall pay the cost of the audit. In the case of the statement to be delivered within ninety (90) days after the Construction Completion Date, if any item of Development Costs is not yet determined, the Lessee shall make one or more supplemental submissions of such additional Development Cost items (which supplemental submission[s] shall be certified and audited, the cost of such audits borne as provided in the preceding sentence). Notwithstanding the foregoing, if Lessee disagrees with the results of the Port Authority's and/or City's audit, Lessee shall notify the Port Authority and/or City within thirty (30) days and, within ten (10) days thereafter, Lessee, the Port Authority and the City shall select an independent certified public accountant from a "Big 4" (or equivalent) national accounting firm, who has not less than 15 years experience to conduct an audit. If the parties cannot agree on a certified public accountant to perform the audit, each party shall select a certified public accountant within ten (10) days and the two accountants shall, within 5 days, appoint a third certified public accountant to perform the audit. Such determination shall be binding on the parties. The cost of this audit shall be shared equally; provided, however, that if the audit establishes that Lessee overstated such Development Costs by more than one (1%) percent, Lessee shall pay the cost of the audit.

Section 15.4 Closings.

Each Lessee shall notify the Condominium Association of the time and location of the closing of any Sale or Financing, at least thirty (30) Business Days prior thereto, and shall include therewith a statement of the anticipated Net Proceeds, if any, and a copy of the most recent available drafts of the Sale or Financing documents, as the case may be. The Condominium Association shall notify the City and Port Authority of such Sale or Financing within ten (10) Business Days of receipt of notice from the Lessee. If there is any material change in the facts as set forth in such notice (including any change whatsoever in anticipated Net Proceeds), the Lessee shall re-notify the Condominium Association which shall re-notify the Port Authority and the City, with the corrected information, no less than fifteen (15) business days prior to the closing. The Lessee shall thereafter supply the Condominium Association, the Port Authority and the City with any documents or information requested by the Port Authority and/or the City in order for the Port Authority and/or the City to verify the calculation of Net Proceeds. Representatives of the Port Authority and/or the City

may attend such closing. Each Proceeds Payment shall be paid to the Port Authority at such closing by certified check or by wire transfer.

Section 15.5 Monitoring of Transfers of Ownership Interests.

15.5.1 *Amendment to Organizational Documents.*

(a) All of the Hotel Unit Owner's organizational documents and the organizational documents of any direct or indirect constituent entity of the Hotel Unit Owner (the "**Organizational Documents**") shall be amended prior to or as of the Lease Commencement Date, and the Organizational Documents of any other entity shall be amended prior to becoming a direct or indirect constituent entity of Hotel Unit Owner, so that the Organizational Documents contain, and shall thereafter continue to contain, throughout the term of this Agreement, provisions that (x) no new partner or member shall be admitted, (y) no transfer of stock ownership or of a beneficial interest in the Hotel Unit Owner or in any direct or indirect constituent entity in the Hotel Unit Owner shall be effective and (z) no Organizational Documents shall be amended to reflect any such changes in partnership or membership interests or transfers of stock ownership or beneficial interests, *until* the Hotel Unit Owner receives reasonably satisfactory evidence, a copy of which the Hotel Unit Owner shall promptly deliver to the Port Authority and the City, that any Proceeds Payment due to the Port Authority and the city in connection with such change or transfer has been or will be paid.

(b) The Condominium Documents shall expressly set forth the obligation to pay Proceeds Payments. Any amendments to the Condominium Documents which affect the City's or Port Authority's rights and/or obligations shall be subject to the City's and Port Authority's approval.

15.5.2 *Legend.* In addition, any instrument evidencing a direct ownership interest in the Hotel Unit Owner or in any direct or indirect constituent entity of the Hotel Unit Owner shall contain a legend giving notice of, or a complete description of, the foregoing transfer restrictions, in form and substance satisfactory to the Port Authority and/or the City.

15.5.3 *Lessee's Monitoring Obligations.* If any principal of the Hotel Unit Owner becomes aware of any assignments or transfers of a direct ownership interest in the Hotel Unit Owner or in any direct or indirect constituent entity of the Hotel

Unit Owner in respect of which a Proceeds Payment was due but was not paid, the Hotel Unit Owner shall charge the shareholder, partner or member or other transferor (including, if necessary, by a reduction in the capital account of the partner involved) to the extent necessary to make the requisite Proceeds Payment, with interest at the Late Charge Rate (accruing from the day the payment should have been made in accordance with this Agreement), and the Hotel Unit Owner shall make such payment to the Port Authority and the City. As a condition of every Sale, the Hotel Unit Owner shall require that the Organizational Documents and instruments evidencing ownership of the purchaser contain identical restrictions on transfer as are contained in this Section.

15.5.4 *Annual Certificate.* Annually on or before each February 1 during the term of this Agreement, the Hotel Unit Owner shall deliver to the Port Authority and the City a certificate, subscribed by the secretary or managing partner or manager of the Lessee, as the case may be, expressly referring to this Section 15.5, and setting forth the names, addresses and beneficial and record interests of all holders of nominal or beneficial interests in the Lessee and its direct and indirect constituent entities as of the preceding January 1.

Section 15.6 Validity of Transactions.

Nothing contained in this Article with respect to Sales and Financings shall be construed to limit the rights of the Port Authority and/or the City under the applicable provisions of the Article entitled "Assignment, Transfer, Mortgage and Subletting". Any Sale or Financing transacted in violation of such Article or this Article shall be null and void.

Section 15.7 Proceeds Payments on Major Subleases.

15.7.1 *Payments.* In the event of any Major Sublease, the Hotel Unit Owner shall pay the Proceeds Payments applicable to such transaction by paying to the Port Authority and the City on the first day of each month an amount equal to fifteen percent (15%) of the excess of the Total Receipts from such Major Sublease in such month over the Basis applicable to such Major Sublease for such month.

15.7.2 *Transactions of Major Subtenants.* In the event of a transaction by, or involving an interest in, a Major Subtenant, which transaction would, if the Major Subtenant were the Hotel Unit Owner, create the requirement for the payment of

a Proceeds Payment, such a Proceeds Payment shall be payable by the Hotel Unit Owner to the Port Authority and the City, in an amount calculated to produce a fifteen percent (15%) share of profits from the transaction according to the principles set forth in this Article, for calculating the Proceeds Payments in connection with Lessee transactions.

ARTICLE 16. RIGHTS OF ENTRY

Section 16.1 Rights Of Entry Reserved.

The City and the Port Authority by their officers, employees, agents, representatives and contractors shall each have the right at all reasonable times upon reasonable notice to enter upon the Hotel and the common areas of the Hotel Residences for the purpose of inspecting the same (including without limitation performing periodic evaluations of, *inter alia*, the maintenance program, condition and code conformance' of electrical, mechanical, structural and fire and life safety systems), for observing the performance by the Lessee of its obligations under this Agreement (including without limitation the Lessee's obligations to comply with Requirements and Rules and Regulations) and for the doing of any act or thing which the City or the Port Authority may, pursuant to the express provisions of this Agreement or pursuant to applicable law (e.g. as owners and/or lessors of the Premises) be obligated or have the right to do, provided that, other than in the case of an emergency, each of the City and the Port Authority agrees to give the Lessee reasonable prior oral notice of its intention to enter any area of the Premises. The Lessee shall have the right to have a representative present during each entry on the Premises by the City or the Port Authority. Each of the City and the Port Authority, in its capacity as landlord hereunder, agrees that it will not unreasonably interfere with the operation of the Premises during any such entry.

Section 16.2 Grant of Easements in Premises.

Upon the written request of the Lessee, the City and the Port Authority agree to join with the Lessee, at no cost to the Port Authority or the City, in executing any instruments creating easements, rights of way or similar interests in, on, under or above the Premises, which are required in order for the Premises to be serviced by utilities, telephones, cable television and like services.

Section 16.3 No Duty on City.

Nothing contained in this Article shall be construed as imposing any responsibility on the City for or in respect of lines, wires, pipes or conduits which are the property of any utility or other company.

Section 16.4 Entry at End of Term.

At any time and from time to time during ordinary business hours within the twenty-four (24) months preceding the expiration of the letting hereunder, the Port Authority, through and by its agents and employees, whether or not accompanied by prospective tenants, occupiers or users of the Premises, shall have the right to enter the Hotel and common areas of the Hotel Residences for the purpose of exhibiting and viewing all parts of the same provided that the Port Authority shall give the Lessee reasonable prior written notice of its intention to enter the Premises to exercise the rights described in this Section. The Lessee shall have the right to have a representative present during each such entry.

Section 16.5 No Eviction.

The exercise of any or all of the foregoing rights by the City and/or the Port Authority and/or its agents in accordance with the provisions of this Article shall not be or be construed to be an eviction of the Lessee nor be made the grounds for any abatement of Rental nor any claim or demand for damages, consequential or otherwise.

ARTICLE 17. TERMINATION

Section 17.1 Events of Default.

If any one or more of the following events (each, an "**Event of Default**") shall occur with respect to a Lessee, that is to say:

(1) the Lessee shall become insolvent, or take the benefit of any present or future insolvency statute, or make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any other law or statute of the United States or of any State thereof, or consent to the

appointment of a receiver, trustee or liquidator of all or substantially all its property; or

(2) a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute shall be filed against the Lessee and shall not be dismissed or vacated within ninety (90) days after the filing thereof; or

(3) by order or decree of a court the Lessee shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or stockholders of the Lessee seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or of any State thereof; or

(4) by or pursuant to any order or decree of any court or governmental board, agency or officer, a receiver, trustee or liquidator shall take possession or control of all or substantially all the property of the Lessee, or any execution or attachment shall be issued against the Lessee or any of its property whereby possession of the Premises shall be taken by someone other than the Lessee, and any such possession or control shall continue in effect for a period of sixty (60) days; or

(5) the letting hereunder or a part or all of the interest or estate of the Lessee under this Agreement shall be sold, transferred, assigned, subleased, mortgaged, pledged, hypothecated, encumbered, conveyed or shall pass to or devolve upon (by operation of law, by statute, or otherwise) any other Person, or if the Lessee shall merge or consolidate with or into any other Person, except as permitted under Articles 14 and 14A of this Agreement; or

(6) the Lessee shall be dissolved as the result of any act or omission of its partners, members or other principals, or any of them, or by operation of law or the order or decree of any court having jurisdiction, or for any other reason whatsoever, and following such dissolution the Lessee shall not be reconstituted or its business continued; or

(7) any lien shall be filed against the Premises because of any act or omission of the Lessee and is not

removed, discharged, or bonded within thirty (30) days after the Lessee has received notice thereof; or

(8) the Initial Developer shall voluntarily abandon, desert or vacate the entire Premises or discontinue its operations at the Premises; or the Hotel Unit Owner shall voluntarily abandon, desert or vacate the entire Premises or discontinue its operations at the Hotel Unit; or

(9) the Lessee shall fail duly and punctually to pay its Share of any Rental (including without limitation the Basic Rental, Percentage Rental, Annual PILOT Rental and the Annual O & M Rental), fee, charge or other sum payable hereunder to the City, the Port Authority or the O & M Board, as the case may be, within fifteen (15) days after receipt of notice of such default from the City or the Port Authority; or

(10) the Lessee shall fail to keep, perform and observe any other promise, covenant and agreement set forth in this Agreement on its part to be kept, performed or observed within twenty (20) days after receipt of notice of default thereunder from the City or the Port Authority (or, in the case of any obligation which requires more than a period of twenty (20) days for its performance with due diligence, if the Lessee shall fail to commence to perform whatever may be required for fulfillment of such obligation within twenty (20) days after receipt of such notice or, having so commenced performance, shall thereafter fail diligently to continue and complete such performance);

then (x) upon the occurrence of any such Event of Default or at any time thereafter during the continuance thereof, the Port Authority may upon ten (10) days written notice terminate the Unit Owner's interest under this Agreement, effective upon the date specified in such notice, and (y) if any such Event of Default consists of the failure of a Lessee to duly and punctually pay to the City or the O & M Board, respectively, the Annual PILOT Rental or the Annual O & M Rental, the City may, upon the occurrence of such Event of Default or at any time thereafter during the continuance thereof, upon five (5) days notice terminate the Lessee's interest in this Agreement, such termination to be effective upon the date specified in such notice. Each such right of termination and the exercise thereof shall be and operate as a conditional limitation. Neither the City nor the Port Authority nor their respective successors in

interest may terminate the leasehold interest of a Unit Owner who makes timely payment of its Share of Subtenant Payments and otherwise complies with all covenants which, if violated, would entitle the City or the Port Authority to terminate this Agreement. A Unit Owner's leasehold interest shall not be affected by failure of any other person to pay Subtenant Payment or fulfill any other covenant.

It is understood and agreed that in accordance with Section 14.2.5, the Condominium Association shall receive all notices of default hereunder.

Section 17.2 Acceptance of Rental Not a Waiver.

No acceptance by the City or the Port Authority of Unit Owner's Share of Rental, fees, charges or other payments in whole or in part for any period or periods after an Event of Default has occurred and while such Event of Default is continuing shall be deemed to be a waiver of the right on the part of the City or the Port Authority to terminate the Lessee's leasehold interest hereunder by reason of such Event of Default.

Section 17.3 Remedies.

The right to terminate a Lessee's interest under this Agreement under the circumstances described in this Article shall be in addition to any other right of termination provided for in this Agreement and in addition to any other rights and remedies (other than termination) that the City or the Port Authority would have at law or in equity consequent upon any breach of this Agreement by the Lessee, and the exercise by the City or the Port Authority of any right of termination shall be without prejudice to any other such rights and remedies.

Section 17.4 Limitation on Counterclaims.

The Lessee shall not interpose any counterclaim in any summary proceeding or action for non-payment of Rental which may be brought by the City or the Port Authority unless such counterclaim is in the nature of a mandatory counterclaim (*i.e.*, the claim of the Lessee would be waived if not brought as such a counterclaim).

Section 17.5 Right of Re-Entry.

The Port Authority shall, as an additional remedy upon the termination of this Agreement and the letting hereunder, have

the right to reenter the Unit and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such reentry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of the Lessee under this Agreement, and shall in no event constitute an acceptance of surrender.

Section 17.6 Waiver of Redemption.

The Lessee hereby waives any and all rights to recover or regain possession of the Unit and any and all rights of redemption granted by or under any present or future law, in the event it is evicted or dispossessed for any cause or in the event the Port Authority or the City obtains possession of the Unit in any lawful manner.

Section 17.7 Survival of Obligations.

In the event that a Unit Owner's leasehold interest under this Agreement is terminated in accordance with the provisions of this Article, or in the event the Port Authority or the City has re-entered, regained or resumed possession of the Unit in accordance with this Article, all of the obligations of the Lessee under this Agreement shall survive such termination, re-entry or regaining or resumption of possession and shall remain in full force and effect for the full term of this Agreement, and damages shall become due and payable to the City and the Port Authority as set forth below. Notwithstanding anything to the contrary contained herein, all of the obligations of the Hotel Lessee under this Lease with respect to Environmental Damages and Environmental Requirements shall survive the expiration or termination of this Agreement.

Section 17.8 Damages.

Immediately upon any termination and/or re-entry, regaining or resumption of possession in accordance with this Article, there shall become due and payable by the Lessee to the City and the Port Authority, without notice or demand, as damages (which damages are not intended to be exclusive) the sum of the following:

(1) the amount of all then accrued and unpaid monetary obligations of the Lessee to the City and the Port

Authority under this Agreement as of the effective date of termination, re-entry or regaining or resumption of possession; and

(2) an amount equal to the reasonable cost to and the expenses of the Port Authority and/or the City in connection with the termination, re-entry or regaining or resumption of possession, including reasonable legal expenses and costs, and brokerage fees and commissions in connection with any reletting of the Unit; and the Port Authority's costs and expenses for putting the Unit in order, including without limitation cleaning, decorating and restoring (on failure of the Lessee to restore), and the Port Authority's costs and expenses for the care and maintenance of the Unit, and the furnishing and equipping thereof during any period of vacancy; and

(3) in the event that on or before the effective date of termination, re-entry or regaining or resumption of possession, the Initial Developer has failed to perform and complete the design, construction and equipping of the Building to be constructed by the Initial Developer under this Agreement, an amount equal to the cost to and the expenses of the City and/or the Port Authority in connection with the performance of such obligations, regardless of whether or not the termination, re-entry or regaining or resumption of possession is predicated upon the Initial Developer's failure to perform such obligations, and all other monetary damages incurred by the City and/or the Port Authority on account of the Initial Developer's failure to perform such obligations. In any such event the Port Authority may itself perform or contract for the performance or completion thereof or may retain a third party to act as agent or representative in accomplishing the same and the costs and expenses of the agent or representative in addition to those of the Port Authority shall likewise be included in the amount of damage under this provision; and

(4) an amount equal to the then Present Value of all Rentals and other amounts payable by the Lessee pursuant to this Agreement for the entire term following the effective date of termination, re-entry or regaining or resumption of possession as originally fixed in this Agreement.

Section 17.9 Collection of Damages; Credit.

The City and/or the Port Authority may at any time bring an action to recover all the damages set forth in Section 17.8 above not previously recovered in separate actions, or it may bring separate actions to recover the items of damages set forth in subparagraphs (1), (2) and (3) of Section 17.8 and separate actions periodically to recover from time to time only such portions of the damages set forth in subparagraph (4) of Section 17.8 as would have accrued as rental up to the time of the action if there had been no termination, re-entry, regaining or resumption of possession. In any such action the Lessee shall be allowed a credit against its survived damages obligations equal to the amounts which the City or the Port Authority shall have actually received from any subtenant, licensee, permittee or other occupier of the Unit, or any part thereof, during the period for which damages are sought, and, if recovery is sought for a period subsequent to the date of suit, a credit equal to the then Present Value of the market rental value of the Unit during such period; *provided, however,* that the credit provided for in this sentence shall not exceed the amount due and payable by the Lessee to the City and the Port Authority. If at the time of such action the City and the Port Authority have relet the Premises, the rental for the Premises obtained through such reletting shall be deemed to be the market rental value of the Unit or (if less than the entire Premises have been relet) be deemed to be the basis for computing such market rental value.

Section 17.10 Reletting.

17.11.1 *Right to Relet.* The Port Authority, upon any termination or re-entry, regaining or resumption of possession pursuant to this Article may occupy or relet the Unit, and shall have the right to permit any Person to enter upon the Unit and use the same. The Port Authority may grant free rental or other concessions and such reletting may be of part only of the Unit or of the Unit or a part thereof together with other space, and for a period of time the same as or different from the balance of the term hereunder remaining, and on terms and conditions and for purposes the same as or different from those set forth in this Agreement. The Port Authority, upon such termination or re-entry, regaining or resumption of possession pursuant to this Article, shall also have the right to repair or make structural or other changes in the Unit, including changes which alter the character of the Unit and the suitability thereof for the

purposes of the Lessee under this Agreement, without affecting, altering or diminishing the obligations of the Lessee hereunder.

17.11.2 *Credit*. In the event either of any actual reletting or of any actual use and occupancy by the Port Authority (the mere right of the Port Authority to use and occupy not being sufficient however) there shall be credited to the account of the Lessee against its survived obligations hereunder any net amount remaining after deducting from the amount actually received from any tenant, licensee, permittee or other occupier as the rental or fee in connection with the use of the Unit or portion thereof during the balance of the letting as the same is originally stated in this Agreement, or from the market value of the occupancy of such portion of the Unit as the Port Authority may during such period actually use and occupy, all expenses, costs and disbursements incurred or paid by the Port Authority in connection therewith. No such reletting shall be or be construed to be an acceptance of a surrender.

ARTICLE 18. SURRENDER

Section 18.1 Surrender of Premises.

Subject to any Non-Disturbance Agreements executed by the Port Authority and City, each Lessee covenants and agrees to yield and deliver possession of their respective Unit to the Port Authority peaceably and promptly on the date of cessation of the letting hereunder, whether such cessation be by termination, expiration or otherwise, promptly and in the condition provided in Section 9.1(3) upon the Expiration Date, all of the Premises, and all construction, buildings, structures, improvements and fixtures located thereon, shall be free and clear of all liens, encumbrances, security interests and rights of any subtenants, concessionaires or occupants of the Premises.

Section 18.2 Removal of Property.

Unless required for the performance by the Lessee of its obligations hereunder, the Lessee shall have the right, at any time during the letting hereunder to remove and, on or before the Expiration Date or the effective date of any earlier termination of the letting under this Agreement, shall be obligated to remove, its trade fixtures, equipment, inventories, signs, detachable furniture and furnishings and its other removable fixtures and personal property from the Premises and the Building, repairing all damage caused by such removal. If

the Lessee shall fail to remove any such trade fixtures, equipment, inventories, signs, detachable furniture and furnishings or its other removable fixtures and personal property on or before the termination or expiration of the letting hereunder, the City or the Port Authority may remove the same to a public warehouse for deposit or may retain the same in its own possession and in either event may sell the same at public auction, the proceeds of which shall be applied first to the expenses of removal, including any repairs necessitated by such removal, and of storage and sale, and second to any sums owed by the Lessee to the City or the Port Authority, with any balance remaining to be paid to the Lessee. If the expenses of such removal, repair, storage and sale shall exceed the proceeds of sale, the Lessee shall pay such excess to the City or the Port Authority upon demand.

Section 18.3 Failure to Comply with Subsection 9.1(3).

In the event that the Premises are not in the condition called for by subsection 9.1(3) upon their surrender pursuant to this Article, the City or the Port Authority shall have the right to perform any work required to place the Premises in such condition, and the Lessee shall reimburse the City or Port Authority, as applicable, for the cost thereof.

Section 18.4 Acceptance of Surrender.

No agreement of surrender or to accept a surrender of the Premises shall be valid unless and until the same shall have been reduced to writing and signed by the duly authorized representatives of the Port Authority, the City and the Lessee. Except as expressly provided in this Section, neither the doing of, nor any omission to do, any act or thing by any of the officers, agents or employees of the Port Authority or the City shall be deemed an acceptance of a surrender of the Premises or the letting hereunder.

ARTICLE 19. CONDEMNATION

Section 19.1 Definitions.

"Temporary Taking" shall mean an acquisition by condemnation or the exercise of the power of eminent domain, or agreement in lieu thereof, by a Person having a superior power of eminent domain of a Temporary Interest in the Premises;

"Temporary Interest" shall mean an interest in real property entitling the owner of such interest to the possession of such property (whether or not such interest includes or is co-extensive with an interest of the Lessee therein under this Agreement) for an indefinite term or for a term terminable at will or at sufferance or for a term measured by a war or an emergency or other contingency or for a fixed term.

"Permanent Taking" shall mean an acquisition by condemnation or the exercise of the power of eminent domain, or agreement in lieu thereof, by a Person having a superior power of eminent domain of a Permanent Interest in the Premises;

"Permanent Interest" shall mean an interest in real property entitling the owner of such interest both to possession and ownership thereof in fee simple.

"All or Substantially All of the Premises" shall mean such part of the Premises as, when so taken, would leave remaining a part of the Premises which, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would, taking into account economic considerations, the length of the remaining term of the letting hereunder, zoning laws and building regulations then existing or prevailing and applicable to the Premises, make it unfeasible to restore or rebuild the Building or to continue to operate the Building.

Section 19.2 Permanent Taking of All or Any Part of the Premises.

19.2.1 *All or Substantially All of the Premises.* In the event of a Permanent Taking of All or Substantially All of the Premises, this Agreement and the letting hereunder shall terminate and expire on the earlier of (i) the date the Lessee is deprived of physical possession of the Premises or the portion so taken and (ii) the date of such taking, and all Rentals, fees and payments due under this Agreement shall be apportioned and paid by the Lessee to the date of such termination.

19.2.2 *Less Than All or Substantially All of the Premises.* In the event of a Permanent Taking of less than All or Substantially All of the Premises, this Agreement and the term of the letting hereunder shall be deemed terminated as to the part so taken as of the earlier of (i) the date the Lessee is deprived of physical possession of such part and (ii) the date of such taking, and with respect to the part not taken, the

letting hereunder shall continue in full force and effect (subject to the provisions of subsection 19.2.3 hereof) and the Lessee shall continue to pay all sums, charges and fees, including all Rentals attributable to such untaken portion provided to be paid by the Lessee under this Agreement without any reduction or abatement; *provided, however,* that the Basic Rental, the Annual PILOT Rental and the Annual O & M Rental Payment shall be abated proportionally based on the ratio of the area of the Premises taken to the area of the Premises prior to such taking.

19.2.3 *Damage.* If any portion of the Premises shall be damaged or partially destroyed by any Permanent Taking of less than All or Substantially All of the Premises, the Lessee through the Condominium Association shall proceed with due diligence to perform any necessary demolition and to repair, replace or rebuild at the Lessee's own cost and expense any remaining part of the Premises so as to constitute such remaining part a complete unit of such usefulness, design and construction as to enable the Lessee to carry on therein the activities permitted under this Agreement, unless the parties shall otherwise agree in advance. All work necessary to repair, replace and rebuild the said portions of the Premises shall be performed in full compliance with the provisions of this Agreement, including but not limited to the provisions of Article 6 hereof.

Section 19.3 Temporary Taking of All or Any Part of the Premises.

In the event of a Temporary Taking of the Premises or any part thereof, this Agreement shall nevertheless continue in full force and effect except to the extent the Lessee may be prevented from continuing its operations pursuant to the terms of the order of the condemning authority, and the Lessee shall continue to pay all sums, charges and fees, including all Rentals, provided to be paid by the Lessee under this Agreement without any reduction or abatement therein, but the Lessee shall have the right to assert a claim in such proceedings to protect its interests and to determine the value of the interest so taken. If such temporary taking shall damage any portion of the Premises, then, following the expiration of such taking, and provided that the term of this Lease has not theretofore expired, the Lessee at its cost and expense shall diligently repair any such damage and shall put the same as nearly as

possible in the condition thereof immediately prior to such taking.

Section 19.4 Determination and Distribution of Award.

19.4.1 *Appearance at Proceedings*. In the event of a Permanent Taking of all or any part of the Premises, the City, the Port Authority, the Condominium Association on behalf of the Unit Owner, the Recognized Mortgagee of the Hotel Unit, if any, and the Hotel Unit Owner Subtenant shall have the right to appear in the condemnation or eminent domain proceedings and to participate in any and all hearings, trials and appeals therein, for the purpose of protecting their interests hereunder.

19.4.2 *Permanent Takings*. (a) Upon a Permanent Taking of All or Substantially All of the Premises, the award, awards or damages in respect thereof, net of costs incurred in obtaining the same, shall be paid to the Condominium Association to be distributed as follows and in the following order of priority: (i) there shall first be paid to each Recognized Mortgagee, if any, so much of the portion of the award attributable to the mortgaged Unit as shall be required to pay the unpaid principal balance of the Recognized Mortgagee's Mortgage and all accrued and unpaid interest thereon; (ii) there shall be paid to each Owner the value of the Unit affected by the taking subject to any payment made to Recognized Mortgagee (iii) there shall then be paid to the Port Authority so much of the balance of the award as is for or attributable to (A) the value of the Land, or the portion thereof so taken, considered as subject to this Agreement and the letting hereunder, (B) the cost of any site improvements at the Premises made by the City and/or the Port Authority (the Port Authority holding amounts received for the City's site improvements in trust for the City) and (C) the value of the Port Authority's reversionary interest under this Agreement in and to the Land and the Building; and (iii) there shall next be paid each Lessee, subject to the rights of the Recognized Mortgagee, the balance, if any, of such award.

(b) Upon a Permanent Taking of less than All or Substantially All of the Premises, the award shall be made available to the Condominium Association on behalf of Lessee for the repair or rebuilding of the Building and such portion of the award remaining after providing for the costs of such repair or rebuilding and the costs of obtaining the same shall be distributed as follows and in the following order of priority: (i) there shall first be paid to each Recognized Mortgagee, if any, so much of the portion of the award as is attributable to

the taking of any portion of the Building, but not including any portion thereof which is paid for restoration of the portion of the Building which is not taken; *provided, however,* that the amount payable to the Recognized Mortgagee pursuant to this clause (i) shall not exceed the then unpaid principal amount of the Recognized Mortgagee's Mortgage; (ii) there shall be paid to each Owner the value of the Unit affected by the taking (iii) there shall then be paid to the Port Authority so much of the balance of the award as is for or attributable to (A) the value of the portion of the Land taken in such condemnation, considered as subject to this Agreement and the letting hereunder and (B) a portion of the cost of any site improvements at the Premises made by the City and/or the Port Authority (the Port Authority holding amounts received for the City's site improvements in trust for the City) equal to a fraction of the numerator is the number of square feet of the Land so taken and the denominator is the number of square feet contained in the Land at the date of this Agreement; and (iii) there shall next be paid to the Lessee, subject to the rights of the Recognized Mortgagees, the balance, if any, of such award.

19.4.3 *Temporary Taking*. Upon a Temporary Taking of all or any portion of the Premises, the entire award shall be paid to the Condominium Association for payment of each Lessee subject to the rights of the Recognized Mortgagees Owner, if any; *provided, however,* that if such temporary taking extends past the expiration or termination of this Agreement and the letting hereunder, such award shall be apportioned as of the date of such expiration or termination, and the portion thereof allocable to any period of time which occurs after the date of such expiration or termination shall be payable to the Port Authority.

19.4.4 *Other Portions of the Project Area.* Nothing contained herein shall be deemed to affect in any way any claim the City or the Port Authority may have for the value of any portion of the Project Area not included within the Premises hereunder which may be affected by any taking described in this Article or shall serve to give the Lessee any interest in any such claim.

ARTICLE 20. COMPLIANCE WITH LAWS AND RULES AND REGULATIONS

Section 20.1 Licenses and Permits.

The Lessee shall procure and maintain in effect throughout the term of the letting under this Agreement all licenses,

certificates, permits or other authorization from all Governmental Authorities having jurisdiction over the operations of the Lessee which may be necessary for the conduct of its operations in and on the Premises; *provided, however,* that all Construction Plan approvals and any construction, building or occupancy permit(s) with respect to the construction of the Project or occupancy of the Premises shall be subject to the jurisdiction of the Port Authority, as provided under the provisions of Article 5 of this Agreement, including without limitation subsection 5.3.7.

Section 20.2 Compliance with Requirements.

The Lessee shall promptly:

(1) comply with the provisions of any and all Requirements; and

(2) cure all violations or notices of non-compliance, whether formally filed against the Premises or set forth in any summons, notice of violation, warning notice or other legal process for the enforcement of any such Requirements,

which may pertain or apply to its operations on the Premises or its occupancy of the Premises, including any such that apply to construction, maintenance, health and fire protection and which would be applicable if the owner of the Premises were a private corporation. The Lessee shall deliver to the City and the Port Authority promptly after receipt a true copy of any such notice of violation, warning notice or other legal process requiring the performance of construction. The Lessee shall make any and all structural and non-structural improvements, alterations or repairs of the Premises and perform all remediation work and clean up of Hazardous Substances required in order to fully satisfy the compliance obligations set forth herein.

Section 20.3 Effect of Port Authority and City Immunity.

No immunity or exemption of the Port Authority or the City from the application to itself of any Requirement shall excuse compliance or be grounds for noncompliance on the part of the Lessee, and no provisions of this Article shall constitute a waiver of such immunity or exemption.

Section 20.4. Rules and Regulations.

The Lessee covenants and agrees to observe and obey (and to require its officers, members, employees, agents, representatives to observe and obey, and to use reasonable efforts to require contractors, customers, guests, invitees and those doing business with it to observe and obey) all Rules and Regulations.

ARTICLE 21. LABOR HARMONY, AFFIRMATIVE ACTION

Section 21.1 Labor Harmony.

Each of the parties hereto shall use all reasonable efforts, taking all reasonable measures and means, to promote labor harmony in its operations and activities at the Premises and the Project Area, all to the end of avoiding and preventing, to the extent reasonably possible, strikes, walkouts, work stoppages, slowdowns, boycotts and other labor trouble and discord. In undertaking any Construction Work, the Lessee shall include in any contract such provisions relating to labor harmony as the Port Authority may reasonably require.

Section 21.2 Compliance with New Jersey Law.

The Lessee agrees that in the performance of its construction obligations under this Agreement, it will comply with the provisions of this Article, which compliance will satisfy the policies of the State of New Jersey in accordance with N.J.S.A. 32:1-35.36(c)1d with respect to affirmative action and equal employment opportunities.

Section 21.3 Participation of MBEs and WBEs. In addition to and without limiting any of the other terms and conditions of this Agreement, the Lessee agrees to require its contractors to make good faith efforts, consistent with the Lessee's exercise of good business judgment, including, without limitation, the consideration of cost competitiveness, to provide for meaningful participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in construction contracts entered into with respect to the development of the Premises. For purposes hereof, Minority Business Enterprise (MBE) shall mean any business enterprise which is at least fifty-one percent (51%) owned by, or in the case of a publicly owned business at least fifty one percent (51%) of the stock of which is owned by, one or more citizens or permanent resident aliens who are members of one or more minority groups and whose management and

daily business operations are controlled by one or more such individuals. As used herein minority group shall mean any of the following racial or ethnic groups:

Black (individuals having origins in any of the Black African racial groups not of Hispanic origin);

Hispanic (individuals of Mexican, Puerto Rican, Dominican, Cuban or Central or South American culture or origin, regardless of race);

Asian and Pacific Islander (individuals having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and

Native American or Alaskan Native (individuals having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

For the purposes hereof, Women-owned Business Enterprise (**WBE**) shall mean any business enterprise which is at least fifty—one percent (51%) owned by, or in the case of a publicly owned business at least fifty-one percent (51%) of the stock of which is owned by, one or more women and whose management and daily business operations are controlled by one or more women. "**Meaningful Participation**" shall mean that at least seventeen percent (17% of the total value of the contracts is for the participation of Minority Business Enterprises ("MBEs") and Women—owned Business Enterprises ("WBEs"), with a minimum of twelve (12%) participation by MBEs, and a minimum of five (5%) participation by WBEs in all purchasing, subcontracts and services. Good faith efforts to include meaningful participation by MBEs and WBEs shall include at least the following:

(1) actively and affirmatively soliciting bids and proposals for contracts or subcontracts from MBEs and WBEs, including circulation of solicitations to MBEs and WBEs;

(2) providing prospective MBEs and WBEs with plans, specifications and other necessary background materials in sufficient time for review;

(3) utilizing the lists of certified MBEs and WBEs maintained by the Port Authority, the City, the State of New Jersey or the State of New York or seeking

minorities, women and local business people from other sources for the purpose of soliciting contractors, subcontractors and suppliers;

(4) utilizing the services of available minority and women's community organizations, contractor's groups, local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;

(5) insuring that provision is made to provide progress payments to MBEs and WBEs on a timely basis, where appropriate, in the same manner that progress payments are made to other contractors or subcontractors; and

(6) not requiring bonds from and/or providing bonds for MBEs and WBEs for contracts or subcontracts of less than $100,000.00.

Section 21.4 Certified MBEs and WBEs.

21.4.1 *List*. The Port Authority has compiled a list, which may be supplemented and revised from time to time by the Port Authority, of the firms the Port Authority has determined satisfy the criteria for MBE and WEE certification. Such list shall be made available to the Lessee upon request. The Port Authority makes no representation as to the financial responsibility of such firms, their technical competence to perform or any other performance-related qualifications. Only listed MBEs and WBEs and such firms as are not so listed but as are certified by the Port Authority, the State of New Jersey or the State of New York as MBEs and WBEs hereunder and the MBEs and WBEs listed on Exhibit N annexed hereto will count toward the MBE and WBE goals.

21.4.1 *Certification*. Certification of MBEs and WBEs hereunder shall be made by the Office of Business and Job Opportunity of the Port Authority. If the Lessee wishes to utilize a firm not listed with the Port Authority but which the Lessee believes should be certified as an MBE or WBE, the Lessee may encourage such firm to complete an application for certification by completing and forwarding such forms as may be required by the Port Authority from time to time. All such applications shall be submitted to the Office of Business and Job Opportunity, the Port Authority of New York and New Jersey., One World Trade Center, New York, NY 10048. If any such firm is determined eligible for certification it shall only be by a

writing over the name of the Director in charge of such Office. The determination of the Port Authority shall be final and binding on the Lessee.

Section 21.5 Replacement of Cancelled MBEs and WBEs.

In the event that the participation of any MBE or WBE selected by the Lessee to participate in any construction contracts entered into with respect to the development of the Premises is cancelled or terminated for any reason, the Lessee agrees to make every good faith effort, to the maximum extent feasible, and consistent with the Lessee's exercise of good business judgment, including, without limitation, the consideration of cost competitiveness, to utilize other MBEs and WBEs so as to maintain appropriate participation by Minority Business Enterprises (MBEs) and Women-owned Business Enterprises (WBEs) in such contracts.

Section 21.6 Goals For Minority and Female Participation.

Without limiting the provisions of the previous Sections of this Agreement, and without limiting any of the other terms and conditions of this Agreement, the Lessee agrees, and agrees to require its construction contractors and subcontractors at each tier of any construction undertaken pursuant to the provisions of this Agreement, to make good faith efforts to achieve the goals for minority and female participation set forth below. The Lessee agrees to appoint a project representative as a contact person for the implementation of the contractors' good faith efforts to achieve minority and female participation in the work force. The goals for minority and female participation, expressed in percentage terms for the aggregate workforce on an average basis for all trades on all construction work, are as follows:

Journey Level Trade Workers

Minority participation:	30%
Female participation:	6.9%

Laborers and other unskilled workers

Minority participation:	40%
Female participation:	6.9%

These goals are applicable to all the Lessee's construction work performed in and for the Premises. Compliance with such goals will be measured against the total work hours performed.

Section 21.7 Notification of Contract Awards.

The Lessee agrees to require its contractors and subcontractors to provide written notification to the Lessee and the Lessee agrees to provide written notification to the Office of Business and Job Opportunity of the Port Authority within ten (10) working days of the award of any construction contract or subcontract in excess of One Hundred Thousand Dollars ($100,000.00) at any tier for Construction Work. The notification shall list the name, address, telephone number and employer identification number of the contractor or subcontractor and the estimated starting and completion dates of the contract or subcontract. As used herein, "employer identification number" shall mean the Federal Employer Identification Number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

Section 21.8 Inclusion of Goals in Subcontracts.

The Lessee agrees to require its contractors and subcontractors, at any tier, whenever they subcontract a portion of the construction work involving any construction trade, to physically include in each subcontract in excess of One Hundred Thousand Dollars ($100,000.00) those provisions which include the applicable goals for minority and female participation.

Section 21.9 Implementation of Affirmative Action Standards.

The Lessee agrees to require its contractors and subcontractors to implement the specific affirmative action standards provided in subparagraphs (1) through (16) of Section 21.12 of this Article. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Lessee's contractors and subcontractors should reasonably be able to achieve in each construction trade in which it has employees on the Premises. The Lessee agrees, and agrees to require its contractors and subcontractors, to use good faith efforts to make substantially uniform progress toward such goals in each craft during the period specified.

Section 21.10 Non-Effect of Union Contracts.

The Lessee agrees to provide in its construction contracts that neither the provisions of any collective bargaining agreement, nor the failure by a union with which any contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations thereunder unless the union itself has made good-faith efforts to achieve the goals set forth herein in its membership ranks.

Section 21.11 Apprentices and Trainees.

The Lessee further agrees to provide in its agreements with its contractors that in order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals set forth herein, such apprentices and trainees shall be employed by the contractors during the training period, and the contractors shall have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees shall be trained pursuant to training programs approved by the U. S. Department of Labor or by or other appropriate governmental agency.

Section 21.12 Affirmative Action Standards.

The Lessee agrees to require its contractors and subcontractors to take specific affirmative actions to ensure equal employment opportunity ("**EEO**"). The Lessee's evaluation of the contractor's compliance with these provisions shall be based upon a contractor's good faith effort to achieve maximum results from its actions. The Lessee agrees to require its contractors and subcontractors to document these efforts fully, and to implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation and coercion at all portions of the Premises at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each phase of the construction project. The contractor shall specifically ensure that all foremen, superintendents and other supervisory personnel at the Premises are aware of and carry out the contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the Premises.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization.

(4) Provide immediate written notification to the Lessee when any union or unions with which the contractor has a collective bargaining agreement has not referred to the contractor a minority person or woman sent by the contractor, or when the contractor has other information that the union referral process has impeded the contractor's efforts to meet its obligations.

(5) Develop maximum job opportunities for apprentices appropriate to the conditions of the work, subject to applicable collective bargaining agreements, in conjunction with training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the contractor's employment needs, especially those programs funded or approved by the Department of Labor. The contractor shall provide notice of these programs to the sources compiled under subparagraph (2) above.

(6) Disseminate the contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the contractor's newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the contractor's EEO policy on bulletin boards accessible to all employees at each location where the construction work is performed.

(7) Review, at least every six (6) months, the contractor's EEO policy and affirmative action obligations

hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions, including specific review of these items with on-area supervisory personnel such as superintendents, general foremen, etc., prior to the initiation of construction work at the Premises. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed and disposition of the subject matter.

(8) Disseminate the contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the contractor's EEO policy with other contractors and subcontractors with whom the contractor does or anticipates doing business.

(9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students, to minority and female recruitment and training organizations and to State certified minority referral agencies serving the contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the contractor shall send written notification to organizations such as the above describing the openings, screening procedures and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women.

(11) Comply with 41 CFR Part 60-3 with respect to tests and other selection requirements.

(12) Conduct, at least every six (6) months, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices do not have a discriminatory effect by continually monitoring all personnel and employment related

activities to ensure that the EEO policy and the contractor's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are nonsegregated except that separate or single—user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least every six (6) months, of all supervisors' adherence to and performance under the contractor's EEO policies and affirmative action obligations.

Section 21.13 Contractor Participation in Associations.

The Lessee shall encourage its contractors to participate in voluntary associations which assist in fulfilling subparagraphs (1)-(16) of Section 21.12 of this Article. The efforts of a contractor association, joint contractor-union, contractor—community or other similar group of which the contractor is a member and participant may be asserted by such contractor as fulfilling any one or more of its obligations under Section 21.12 of this Article provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, encourages that the concrete benefits of the program are reflected in the contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the contractor. The requirement for good faith efforts to comply, however, shall remain with the contractor and the Lessee shall provide in its agreements with the contractor that failure of such a group to fulfill an obligation shall not be a defense for the contractor's non-compliance.

Section 21.14 Affirmative Action for All Minority Groups.

Goals for minorities and a separate single goal for women have been established. The Lessee, however, agrees to require

its contractors and subcontractors to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority, and to provide that, consequently, the contractor may be in violation of its agreement with the Lessee if a particular group is employed in a substantially disparate manner (for example, even though the contractor has achieved its goals for women generally, the contractor may be in violation if a specific minority group of women is under-utilized).

Section 21.15 No Discrimination.

The Lessee agrees to provide that the contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.

Section 21.16 No Contracts with Debarred Persons.

The Lessee agrees that it will not enter into any contract with any Person debarred from U.S. Government contracts pursuant to Executive Order 11246.

Section 21.17 Further Requirements.

The Lessee agrees to require its contractors and subcontractors, in fulfilling their obligations to the Lessee, to implement specific affirmative action steps at least as extensive as those standards prescribed in Section 21.12 hereof so as to achieve maximum results from their efforts to ensure equal employment opportunity.

Section 21.18 Maintenance of Records.

The Lessee agrees to designate a responsible official to monitor all employment related activity to ensure that EEO policy is being carried out, to submit reports relating to the contractor's EEO obligations as may be required, and to keep records. The Lessee agrees to require that records shall at least include for each employee the name, address, telephone number, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper or laborer), date of changes in status, hours worked per week in the indicated trade, rate of pay and location at which the work was performed. The Lessee further agrees to provide that records shall be maintained in an easily understandable and retrievable

form; however, to the degree that existing records satisfy this requirement, contractors need not be required to maintain separate records.

Section 21.19 Effect of Other Laws.

Nothing herein provided shall be construed as a limitation upon the application of any applicable laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program, if applicable).

Section 21.20 Cooperation.

Without limiting any other term or provision of this Agreement, the Lessee agrees, and agrees to require its contractors and subcontractors, to cooperate with all federal, state or local agencies established for the purpose of implementing affirmative action compliance programs and the Lessee agrees, and agrees to require its contractors and subcontractors, to comply with all procedures which may be agreed to by and between the Port Authority and the Lessee.

Section 21.21 Additional Required Contract Provisions.

In addition to and without limiting any of the terms and provisions of this Agreement, the Lessee agrees to provide in its contracts and all subcontracts covering construction work, or any portion thereof, that:

(1) The contractor shall not discriminate against employees or applicants for employment because of race, creed, color, religion, national origin, ancestry, sex, age, liability for military service, disability or marital status, and shall undertake or continue existing programs of affirmative action to ensure that applicants are employed and employees are treated during employment without such discrimination. Such programs shall include, but not be limited to, recruitment or recruitment advertising, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeships and on the job training.

(2) At the request of either the Port Authority or the Lessee, the contractor shall request such employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the contract with the Lessee to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will cooperate in the implementation of the contractor's obligations hereunder.

(3) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor in the performance of the contract, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

(4) The contractor will include the provisions of subparagraphs (1) through (3) of this Section in every subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work in connection with the contract.

"Contractor" as used in subparagraphs (1) through (4) of this Section shall include each contractor and subcontractor at any tier of construction.

Section 21.22 Clarifying Provisions.

Notwithstanding any provision of this Article 21 to the contrary, it is understood that the Lessee's obligations pursuant to this Article 21 are to make good faith reasonable attempts to perform the obligations set forth herein and to include in its direct construction contracts provisions requiring its contractors to do the same and provisions requiring such contractors to include in its direct subcontracts provisions requiring its subcontractors to do the same. Whenever the word "ensure", "require" or words of similar meaning are used in Article 21, it shall be deemed to mean make good faith efforts to achieve the stated goals of this Article. The provisions of this Article 21 shall only apply to the initial construction of the Building and shall not apply to "fit out" of interior tenant spaces nor to subsequent alterations. The

requirements set forth in this Article 21 shall apply to direct contractors of the Lessee and to subcontractors of said direct contractors, but not to subcontractors of any further tier; *provided, however,* that the hiring of MBEs and/or WBEs by any subcontractors at any such further tier shall be counted towards the achievement of the goals set forth herein.

ARTICLE 22. LESSEE'S REPRESENTATIONS

Section 22.1 Lessee's Due Formation and Ownership Structure.

The Lessee hereby represents that (x) it is a limited liability company, duly organized and existing under the laws of the State of New Jersey and (y) the members of the Lessee and their respective interests in the Lessee, as well as the Persons owning interests in such and their respective ownership percentages, are correctly and completely shown on the diagram attached hereto as Exhibit O and hereby made a part hereof.

Section 22.2 Certain Certifications.

22.2.1 *Indictments, etc.* The Lessee hereby certifies as to the truth and accuracy of the following statements:

(1) neither the Lessee, nor any of its officers, directors, general partners, members, management employees or significant equity participants has (x) been indicted for, or convicted of, a crime in any jurisdiction, or been the target of a grand jury investigation therefor, or (y) been suspended or otherwise disqualified from entering into contracts with any governmental agency; and

(2) neither the Lessee, nor any Affiliate, has (x) had a development agreement between itself and either the Port Authority or the City terminated by the Port Authority or the City due to its willful breach or default, or (y) had a contract terminated by a governmental agency of the States of New York or New Jersey for willful breach or default, or (z) had a contract terminated for any cause relating to an indictment or conviction of itself or its principals.

22.2.2 *Prior Representations.* The Lessee hereby certifies and affirms, as of the date of this Agreement, the representations which it made in the "Prerequisites Certification Form" in its April 4, 1997 response to the

"Request for Qualifications and Request for Proposals" dated December 27, 1996.

Section 22.3 Brokerage.

The Lessee represents and warrants that no broker, finder or similar agent has been involved in the negotiation of this Agreement and the letting hereunder, and that there is no broker, finder or similar agent who is or may be entitled to be paid a commission or other compensation in connection therewith, as a result of dealings or other acts of the representing party. The Lessee shall indemnify and save harmless the City and the Port Authority from any claims for commissions, brokerage fees or other compensation made by any Person for services in connection with the negotiation or execution of this Agreement, together with all expenses (including, without limitation, reasonable attorneys' fees and disbursements) incurred by the City and the Port Authority in resisting any such claim.

ARTICLE 23. PAYMENTS

Section 23.1 Except as otherwise specifically provided herein, all Rental shall be paid without notice or demand. All Rental (except Impositions, if the rules and regulations of the City governing such payment are to the contrary) shall be paid by good checks drawn on an account at a bank that is a member of the New York Clearing House Association (or any successor body of similar function) or in currency that at the time of payment is legal tender for public and private debts in the United States of America.

Section 23.2 Address for Payments.

All payments required to be made by the Lessee to the City, the Port Authority or the O & M Board under or pursuant to this Agreement shall be made as follows:

(1) payments to the City shall be mailed to the City at City Hall, Hoboken, News Jersey, or to such other address as may be substituted therefor by Notice given by the City to the Lessee pursuant to the Article hereof entitled "Notices";

(2) payments to the Port Authority shall be mailed to The Port Authority of New York and New Jersey, P. O. Box 95000-1517, Philadelphia, Pennsylvania 19195-1517, or wired via the following Wire Transfer Instructions:

Bank: Commerce Bank; Bank ABA Number: 026013673; Account No. 5950011618,

or to such other address as may be substituted therefor by Notice given by the Port Authority to the Lessee pursuant to the Article hereof entitled "Notices"; and

(3) payments to the O & M Board shall be mailed to the O & M Board at City Hall, Hoboken, New Jersey, or to such other address as may be substituted therefor by Notice given by the City or the O & M Board to the Lessee pursuant to the Article hereof entitled "Notices".

Section 23.3 Nature of Payments; No Waiver.

No payment by the Lessee, or receipt by the City, the Port Authority or the O & M Board, of a lesser amount than that which is due and payable under the provisions of this Agreement at the time of such payment shall be deemed to be other than a payment on account of the earliest amount then due, nor shall any endorsement or statement on any check or in any letter accompanying any check or payment be deemed an accord and satisfaction, and the City, the Port Authority or the O & M Board may accept such check or payment without prejudicing in any way its right to recover the balance of such amount or to pursue any other remedy provided in this Agreement or by law.

Section 23.4 Late Charges.

If the Lessee should fail to pay any amount required under this Agreement when due to the Port Authority or the City, including without limitation any payment of Rental or any payment of utility or other charges, or if any such amount is found to be due as the result of an audit, then, in such event, the Port Authority and the City may impose (by statement, bill or otherwise) a late charge with respect to each such unpaid amount for each late charge period (described below) during the entirety of which such amount remains unpaid, each such late charge not to exceed an amount equal to eight-tenths of one percent of such unpaid amount for each late charge period. There shall be twenty-four late charge periods on a calendar year basis; each late charge period shall be for a period of at least fifteen (15) calendar days, except one late charge period each calendar year may be for a period of less than fifteen (but not less than thirteen) calendar days. Without limiting the generality of the foregoing, late charge periods in the case of

amounts found to have been owing to the Port Authority or the City as the result of audit findings shall consist of each late charge period following the date the unpaid amount should have been paid under this Agreement. Each late charge shall be payable immediately upon demand made at any time therefor by the Port Authority or the City, as the case may be. No acceptance by the Port Authority or the City of payment of any unpaid amount or of any unpaid late charge amount shall be deemed a waiver of the right of the Port Authority or the City, respectively, to payment of any late charge or late charges payable under the provisions of this Section with respect to such unpaid amount. Each late charge shall be recoverable in the same manner and with like remedies as if it were originally a part of the Basic Rental as set forth in the section of this Agreement entitled "Basic Rental". Nothing in this Section is intended to, or shall be deemed to, affect, alter, modify or diminish in any way (x) any rights of the Port Authority and the City under this Agreement, including without limitation the rights of the Port Authority and the City set forth in the Article of this Agreement entitled "Termination" or (y) any obligations of the Lessee under this Agreement. In the event that any late charge imposed pursuant to this Section shall exceed a legal maximum applicable to such late charge, then, in such event, each such late charge payable under this Agreement shall be payable instead at such legal maximum.

ARTICLE 24. NOTICES

Section 24.1 Delivery of Notices.

24.1.1 *Notices to be in Writing*. Notices, requests, permissions, consents, approvals and other communications (all of the foregoing being hereinafter referred to singularly as a "**Notice**" and collectively as "**Notices**"), including changes to the address designated by any party hereto for the delivery of Notices (the "**designated address**"), given or required to be given to any party under this Agreement shall not be effective unless they are given in writing.

24.1.2 *Delivery*. All Notices shall be (i) personally delivered to such party or a duly designated officer or representative of such party at such party's designated address during regular business hours; (ii) delivered by reliable overnight delivery service to such party's designated address; or (iii) mailed to such party, officer or representative by registered or certified mail with return receipt at such party's

designated address, to the attention of the representative designated by such party from time to time.

24.1.3 *Designated Representative.* (a) Until further notice, the City hereby designates the Mayor of the City, the Port Authority hereby designates its Executive Director and the Lessee hereby designates the Person named as representative on the first page hereof as their respective officers or representatives upon whom Notices may be served and the City hereby designates its office at City Hall, Hoboken, New Jersey, and the Port Authority and the Lessee hereby designate their addresses stated on the first page hereof, as their respective designated addresses.

(b) Until further notice, the Lessee hereby designates the following persons, at the respective addresses indicated below, as its representatives upon whom Notices may be served:

225 River Street LLC
5 Marine View Plaza
Suite 500
Hoboken NJ 07030
Attn: Michael Barry

With a copy to:

Barbara Oif Stack, Esq.
5 Marine View Plaza
Suite 500
Hoboken NJ 07030

(c) From and after the date that this Agreement is subjected to a Master Deed, the City and Port Authority shall, in addition to providing Notices to Lessee, serve notice upon the Condominium Association at the address of the Premises.

24.1.4 *Copies.* Each party may request the other party(ies), as a courtesy, to transmit a copy or copies of Notices to others at any time, *provided, however,* that such transmittal shall be for convenience only and a failure to transmit such copy(ies) of a Notice(s) to others shall have no effect whatsoever on the completeness or effectiveness of service of such Notice on the party requesting the copy.

Section 24.2 When Notices Deemed Given.

Each Notice shall be deemed given and effective upon receipt, or, in the event of a refusal by the addressee, on the first tender of such Notice to the addressee at the designated address.

ARTICLE 25. MISCELLANEOUS

Section 25.1 Limitation on Representations.

Except as may be expressly set forth in this Agreement, the Lessee acknowledges that it has not relied upon any representation or statement of the City or the Port Authority or any of their Commissioners, officers, elected officials, attorneys, employees or agents as to the condition of the Premises or the suitability thereof for the operations permitted on the Premises by this Agreement. The Lessee also acknowledges that prior to the execution of this Agreement it was given access to the Premises to conduct such tests as it thought appropriate to determine the Environmental Condition of the Premises and the Lessee hereby agrees to take the Premises in their "as is" condition.

Section 25.2 No Change in Permits.

25.2.1 *Consent Required.* Without limiting the generality of any other provision of this Agreement, the parties hereto shall not, without the written consent of the other party(ies), which consent shall not be unreasonably withheld or delayed, seek any change to any permit issued by a Governmental Authority which relates to the Premises or which would affect the rights or obligations of any party(ies) to this Agreement in any material respect.

Section 25.3 Signs.

Except with the prior approval of the City and the Port Authority, the Lessee shall not erect, maintain or display any signs, lettering, advertising, posters, displays or similar devices on the exterior of the Premises or the Building and elsewhere at the Project Area. The Lessee may, without prior Port Authority or City consent, install signs, lettering, advertising, posters, displays or similar devices in the interior portions of the Building. Any signs, lettering, advertising, posters, displays or similar devices erected, maintained or displayed anywhere on the exterior of the Premises

or the Building pursuant to the provisions of this Article shall conform to such standards with respect to design, material, lettering and size as are set forth in the Design Guidelines unless the City and the Port Authority approve a deviation. The Lessee shall keep all exterior signs, lettering, advertising, posters, displays or similar devices at all times in a clean, first-class condition and appearance and shall perform all required maintenance, repairs and replacements thereto and thereof.

Section 25.4 Telecommunication Facilities.

As required under the Waterfront Development Legislation, Lessee understands and agrees that no satellite antenna or similar telecommunications facility shall be located on the Premises unless such facility is directly used by and is for the sole use of end users located on the Premises, conforms to the Plan and the Design Guidelines and complies with Requirements.

Section 25.5 Nonliability of Individuals.

Neither the Mayor of the City nor the Commissioners of the Port Authority, nor any of them, nor any officer, director, elected official, attorney or other professional (architect, engineer, etc.), agent or employee of the City or the Port Authority, shall be charged personally with any liability or held personally liable under any term or provision of this Agreement or because of acts or omissions of any such individual or because of any breach or attempted or alleged breach of any of the provisions of this Agreement, it being understood that all such liability, if any, shall be that of the City or the Port Authority, as applicable.

Section 25.6 Force Majeure.

25.6.1 *Definitions.* "**Force Majeure**" or "**causes or conditions beyond its control**", or words of similar import, shall mean acts of God, the elements, weather conditions, tides, earthquakes, settlement, fire, acts of any Governmental Authority (other than the City and the Port Authority with respect to obligations to be performed by them, or either of them, under this Agreement), war, shortage of labor or materials, acts or omissions of third parties for which the Port Authority, the City or the Lessee, as the case may be, is not responsible, injunctions, labor troubles or disputes of every kind (including those affecting the City, the Port Authority or the Lessee, or its or their contractors, suppliers or

subcontractors) or any other conditions or circumstances, whether similar to or different from the foregoing (it being agreed that the foregoing enumeration shall not limit or be characteristic of such conditions or circumstances) which are beyond the control of City, the Port Authority or the Lessee, as the case may be, and which could not be prevented or remedied by reasonable effort and at reasonable expense. Notwithstanding the foregoing, in no event shall lack of money required in any circumstances constitute Force Majeure or causes or conditions beyond the control of any party hereto.

25.6.2 *No Liability for Force Majeure Delays.* No party to this Agreement shall be liable for any failure, delay or interruption in performing its obligations hereunder due to causes or conditions beyond its control unless the failure, delay or interruption shall result from failure on the part of such party to use reasonable care to prevent or reasonable efforts to remedy or end such failure, delay or interruption.

25.6.3 *No Default as a Result of Force Majeure.* If the Lessee shall be delayed in performing any of its obligations under this Agreement (other than monetary obligations) by reason of Force Majeure, the time for the performance of the obligation in question shall be extended by the period of delay resulting from Force Majeure and the Lessee shall not be in default under this Agreement by reason of such delay in the performance by it of such obligation.

25.6.4 *Application of this Section.* The provisions of this Section shall apply to each and every obligation (other than monetary obligations) of each of the parties hereto under this Agreement, whether or not reference to Force Majeure or conditions beyond the control of the party in question is set forth in the provision of this Agreement which gives rise to such obligation. The fact that references to Force Majeure or conditions beyond the control of a party hereto may be included in only certain of the provisions of this Agreement shall not be construed as making the provisions of this Section inapplicable to those provisions of this Agreement which do not contain such references.

Section 25.7 Quiet Enjoyment.

The Lessee, so long as it pays all Rentals hereunder and performs all of the covenants, conditions and provisions of this Agreement on its part to be performed, shall and may peacefully

and quietly have, hold and enjoy the Premises throughout the term of the letting hereunder.

Section 25.8 No Subordination.

The interest of the Port Authority and the City in the Premises and in this Agreement, as the same may be modified, amended or renewed, shall not be subject or subordinate to (x) any Mortgage now or hereafter existing, (y) any other liens or encumbrances hereafter affecting the Lessee's interest in this Agreement and the leasehold estate created hereby or (z) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises.

Section 25.9 Relationship of the Parties.

This Agreement does not constitute the Lessee the agent or representative of the City or the Port Authority for any purpose whatsoever. Neither a partnership nor any joint venture is hereby created.

Section 25.10 Severability.

If any term or provision of this Agreement or the application thereof to any Person or circumstances shall to any extent be held invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 25.11 Remedies to be Non-Exclusive.

All remedies provided in this Agreement shall be deemed cumulative and additional and not in lieu of or exclusive of each other or of any other remedy available to the Port Authority, the City or to the Lessee at law or in equity, and the exercise of any remedy, or the existence herein of other remedies or indemnities, shall not prevent the exercise of any other remedy.

Section 25.12 Construction and Application of Terms.

25.12.1 *Headings.* The use of article, section and subsection headings and a table of contents, and the organization of the various provisions of this Agreement

thereunder, are for convenience of reference only and in no way define, limit or describe the scope or intent of any provision hereof.

25.12.2 *Ambiguities*. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applicable to the interpretation of this Agreement or any amendments, addendums or supplements hereto or any exhibits or schedules hereto.

25.12.3 *Gender and Number*. Wherever in this Agreement a third person singular neuter pronoun or adjective is used, referring to the Lessee, the City or Port Authority, the same shall be taken and understood to refer to the Lessee, the City, or the Port Authority, regardless of the actual gender or number thereof.

25.12.4 *Time Designations*. All designations of time herein contained shall refer to the time-system then officially in effect in the municipality wherein the Premises are located.

25.12.5 *Exhibits and Schedules*. The provisions and obligations contained in any Exhibits or Schedules attached hereto shall have the same force and effect as if herein set forth in full.

25.12.6 *Governing Law*. To the extent that any provisions of this Agreement are in any instance to be construed in accordance with the laws of a state, the laws of the State of New Jersey shall apply.

25.12.7 *Successors and Assigns*. The covenants, agreements, terms, provisions and conditions contained in this Agreement shall be binding upon and inure to the benefit of the City, the Port Authority and the Lessee and their respective successors and permitted assigns, except as otherwise expressly set forth herein.

Section 25.13 Entire Agreement.

25.13.1 *Entire Agreement*. This Agreement consists of the following: pages 1 through 174, inclusive, Articles 1-25, inclusive, and Exhibits A through Q. This Agreement, together with the attachments hereto, contains all of the promises, agreements, conditions, inducements and understandings among the Port Authority, the City and the Lessee concerning the Premises and there are no promises, agreements, conditions,

understandings, inducements, warranties or representations, oral or written, express or implied, between them other than as expressly set forth herein and therein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

25.13.2 *Modifications to be in Writing.* No covenant, agreement, term or condition of this Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by the City, the Lessee and the Port Authority.

25.13.3 *No Waiver.* No failure by the Port Authority or the City to insist upon the strict performance of any agreement, covenant, term or condition of this Agreement or to exercise any right or remedy consequent upon the breach or default of any agreement, covenant, term, or condition of this Agreement, and no extension, supplement or amendment or this Agreement during or after such breach or default, unless expressly stated to be a waiver, and no acceptance by the Port Authority or the City of any Rental after or during the continuance of any such breach or default, shall constitute the waiver of such breach or default. No waiver of any default shall affect or alter this Lease, but each and every agreement, covenant, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

25.13.4 *Counterparts.* This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 25.14 Recordation. This Agreement and its attachments shall be recorded with the Office of the Hudson County Register of Deeds or County Clerk at the expense of the City. Thereafter, each and every modification, extension, supplement, assignment, surrender or other amendatory agreement relating to this Agreement shall be recorded in a timely fashion by and at the expense of the party which desires such recording.

Section 25.15. Hotel Management Agreement. Any hotel management agreement and all amendments and/or modifications thereto entered into with respect to the Premises for the operation of the hotel shall be subject to the reasonable approval of the City and Port Authority and shall provide in the

event of the City's or Port Authority's reentry and repossession of the Premises following a termination of this Agreement due to an Event of Default, such agreement shall be terminable by the City or the Port Authority on not more than thirty (30) days' written notice at no cost. Although the City and Port Authority shall be afforded an opportunity to review and approve any hotel management agreement, such review shall in no event be deemed to be a consent by the City or the Port Authority to any of the terms set forth in such hotel management agreement or a waiver of any of the terms in this Lease and the provisions of this Lease shall control.

Section 25.16. Exclusivity Agreement. Notwithstanding the expiration of the Exclusivity Period (as defined in the Exclusivity Agreement) as it has been extended, and the execution of this Agreement, the Lessee shall at all times be obligated, as an obligation hereunder, to make all payments under the Exclusivity Agreement, including but not limited to the payments provided with respect to the extensions of the Exclusivity Agreement.

IN WITNESS WHEREOF , the parties hereto have executed these presents as of the day and year first above written.

ATTEST: 7-26-06

City Clerk, James J. Farina
(title)

THE CITY OF HOBOKEN

By
(name) Mayor David Roberts
(title)

(Seal)

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Secretary

By
(name)
(title)

(Seal)

225 RIVER STREET LLC

ATTEST:

Secretary

By
(name)
(title)

(Seal)

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

THE CITY OF HOBOKEN

_____

City Clerk, James Farina

By _____

(name)
(title)

(Seal)

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Secretary

By _____

Kenneth J. Ringler, Jr.
Executive Director

Port Authority Use Only:	
Approval as to Terms:	Approval as to Form

(Seal)

225 RIVER STREET LLC

By APPLIED 225 RIVER LLC

WITNESS:

By IRONSTATE HOLDINGS LLC

_____

(name)
(title)

By _____

Michael Barry
Managing Member

(Seal)

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

THE CITY OF HOBOKEN

_____

City Clerk, James Farina

By _____

(name)
(title)

(Seal)

ATTEST:

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

_____

Secretary

By _____

(name)
(title)

(Seal)

225 RIVER STREET LLC

By APPLIED 225 RIVER LLC

By IRONSTATE HOLDINGS LLC

WITNESS:

_____

(name) David Barry
(title) Member

By _____

Michael Barry
Managing Member

(Seal)

STATE OF NEW JERSEY)

: ss. :

COUNTY OF HUDSON)

On the 25 day of July , 2006, before me, the undersigned, a Notary Public in and for said State, personally appeared Mayor David Roberts, of THE CITY OF HOBOKEN, personally known to me or proved to me on the basis of satisfactory evidence to be the individuals (s) whose name (s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity (ies) , and that by his/ her/ their signature (s) on the instrument, the individual (s) , or the person upon behalf of which the individual (s) acted, executed the instrument.

Sworn to and subscribed
before me this
25 day of July, 20 06

Lutricia Alexander
Notary Public

LUTRICIA ALEXANDER
Notary Public of New Jersey
Commission Expires 7/7/2010

STATE OF NEW YORK)

: ss. :

COUNTY OF NEW YORK)

On the 14th day of August 2006, before me, the undersigned, a Notary Public in and for said state, personally appeared KENNETH J. RINGLER, JR., Executive Director of the PORT AUTHORITY OF NEW YORK AND NEW JERSEY, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

TIMOTHY G. STICKELMAN
Notary Public, State of New York
No. 02ST6086913
Qualified in Suffolk County
Commission Expires on February 3, 2007

STATE OF NEW JERSEY)

: ss. :

COUNTY OF HUDSON)

On the 18th day of August 2006, before me, the undersigned, a Notary Public in and for said state, personally appeared MICHAEL BARRY, Managing Member of IRONSTATE HOLDINGS LLC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Mirna Alamo

Notary Public

MIRNA ALAMO
A Notary Public of New Jersey
My Commission Expires February 5, 2008

EXHIBIT I

BASIC RENTAL SCHEDULE

Hoboken South Waterfront: Block B
Schedule of Payments to Port Authority

Basic Rental Schedule*

	Calendar Year	Basic Rental Rate	
1.	Lease commencement through 2007	$ 416,000	per annum
2.	2008 through 2012	$ 457,000	per annum
3.	2013 through 2017	$ 503,360	per annum
4.	2018 through 2022	$ 553,696	per annum
5.	2023 through 2027	$ 609,066	per annum
6.	2028 through 2032	$ 669,972	per annum
7.	2033 through 2037	$ 736,969	per annum
8.	2038 through 2042	$ 810,666	per annum
9.	2043 through 2047	$ 891,733	per annum
10.	2048 through 2052	$ 980,906	per annum
11.	2053 through 2057	$1,078,997	per annum
12.	2058 through 2062	$1,186,897	per annum
13.	2063 through 2067	$1,305,586	per annum
14.	2068 through 2072	$1,436,145	per annum
15.	2073 through 2077	$1,579,759	per annum
16.	2078 through 2082	$1,737,735	per annum
17.	2083 through 2087	$1,911,509	per annum
18.	2088 through 2092	$2,102,660	per annum
19.	2093 through 2097	$2,312,926	per annum
20.	2098 through 3002	$2,544,218	per annum

*Notwithstanding the Basic Rental Rates set forth in this Schedule, the Basic Rental payable with respect to the first lease year will be $0.

HOBOKEN
SOUTHERN WATERFRONT

OFFICIAL COPY

CLOSING DOCUMENTS
(8/16/95)

DUPLICATE

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G. SELLERS AFFIDAVIT OF TITLE

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I. LEASEHOLDER'S TITLE POLICY

DEED

Prepared by:

John M. Carbone, Esq.

This Deed is made on August 16 , 1995,

Between *The City of Hoboken, a municipal corporation of the State of New Jersey* having its principal offices at *City Hall, 94 Washington Street, Hoboken, New Jersey 07030* referred to as the Grantor,

And *The Port Authority of New York and New Jersey, a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America* whose post office address is *One World Trade Center, 36 North, New York, New York 10048* referred to as the Grantee.

Transfer of Ownership. The Grantor grants and conveys (transfers ownership of) the property described below to the Grantee. This transfer is made for the consideration of Seventeen million and 00/100 ($17,000,000.00) dollars. The Grantor acknowledges receipt of Nine million and 00/100 ($9,000,000.00) dollars and the Grantor and Grantee acknowledge forgiveness of prior debt of Eight million and 00/100 ($8,000,000.00) dollars .

Tax Map Reference. (N.J.S.A. 46:15-2.1) Municipality of the City of Hoboken
Block No. 231 Lot Nos. 3

Property. The property consists of the land and all the buildings and structures on the land in the City of Hoboken, County of Hudson and State of New Jersey. The legal description consisting of 4 pages is attached hereto and made a part hereof as Exhibit A.

Said property is conveyed with and subject to a grant to the Grantee, its successors and/or assigns, for the right of ingress and egress through the "Development Area" and all adjacent lands of the Grantor herein.

This conveyance is made in furtherance of and in partial satisfaction of obligations of the parties under a Municipal Development Agreement, dated August 16, 1995, between the Grantor and Grantee herein, together with the Resolutions of approval by the Hoboken City Council dated July 1, 1995 and July 12, 1995, which are attached hereto as Exhibit B.

Subject to zoning laws and regulations affecting the use of said premises, grants, easements and restrictions of record, if any, such state of facts as an accurate survey may reveal, and a Lease Agreement between the City of Hoboken and the Port Authority of New York and New Jersey, dated August 16, 1995, to be executed simultaneously herewith.

GRANTOR, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, UNCONDITIONALLY RELEASES Grantee, and its respective Commissioners, officers, employees, agents and contractors from any and all liability to Grantor, both known and unknown, present and future, arising out of any violation of environmental Law or the presence of Contaminants on, under or about, or migrating to or from any or all of Parcels 1, 2, 3, 4, 6 and 8 (the "*Parcels*").

GRANTOR, FOR ITSELF AND ITS SUCCESSORS AND ASSIGNS, COVENANTS THAT: Grantor, its successors and assigns shall forever protect, defend, indemnify and save harmless Grantee, and its respective Commissioners, officers, employees, agents and contractors (collectively, the "*Indemnitees*") from and against any losses, damages, including Environmental Damages, liabilities, suits, claims, demands, judgments, costs, interest and expenses (collectively, "*losses and damages*") which an Indemnitee may directly or indirectly suffer, sustain or be subjected to by reason of, on account of, or arising out of the presence of Contaminants on, under or about, or migrating to or from, the Parcels or a violation of, or compliance or noncompliance with, any Environmental Law relating in any way to the Parcels; whether such losses and damages be suffered or sustained by an Indemnitee directly or by its employees, officers, agents, servants, contractors, or licensees, or by any other person or entity, including Grantor, who may seek to hold such Indemnitee liable therefor. The intent of the foregoing is to insulate the Indemnitees from all liability, loss or expense in any way arising out of or associated with the Parcels and shift all associated risks to Grantor to the fullest extent permitted by law. If so directed, Grantor shall, at no cost or expense to any Indemnitee, defend against such loss and damages, in which event Grantor shall not, without obtaining express written permission in advance from General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, immunity of the Port Authority, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority. For purposes of this Deed, Environmental Damages shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including Strict liability), encumbrances, liens, costs and expenses of an investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of (i) an Environmental Condition, (ii) the existence of Contaminants on, about or beneath the Parcels or migrating from the Parcels, (iii) the release or threat of release of Contaminants into the environment or (iv) the violation or threatened violation of any Environmental Law pertaining to the Parcels and regardless of whether the existence of such Environmental condition, contaminants or the violation or threatened violation of an Environmental Law arose prior to, on or after the granting of this indenture; and shall include fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation, cleanup or remediation, including the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration or monitoring work.

Environmental condition shall mean any condition with respect to the environment on the Parcels whether or not yet discovered, which could or does result in any environmental Damage. Environmental shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strats and ambient air; and "Environmental Law" means without limitation all present and future applicable laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all governments and governmental entities or subdivisions, relating in any manner to (a) soil, water, air, noise, or other environmental standards, or (b) the control and/or abatement of environmental pollution and/or environmental hazards, which now or at any time hereafter may be applicable, or claimed to be applicable, whether or not the claim is or is determined to be well founded. Grantee shall at all times use and maintain the Parcels in full compliance with Environmental Law. Release shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Contaminant into the environment. Threat of release shall mean a substantial likelihood of a release which requires action to prevent or mitigate damage to the environment which may result from such release.

Contaminants shall mean (a) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (b) radon, gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or the equipment which contain dielectric fluid contain levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is defined as or included in the definition of "Hazardous substances", "toxic substances", "hazardous materials", "hazardous wastes" or words of similar import under any environmental Law; and (d) any other chemical, material, gas, vapor, energy, radiation or substance, the exposure to or release of which is prohibited, limited or regulated by any government authority having jurisdiction over the Parcels or the operations or activity at the Parcels or any chemical, material, gas, vapor, energy, radiation or substance that does pose a hazard to the health or safety of occupants of the Parcels or the occupants of property adjacent to the Parcels.

BEING a portion of the same premises conveyed to the Grantor herein by Deed from United States of America, acting by and through the Administrator of General Services, under and pursuant to the powers and authority contained in the provisions of the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended, the regulations and order promulgated thereunder, and in the provisions of Public Law 97-268, dated January 11, 1984, recorded January 18, 1984 in the Hudson County Register's Office in Deed Book 3401, page 336.

BEING a portion of the same premises described in the Municipal Development Agreement between the City of Hoboken and the Port Authority of New York and New Jersey, attached hereto as an exhibit.

Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the property. This promise is called a "convenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

Signatures. This Deed is signed and attested to by the Grantor's proper municipal officers as of the date at the top of the first page and its municipal seal is affixed.

Attested by:

James Farina, City Clerk

City of Hoboken

By: Anthony Russo

Anthony Russo, Mayor

STATE OF NEW JERSEY, COUNTY OF HUDSON SS.:

I Certify that on August 16, 1995, JAMES FARINA personally came before me and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the City Clerk of the City of Hoboken named in this Deed;

(b) this person is the attesting witness to the signing of this Deed by the proper municipal officer who is the Mayor of the City of Hoboken;

(c) this Deed was signed and delivered by the municipality as its voluntary act duly authorized by a proper resolution of its City Council;

(d) this person knows the proper seal of the City of Hoboken which was affixed to this Deed;

(e) this person signed this proof to attest to the truth of these facts; and

(f) the full and actual consideration paid or to be paid for the transfer of title is $17,000,000.00 (Such consideration is defined in N.J.S.A. 46:15-5.)

Signed and sworn to before me on this 16th day of August, 1995.

John M. Carbone
An Attorney at Law of New Jersey

James Farina, City Clerk

EXHIBIT A

PARCEL 1

Beginning at a monument set 70.00 feet East and parallel with the Westerly line of River Street where the same is intersected by the Northerly line of First Street (50' wide) projected easterly and running:

1. N-13°-04'-29"E, along said line 70.00 feet East of the Westerly line of River Street, a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, parallel with the Northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street a distance of 212.50 feet to a point in the northerly line of First Street projected Easterly; thence

4. N-76°-55'-31"W, along said Northerly line of First Street, a distance of 112.50 feet to the point and place of beginning.

PARCEL 2

Beginning at a point in the northerly line of First Street (50' wide) projected Easterly, distant 112.50 feet Easterly as measured along the Northerly line of First Street projected Easterly from a monument. Said monument being in a line 70.00 feet East and parallel with the Westerly line of River Street where the same intersects the Northerly line of First Street and running; thence

1. N-13°-04'-29"E, parallel with the Westerly line of River Street a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, and parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street, a distance 212.50 feet to a point in the northerly line of First Street projected Easterly,; thence

4. N-76°-55'-31"W, and along the Northerly line of First Street projected Easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 3

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following course and distance: N-13°-04'-29"E along said line 70.00 feet east of the westerly line of River Street, a distance of 212.50 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following four courses and distances:

1. N-13°-04'-29"E, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street, a distance of 212.50 feet to a point; thence

4. N-76°-55'-31"W, parallel with the northerly line of First Street projected Easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 4

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following two (2) courses and distances: (1) N-13°-04'-29" E along said line 70.00 feet east of the westerly line of River Street a distance of 212.50 feet to a point, thence (2) S-76°-55'-31"E parallel with the northerly line of First Street, a distance of 112.50 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following four courses and distances:

1. N-13°-04'-29"E, parallel with the Westerly line of River Street, a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street, a distance of 212.50 feet to a point; thence

4. N-76°-55'-31"W, parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 6

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following two (2) courses and distances, (1) N-13°-04'29"E along said line 70.00 feet east of the westerly line of River Street a distance of 475.00 feet to a point in the northerly line of second street projected easterly; thence (2) S-76°-55'-31"E parallel with the northerly line of First Street,a distance of 93.27 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following five courses and distances:

1. S-76°-55'-31"E, and along the northerly line of Second Street projected Easterly a distance of 131.73 feet to a point; thence

2. N-13°-04'-29"E, and parallel to Second Street a distance of 240.20 feet to a point; thence

3. N-76°-55'-31"W, and parallel to the Northerly line of Second Street prolonged Easterly a distance of 117.00 feet to a point; thence

4. S-13°-04'-29"W, and parallel to River Street a distance of 154.62 feet to a point of curvature; thence

5. Southerly on a curve to the right having a radius of 256 feet an arc distance of 87.25 feet to a point in the Northerly line of Second Street prolonged Easterly, said point being the point or place of beginning.

PARCEL 8

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following two(2) courses and distances: (1) N-13°-04'-29"E along said line 70.00 feet east of the westerly line of River Street a distance of 900.00 feet to a point in the southerly line of Third Street projected easterly; thence (2) S-76°-55'-31" E parallel with the northerly line of First Street, a distance of 112.50 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following four courses and distances:

1. S-13°-04'-29"W, parallel to River Street a distance of 184.80 feet to a point; thence

2. S-76°-55'-31"E, and parallel to the Northerly line of Second Street projected Easterly a distance of 112.50 feet to a point; thence

3. N-13°-04'-29"E, and parallel to River Street a distance of 184.80 feet to a point; thence

4. N-76°-55'-31"W, and parallel to the Northerly line of Second Street projected Easterly a distance of 112.50 feet to a point said point being the point or place of beginning.

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MUNICIPAL DEVELOPMENT AGREEMENT

Between

THE CITY OF HOBOKEN

and

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

RESPECTING

THE SOUTH WATERFRONT DEVELOPMENT

Exhibit B

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MUNICIPAL DEVELOPMENT AGREEMENT

THIS AGREEMENT, made as of , 1995 by and between THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN (the "City of Hoboken" or the "City"), a municipal corporation of the State of New Jersey and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America (hereinafter called "the Port Authority");

WITNESSETH THAT:

WHEREAS, at its meeting held on March 15, 1995, the Hoboken City Council (the "Council") amended the "Waterfront at Hoboken Redevelopment Plan of 1989", a copy of such Plan as amended (the "Plan") being attached hereto as Schedule 1; and

WHEREAS, at said meeting held on March 15, 1995, the Council also adopted certain amendments to the City Zoning Ordinance in furtherance of the Plan, a copy of such amendments (the "Amendments") being attached hereto as Schedule 2; and

WHEREAS, the City of Hoboken is embarking upon plans for the redevelopment of certain land located on the City's southern waterfront on the Hudson River (hereinafter sometimes referred to as the "South Waterfront Development" or the "Development"); and

WHEREAS, a portion of the Development includes certain real property being Block A, Block B and Block C as hereinafter defined; and

WHEREAS, the City of Hoboken and the Port Authority on April 10, 1995 established certain general principles of agreement ("Principles of Agreement") in which the City and the Port Authority stated their intent to enter into a Final Municipal Development Agreement in accordance with the Major Terms and Conditions set forth in the Principles of Agreement; and

WHEREAS, as anticipated in the Principles of Agreement, Block A and a portion of Block B (being Initial Development Property as hereinafter defined) is being sold to the Port Authority by the City of Hoboken contemporaneously with the execution of this Municipal Development Agreement by the City of Hoboken and the Port Authority; and

WHEREAS, as anticipated in the Principles of Agreement, the Port Authority is letting the Initial Development Property to the City of Hoboken contemporaneously with the execution of this Municipal Development Agreement; and

WHEREAS, this Municipal Development Agreement provides for the future purchase by the Port Authority of the remaining unpurchased portion of

Block B and all of Block C (being the Subsequent Development Property as hereinafter defined) and the reletting of such property to the City of Hoboken; and

WHEREAS, the City of Hoboken recognizes that the Port Authority through its purchase of the Initial and Subsequent Development Properties and its performance of critical public infrastructure work is and will be making a significant investment and substantial contribution to the effectuation of the Development; and

WHEREAS, the parties are entering into this Agreement in direct reliance on the power and authority granted to them under bi-state legislation ("Waterfront Development Legislation") adopted by the States of New Jersey and New York (Chapter 9 Laws of New Jersey, 1983 and Chapter 107 Laws of New Jersey, 1984 and Chapters 676 and 677 of the Laws of New York, 1984, amending and supplementing respectively Chapter 44 of the Laws of New Jersey of 1947 and Chapter 631 of the Laws of New York of 1947, the "Marine Terminal Act"); and

WHEREAS, pursuant to NJSA 32:1-35.36(k), the Port Authority is authorized and empowered in its discretion to enter into an agreement with a municipality to effectuate, establish, acquire, construct, rehabilitate, improve, maintain, or operate all or any portion or portions of any authorized waterfront development project upon terms and conditions as it may deem in the public interest, and a municipality, notwithstanding any contrary provision of law, general, special or local, is empowered and authorized to enter into an agreement with the Port Authority for or related to the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of any authorized waterfront development undertaken by the Port Authority; and any such agreement may provide, inter alia, for the effectuation, establishment, acquisition, construction, rehabilitation, improvement, maintenance or operation of a waterfront development project; and

WHEREAS, NJSA 32:1-35.30 defines "marine terminals" to include waterfront development projects, which are further defined as projects for the revitalization and economic development of waterfront property; and

WHEREAS, pursuant to NJSA 32:1-35.31, the City is authorized to consent to the use by the Port Authority of any real property owned by such municipality and necessary, convenient or desirable, in the opinion of the Port Authority, for marine terminal purposes, and, as an incident to such consent, to lease or otherwise transfer to the Port Authority any such marine terminal on terms as may be determined by the Port Authority and such municipality upon the adoption of an appropriate resolution by the governing body of such municipality; and

WHEREAS, the City of Hoboken may, pursuant to NJSA 32:1-35.36(k), enter into an agreement with any person, firm, association, company, or corporation, for or related to the effectuation, establishment, acquisition,

construction, rehabilitation, improvement, maintenance or operation of the waterfront development project contemplated herein; and

WHEREAS, the Port Authority, by virtue of NJSA 32:1-35.36(k) is also empowered to enter into an agreement with any person, firm, partnership, association, company, or corporation or other legal entity, to effectuate, establish, acquire, construct, rehabilitate, improve, maintain, or operate all or any portion or portions of any authorized waterfront development project; and

WHEREAS, the parties are desirous of entering into this Municipal Development Agreement as the operative agreement relating to the development of the Initial and Subsequent Development Properties and return of the Port Authority Investment (hereinafter defined), all as more particularly hereinafter set forth; and

WHEREAS, the parties hereto have determined that it is in their mutual interests to enter into this Municipal Development Agreement (hereinafter referred to as 'this Agreement' or 'this Municipal Agreement');

NOW, THEREFORE, for and in consideration of the foregoing and of the covenants and mutual agreements hereinafter contained, the Port Authority and the City of Hoboken hereby covenant and mutually agree as follows:

1. DEFINITIONS

As used in this Agreement:

'Metes and Bounds Description' shall mean Schedule 3 attached hereto;

Block A shall mean the area described as Block A in the Metes and Bounds Description;

Block B shall mean the area described as Block B in the Metes and Bounds Description;

Block C shall mean the area described as Block C in the Metes and Bounds Description;

Development Area shall mean Blocks A, B and C as adjusted pursuant to the provisions of Section 9 of this Agreement;

Initial Development Property shall mean (i) all of Block A and (ii) the portion of Block B described as the Initial Block B for the Initial Development Property in the Metes and Bounds Description and shown roughly in diagonal hatching on Exhibit D attached hereto, provided, however, that following acquisition of the USDA Property (hereinafter defined) by the City and conveyance of title to the USDA Property to the Port Authority as provided in Section 6 hereof, it shall mean (i) all of Block A and (ii) the portion of Block B

described in the Metes and Bounds Description as the Substitute Block B for the Initial Development Property and shown roughly in diagonal hatching on Exhibit E attached hereto;

Subsequent Development Property shall mean (i) all of Block C and (ii) the portion of Block B described in the Metes and Bounds Description described as the Initial Block B for the Subsequent Development Property and shown roughly in diagonal hatching on Exhibit D-1 attached hereto, provided, however, that following acquisition of the USDA Property (hereinafter defined) by the City and conveyance of title of the USDA Property to the Port Authority as provided in Section 6 hereof, it shall mean (i) all of Block C and (ii) the portion of Block B described in the Metes and Bounds Description as the Substitute Block B for the Subsequent Development Property and shown roughly in diagonal hatching on Exhibit E-1 attached hereto;

Right of Entry Area shall mean the area shown roughly within the bold lines on Exhibit F attached hereto and any adjacent area owned or controlled by City;

The Permanent First Street Easement shall mean the permanent easement to be acquired by the City from the United States Post Office over the real property described in the Metes and Bounds Description as the First Street Easement Area which will enable such real property to become part of First Street and/or its immediately adjoining sidewalk;

The Headhouse Deck shall mean the area shown roughly in diagonal hatching on Exhibit G attached hereto;

Pier A shall mean the area shown roughly in diagonal hatching on Exhibit P-A attached hereto;

Pier C shall mean the area shown roughly in diagonal hatching on Exhibit P-C attached hereto;

USDA Property shall mean the land described in the Metes and Bounds Description as the USDA Property and the USDA Building (hereinafter defined); said property is shown roughly in diagonal hatching and cross-hatching on Exhibit U attached hereto;

USDA Building shall mean the United States Department of Agriculture Building located on the USDA Property as shown roughly in diagonal cross-hatching on Exhibit U hereof;

Development Square Footage (DSF) shall mean ninety percent (90%) of the Gross Square Footage (hereinafter defined);

Gross Square Footage (GSF) with respect to any building shall mean the sum of the square footage of gross horizontal areas, excluding parking and mechanical areas, of all ground and above ground floors of such

building; for purposes of determining GSF, all dimensions shall be measured between the interior faces of the perimeter walls;

Block A Upland Infrastructure Improvements shall mean the following work to be performed within the area shown roughly in diagonal hatching on Exhibit A-1 attached hereto: (A) the continuation and extension of existing ducts and pipes (and any other necessary items) and the installation of new ducts and pipes (and any other necessary items) as required for (1) delivery to Block A of all needed utilities, including gas, electricity and water, and (2) sanitary/storm sewers; (B) the effectuation of all necessary tie-ins to assure delivery of all utility services and the functioning of the sanitary/storm sewer systems; (C) effectuation of bulkhead repairs and/or improvements if required; (D) the construction of railings, the proposed walkway, linear park, extended Sinatra Drive and associated sidewalks and curbs and extended First Street and Second Street and associated sidewalks and curbs to the intersection with extended Sinatra Drive; and (E) any other work deemed necessary by the Port Authority to prepare Block A for development by a Developer(s). The construction of the extended First Street and associated sidewalks and curbs, to the intersection with extended Sinatra Drive, shall be effected only after the City acquires from the U.S. Postal Service the Permanent First Street Easement. Acquisition of such Easement shall be the sole responsibility of the City; the streetscape shall consist of theme lighting, benches, and tree-scaping. Infrastructure finishes on selected work may be adjusted at the discretion of the Port Authority after consultation with the City;

Block B Upland Infrastructure Improvements shall mean the following work to be performed within the area shown roughly in diagonal hatching on Exhibit B-1 attached hereto: (A) the continuation and extension of existing ducts and pipes (and any other necessary items) and the installation of new ducts and pipes (and any other necessary items) as required for (1) delivery to Block B of all needed utilities, including gas, electricity and water, and (2) sanitary/storm sewers; (B) the effectuation of all necessary tie-ins to assure delivery of all utility services and the functioning of the sanitary/storm sewer systems; (C) effectuation of bulkhead repairs and/or improvements if required; (D) the construction of railings, the proposed walkway, linear park, extended Sinatra Drive and associated sidewalks and curbs and extended Third Street and associated sidewalks and curbs to the intersection with extended Sinatra Drive; and (E) any other work deemed necessary by the Port Authority to prepare Block B for development by a Developer(s). The streetscape shall consist of theme lighting, benches, and tree-scaping. Infrastructure finishes on selected work may be adjusted at the discretion of the Port Authority after consultation with the City;

Block C Upland Infrastructure Improvements shall mean the following work to be performed within the area shown roughly in diagonal hatching on Exhibit C-1 attached hereto: (A) the continuation and extension of existing ducts and pipes (and any other necessary items) and the installation of new ducts and pipes (and any other necessary items) as required for (1) delivery to Block C of all needed utilities, including gas, electricity and water, and (2) sanitary/storm sewers; (B) the effectuation of all necessary tie-ins to

assure delivery of all utility services and the functioning of the sanitary/storm sewer systems; (C) effectuation of bulkhead repairs and/or improvements if required; (D) the construction of railings, the proposed walkway, linear park, extended Sinatra Drive and associated sidewalks and curbs; and (E) any other work deemed necessary by the Port Authority to prepare Block C for development by a Developer(s). The streetscape shall consist of theme lighting, benches, and tree-scaping. Infrastructure finishes on selected work may be adjusted at the discretion of the Port Authority after consultation with the City;

Pier A Open Space Improvements shall mean those improvements to be agreed upon by the City and the Port Authority to the deck area of Pier A, as shown on Exhibit P-A, necessary to provide for publicly-accessible open space and passive/active recreation. It is understood and agreed that the design of any such improvements shall be performed by a consultant(s) to be selected by the City under a scope of work to be agreed to by both the Port Authority and the City and that the ultimate design of such improvements shall require the mutual agreement of the City and the Port Authority. Open space as used above means a continuous paved perimeter esplanade with large green areas, low lying plants and trees which would permit expansive views of the water and skyline. It is anticipated that railings, benches, lighting and trash receptacles would complement the park-like setting. Improvements for passive/active recreation to be agreed upon could include athletic areas (ball fields, basketball, jogging areas, etc.), picnic and sitting areas, and preliminary site preparation for limited restaurant/retail and entertainment facilities. It is expressly understood that Pier A Open Space Improvements do not include any structural repair/rehabilitation that may be necessary to be made in conjunction with such Improvements. Such structural repair/rehabilitation, if any, shall be a City responsibility. Pier A Open Space Improvements may also include such work as may be agreed to by the Port Authority and the City not on the deck area of Pier A which may be needed to preserve or protect such Pier;

Pier C Open Space Improvements shall mean (1) reconstruction, as necessary and feasible in the opinion of the Port Authority, of portions of both piles and deck area of Pier C, generally as shown on Exhibit P-C, necessary to provide for publicly-accessible open space and passive/active recreation and (2) those improvements to be agreed upon by the City and the Port Authority to the deck area of Pier C necessary to provide for publicly accessible open space and passive/active recreation. It is understood and agreed that the design of any such improvements shall be performed by a consultant(s) to be selected by the City under a scope of work to be agreed to by both the Port Authority and the City and that the ultimate design of such improvements shall require the mutual agreement of the City and the Port Authority. The design for the Pier C Open Space Improvements will include provision for railings, benches, lighting, trash receptacles and a fishing area as well as appropriate preliminary site work for a public recreational marina and waterfront museum. Improvements below the pier deck shall include necessary and feasible repairs, in the opinion of the Port Authority, for the stabilization and restoration of existing piles and existing bulkhead to accept the uses

outlined above. Also included will be the partial demolition of the existing deck and associated pilings (to be cut off at the mud line);

Phase 1 of the Port Authority Infrastructure Project shall mean the demolition (and debris removal) of the portion of the Headhouse remaining on the Headhouse Deck as of the date of this Agreement;

Phase 2 of the Port Authority Infrastructure Project shall mean the effectuation of the Block A Upland Infrastructure Improvements and the Pier A Open Space Improvements and, if requested by the City and if the costs of such demolition are reasonable in the opinion of the Port Authority, the demolition of the USDA Building including any ancillary disposal and/or remediation required for such demolition;

Phase 3 of the Port Authority Infrastructure Project shall mean the effectuation of the Block B Upland Infrastructure Improvements;

Phase 4 of the Port Authority Infrastructure Project shall mean the effectuation of the Block C Upland Infrastructure Improvements;

Phase 5 of the Port Authority Infrastructure Project shall mean the effectuation of the Pier C Open Space Improvements;

Port Authority Infrastructure Project shall mean the five phases of infrastructure work hereinabove described;

Phase 2 Milestone shall be reached when either (A) there are Developer Sublease(s) (hereinafter defined) in effect and Developer Financing In Place covering at least 487,500 square feet of the Gross Square Footage permitted under the Plan for all of Block A or (B) the last of the federal, state and other permits, consents and approvals required to be issued by any Governmental Authority have been issued which are necessary to (i) allow development of 2,315,000 square feet of Gross Square Footage of building space in the Development Area consistent with the Plan and (ii) effectuate all infrastructure improvements necessary or desirable for the development of the Development Area consistent with the Plan;

Phase 3 Milestone shall be reached at the same time there are Developer Subleases in effect and Developer Financing in Place covering 100% of the Gross Square Footage permitted under the Plan for all of Block A (i.e., 975,000 square feet);

Phase 4 Milestone shall be reached at the same time there are Developer Subleases in effect and Developer Financing in Place covering 100% of the Gross Square Footage permitted under the Plan for all of Block A and at least 446,500 square feet of the Gross Square Footage permitted under the Plan for all of Block B;

Phase 5 Milestone shall be reached at the same time there are Developer Subleases in effect and Developer Financing in Place covering 100%

of the Gross Square Footage permitted under the Plan for all of Block A and all of Block B (i.e., 975,000 square feet plus 893,000 square feet);

Initial Development Property Purchase Price shall mean Nine Million Dollars ($9,000,000);

Subsequent Development Property Purchase Price shall mean Seven Million Dollars ($7,000,000);

Additional Payment shall mean Four Million Dollars ($4,000,000);

Prior Port Authority Payment shall mean Eight Million Dollars ($8,000,000);

USDA Property Purchase Price shall mean the amount, if any, paid by the Port Authority to the City pursuant to Section 6 of this Agreement to enable the City to purchase the USDA property, such amount not to exceed the USDA Property Purchase Price Maximum;

USDA Property Purchase Price Maximum shall mean $100,000 unless otherwise agreed to by the Port Authority and the City;

Allowable Hoboken Consultant Costs shall mean those costs incurred by the City on or after July 1, 1995 for work performed in connection with the Development for environmental, planning, architectural and engineering design consultant services, and any other services agreed to by the Port Authority, such costs not to exceed the Allowable Hoboken Consultant Cost Maximum;

Allowable Hoboken Consultant Cost Maximum shall mean the amount agreed to by the Port Authority and the City pursuant to separate agreement;

City Investment shall mean any payment of funds made by the City to third parties for infrastructure work within the Right of Entry Area of the kind being done by the Port Authority with respect to the Development which are not reimbursed by the Port Authority and which are classified under ordinary accounting principles as capital expenditures, including such federal, State or other non-Port Authority grants for such work as the City may receive;

Port Authority Infrastructure Project Costs shall mean all amounts, including financial expense during construction, includable in Port Authority Investment (hereinafter defined) other than the Initial Development Property Purchase Price, the Subsequent Development Property Purchase Price, the Additional Payment and the Prior Port Authority Payment;

Port Authority Infrastructure Project Maximum Cost shall mean $45 million less the cost of any infrastructure work undertaken by any Developer pursuant to Section 4C of this Agreement;

Lease of Initial Development Property shall mean the lease between the Port Authority, as lessor, and the City, as lessee, being entered into contemporaneously with the execution of this Agreement and the acquisition of Initial Development Property by the Port Authority;

Lease of Subsequent Development Property shall mean the lease described in the last sentence of Section 7 of this Agreement;

Pier A and Pier C Preparatory Rehabilitation Costs shall mean costs paid by the City pursuant to the contract between the City and Trevcon dated November 3, 1994 for the repair of Pier A and costs for work paid for out of the Hoboken Escrow Fund prior to its termination on April 13, 1995;

Pier A and Pier C Preparatory Rehabilitation Costs Maximum shall mean $3.5 million;

Effective Date shall mean August 10, 1995 or such other date as the City and the Port Authority may agree upon;

Developer Selection Committee shall mean (i) that Committee established by the City by Resolution dated April 5, 1995 and consisting of seven members to include the Mayor or his designee, and two (2) members of the Hoboken Waterfront Corporation to be approved by the Mayor, the Director of Administration, the Director of Human Services, and two (2) members of the Hoboken Municipal Council appointed by the Council President or (ii) such substitute entity, agency, or group as the Mayor of the City may lawfully designate by written notice to the Port Authority;

Developer shall mean with respect to any portion of the Development Area the person or entity selected by the City with the approval of the Port Authority to enter into a Developer Sublease for such portion of the Development Area;

Developer Sublease shall mean any sublease executed by the City and the Port Authority in accordance with the procedures set forth in Section 2 of this Agreement;

Developer Financing in Place with respect to any Gross Square Footage permitted under the Plan and the Amendments shall mean that the Developer of such Gross Square Footage shall have entered into a valid and binding agreement with a lender approved by the City and the Port Authority which is legally enforceable in the State of New Jersey and under which said lender has irrevocably committed to provide funds, for use solely for the development of such Gross Square Footage, in an amount clearly sufficient to construct and complete all the improvements required to be made by Developer to develop such Gross Square Footage;

Developer Solicitation and Selection Process shall mean the process described in Section 2 of this Agreement;

Evaluation Factors shall mean each of the following items:

(1) The Developer's financial qualifications, including its demonstrated ability to obtain financing (if required) from Institutional Lenders (hereinafter defined), and prior or current indications of willingness of such lenders to finance the Developer's proposal;

(2) The development, management, operating and design experience of the Developer, with particular reference to projects of complexity and quality similar to that anticipated by the Plan, including the design standards contained in the Plan and any building design guidelines that may be prepared in connection therewith; and

(3) The Developer's access to and ability to commit necessary technical and staff resources to accomplish the construction, operation and management of its project in accordance with the overall project objectives;

(4) The amount of minimum payment the Developer is willing to pay in the form of an initial payment or payments and/or a percentage of Developer Gross Revenues;

(5) Any percentage of Developer Gross Revenues (hereinafter defined) above the minimum which Developer is willing to pay;

(6) The proposed schedule of Developer performance; and

(7) The willingness of Developer to commit to an annual fee (and amount of such fee) per development square foot to be paid into a fund dedicated to City waterfront operation and maintenance activities.

Developer Prerequisites shall mean:

(1) The proposed Developer, its officers, directors, general partners, management employees or significant equity participants shall neither: (a) have been indicted for, or convicted of, a crime in any jurisdiction, or be then the target of a grand jury investigation therefor; nor (b) have been suspended or otherwise disqualified from entering into contracts with any governmental agency; and

(2) The proposed Developer, its subsidiaries, parent, predecessors, entities it controls or is controlled by, or is under common control with, shall not have (a) had a development agreement between such entity and either the Port Authority or the City terminated by the Port Authority or the City due to the willful breach or default of such entity; or (b) had a contract terminated by a governmental agency within the states of New York and New Jersey for willful breach or default; or (c) had a contract terminated for any cause relating to an indictment or conviction of such entity or its principals;

Applicable PILOT Rate shall mean, for the year in which the first temporary or permanent certificate of occupancy allowing for occupancy of a building is issued by the City to a Developer with respect to a building located within the Development Area, Two Dollars ($2.00) per Development Square Foot; for each succeeding year, the Applicable Pilot Rate shall be determined by increasing the Applicable Pilot Rate of the prior year by the greater of (i) Two Percent (2%) and (ii) the percentage increase (calculated to four decimal places) in the Tax Rate for such year over the Tax Rate for the prior year; the Applicable PILOT Rate for any year shall be applicable to the entire Development Area during such year so that in any given year all Developers shall be paying at the same PILOT Rate;

Tax Rate shall mean the real property tax rate established annually by the Hudson County Board of Taxation for assessed property within Hudson County, expressed as $X per $Y of assessed valuation;

Developer Gross Revenues shall mean all rentals, receipts, fees, commissions, proceeds and amounts of any kind (and anything else of value) received directly or indirectly by or for the account of any Developer or any Affiliate (hereinafter defined) from Developer's operations or from Developer's tenants, occupants, users, licensees or permittees or any other Persons (hereinafter defined) arising directly or indirectly out of the use of the Development Area or any portion thereof, or the leasing, use, occupation or operation of the Development Area or any portion thereof;

The Conditions Precedent are that the Port Authority has received (i) its Requisite Return on the total amount of the Port Authority Investment plus (ii) additional payments under the sharing formula set forth in Section 10b of this Agreement equal to ten percent (10%) of the total Port Authority Investment;

Independent Action shall mean, with respect to any portion of the Development Area for which the Port Authority chooses to exercise its right of independent action pursuant to Section 12 of this Municipal Development Agreement, any of the following courses of action: the sale of such property; the solicitation and selection of a developer and negotiation of a lease or other agreement for the development of such property under the Plan; or the

development of such property in accordance with the Plan without entering into agreements with developers;

Accounting Principles shall mean generally accepted accounting principles (GAAP) consistently applied;

Affiliate shall mean (i) (a) any Person (hereinafter defined) which, directly or indirectly, controls, is controlled by or is under common control with any other Person. "Control" shall be deemed to mean either (i) ownership of more than forty-nine percent (49%) of all of the voting stock of a corporation or more than forty-nine percent (49%) of all of the legal or equitable interests in any other business entity or (ii) the possession of the power, directly or indirectly, to cause the direction of management and policy of a corporation, partnership, trust or other business entity, whether through voting securities, by contract or common directors, officers or trustees or otherwise. Affiliate shall also mean any individual who is a member of the immediate family (whether by birth or marriage) of an individual, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood of such individual or his spouse, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing;

Governmental Authority (Authorities) shall mean the United States of America, the State of New Jersey, the City of Hoboken and any agency, department, corporation, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or exercising jurisdiction over the Development or any portion of the Development Area or Right of Entry Area including, without limitation, jurisdiction over the administration or enforcement of any Environmental Laws, as such term is defined in the Lease of Initial Development Property, provided such entity is acting in its governmental capacity;

Person shall mean and include an individual, corporation, partnership, joint venture, estate, trust, unincorporated association, any Federal, State, County or municipal government, bureau, department or agency thereof, and any other entity;

Project Budget shall mean the budget for construction of any improvement by a Developer;

The City Development Corporation shall mean any entity created or established by the City to carry out or continue the City's duties, responsibilities or obligations under this Municipal Development Agreement or applicable law;

Port Authority Investment shall mean all of the following: (1) the Prior Port Authority Payment; (2) the Initial Development Property Purchase Price; (3) the Subsequent Development Property Purchase Price; (4) the Additional Payment and the Pier A and Pier C Rehabilitation Costs; (5) the USDA Property Purchase Price; (6) Allowable Hoboken Consultant Costs; (7) all

costs incurred by the Port Authority in connection with the Port Authority Infrastructure Project, including payments to construction contractors, engineers, architects, designers or other Persons as hereinabove defined for and in connection with the planning, design and construction of such work; (8) any costs incident to environmental mitigation, if required, expended by the Port Authority relating to the oil condition under the Headhouse Deck; (9) any Port Authority staff costs and general and administrative costs of the Port Authority as determined by the Port Authority associated with any of the costs described in (1) through (8) above; (10) any other direct or indirect costs that assist the effectuation of the Development, including but not limited to assisting the City in obtaining any necessary permits, approvals, or consents, in Developer solicitation and selection, in negotiation and marketing activities relating to the Development, and in providing technical advice and assistance in connection with the preparation of RFQ's and RFP's pursuant to Section 2B of this Agreement; and (11) financial expense during construction determined in accordance with normal Port Authority accounting procedures consistently applied; each of the items (1) through (11) above shall be deemed a component of the Port Authority Investment;

Yearly Rate Equivalent for any calendar year shall mean the average of the "Weekly Bond Buyer Revenue Bond Index" (as published in The Bond Buyer) for the twenty-six weeks immediately preceding the commencement of such calendar year plus 300 basis points. Each cost forming a component or part of a component of the Port Authority Investment (except component (11) covering financial expense during construction) shall have a Yearly Rate Equivalent determined for such cost in the calendar year in which it is deemed expended by the Port Authority and the Yearly Rate Equivalent for such cost shall remain the same until such cost is fully reimbursed. In the event that the Weekly Bond Buyer Revenue Bond Index ceases to be published by The Bond Buyer, the Port Authority shall create or select an appropriate substitute index in consultation with the City;

Yearly Rate Equivalent Amount for any given calendar year shall mean the sum of the products obtained by multiplying each cost (except financial expense during construction) forming a component or part of a component of the Port Authority Investment (each such cost to include the unreimbursed Yearly Rate Equivalent Amounts attributable to such cost from prior calendar years) by the Yearly Rate Equivalent for each such cost. Each cost of every component of the Port Authority Investment (other than financial expense during construction) shall have a Yearly Rate Equivalent Amount for each calendar year that all or a portion of such cost has not been reimbursed to the Port Authority. Each such cost shall be deemed incurred on July 1 of the calendar year in which the Port Authority determines it to have been expended, provided, however, that any such costs incurred in 1995 shall be deemed incurred in the month when paid and provided, further, however, that any such costs incurred prior to the Effective Date shall be deemed incurred on the Effective Date. There shall be no Yearly Rate Equivalent Amount attributable to financial expense during construction;

Requisite Return on Port Authority Investment shall be (1) the reimbursement to the Port Authority of all costs includable in Port Authority Investment (effectively the principal) plus (2) the payment to the Port Authority of all Yearly Rate Equivalent Amounts determined as provided above;

"Unavoidable Delay" shall mean any delay incurred due to (a) strikes, lockouts and work stoppage, acts of God, inability to obtain labor or materials, enemy action, civil commotion, fire, casualty or other similar causes beyond the control of the Port Authority; (b) the failure of the City or any utility company to provide and maintain utilities, services, water and sewer lines and power transmission lines to the Development Area and the portion of the Right of Entry area not included in the Development Area; (c) any unforseen subsurface condition which shall prevent or require a redesign or change in the construction of any improvement or other work; (d) the failure of any subcontractor or supplier to furnish labor, services, materials or equipment on the dates agreed to, or such party's insolvency or financial condition; (e) the City's failure to comply with any of its obligations hereunder, or any delay or interference with construction caused by construction or other activities of the City or any Person; or (f) the act of any Governmental Authority (as hereinbefore defined) or any judicial or quasi-judicial order or direction;

"Annual Period" shall mean the period commencing January 1 of any year and ending December 31 of such year;

"Institutional Lender" which shall mean any of the following:

(i) a commercial bank or trust company, savings bank, savings and loan association having assets in excess of $100,000,000;

(ii) an insurance company having assets in excess of $300,000,000 or a combination of not more than four such companies whose assets in the aggregate are in excess of $300,000,000 provided the smallest thereof has assets in excess of $25,000,000;

(iii) a pension trust or fund of a governmental body, a union or a corporation, whose shares are traded on a national stock exchange, the assets of which fund or trust are in excess of $300,000,000 or a combination of not more than four such entities whose assets in the aggregate are in excess of $300,000,000 provided the smallest thereof has assets in excess of $15,000,000; or

(iv) a corporation whose shares are traded on a national stock exchange and whose assets are in excess of $500,000,000.

2. DEVELOPER SOLICITATION AND SELECTION PROCESS

1. The Developer Solicitation and Selection Process for each Block or Blocks or portion(s) thereof constituting part of the Development Area shall be as follows:

A. A Request for Qualifications (RFQ) shall be issued by the City. The criteria for evaluating responses to the RFQ shall include items (1) through (3) of the Evaluation Factors and such other criteria for evaluating the responses to the RFQ as the City and the Port Authority mutually agree upon.

B. Following the receipt of responses to the RFQ, the City, working with the Developer Selection Committee, shall prepare and issue to selected Persons a Request for Proposals (RFP). The City shall not issue an RFP to any Person who does not satisfy in every particular each of the Developer Prerequisites. The City shall issue an RFP to any Person satisfying the Developer Prerequisites unless both the Port Authority and the City agree that such Person does not satisfactorily meet the Evaluation Factors set forth in subdivisions (1) through (3) of the definition of such term. The City has requested and the Port Authority is willing to provide technical advice and assistance in connection with the preparation of all RFQ's and RFP's.

C. Copies of all responses to any RFP shall be promptly provided by the City to the Port Authority and all members of the Developer Selection Committee. Following receipt of the responses to the RFP, the Port Authority, the City and members of the Developer Selection Committee shall consult with each other with respect to the responses.

D. Selection of the Developer for each portion of the Development Area shall be subject to the prior written approval of the Port Authority. In determining whether or not to approve a Developer, the Port Authority shall base its determination on how well, in the Port Authority's judgment, the Developer meets each of the Evaluation Factors. Unless otherwise agreed by the City and the Port Authority, the City and the Port Authority shall each be a party to any Developer Sublease.

E. In the event that the process described in paragraphs A through D above does not lead to selection of a Developer for the portion of the Development Area for which a Developer is sought, the City, the Developer Selection Committee and the Port Authority shall consult with each other, and thereafter, the City may issue such new RFQ and/or new RFP as the City and the Port Authority agree upon. Unless the City and the Port Authority otherwise agree, the process for selection of Persons qualified to receive a revised RFP and the selection of a Developer on the basis of a revised RFP shall be identical to the process set forth in paragraphs A through D of this Section for the initial RFQ and RFP.

F. Nothing in this Municipal Development Agreement is intended to preclude the Port Authority and the City from mutually agreeing to additional or alternative procedures for the selection of Developers and the

negotiation of Developer Subleases. Any such alternative procedures must be agreed upon in writing executed by the Port Authority and the City.

G. The terms and conditions to be included in any Developer Sublease shall be mutually agreed to by the Port Authority and the City. Without limiting the foregoing, the Port Authority and the City agree that: each Developer Sublease shall contain provisions requiring the Developer to pay as part of its rental obligation during each year of the term of the Developer Sublease (a) an amount equal to the product obtained by multiplying the Applicable Pilot Rate for each such year by the Development Square Footage contained in the subleased premises; and (b) a minimum payment in the form of an initial payment or series of payments and/or a percentage of Developer Gross Revenues. The Developer Sublease shall also contain provisions under which the Developer will pay all amounts due under the Developer Sublease (other than amounts due by application of the Applicable PILOT Rate) directly to the Port Authority as assignee of the City's right to receive such amounts. Each Developer Sublease shall also include provisions under which (i) the Developer will commit to observe a Project Budget to be attached to the Developer Sublease and (ii) the City will waive all fees and other payments which would otherwise be payable in connection with the development permitted under such Developer Sublease, including without limitation permit fees and certificate of occupancy fees.

H. Except as provided for in Section 20 of this Municipal Development Agreement, the City shall not enter into any agreement providing for the use, occupancy or development of any portion of the Development Area by any Person except by means of a Developer Sublease; in this connection, nothing in this Municipal Development Agreement or in the Lease of the Initial Development Property or in the Lease of the Subsequent Development Property shall grant to or be deemed to grant to the City any rights whatsoever in the air space above any of such Property.

I. The City understands and agrees that under no circumstance shall the Port Authority be required to pay any real property tax or any payments in lieu of taxes, or any other taxes, assessments or fees of any kind, for or in connection with the Development Area or because of the execution of this Municipal Development Agreement or because of any other matter related to the Development.

3. <u>ORDER OF DEVELOPMENT</u>

Development of the Development Area shall occur in the following order of development: (i) two parcels of Block A; (ii) remaining two parcels of Block A; (iii) two parcels of Block B; (iv) remaining two parcels of Block B; (v) two parcels of Block C; and (vi) remaining two parcels of Block C. The Port Authority and the City may agree to reverse the order with respect to the parcels forming Blocks B and C. In the event that either the City or the Port Authority requests the other party to agree to such re-ordering and the other party is not agreeable to such change, then the order provided for above shall not be changed unless the Governor of the State of New Jersey requests

such reversal in a letter addressed to the City and the Port Authority in which case such reversal of order shall be deemed agreed to by the Port Authority and the City.

4. PORT AUTHORITY INFRASTRUCTURE COMMITMENT

A. The Port Authority shall promptly undertake, either itself or through others, Phase 1 of the Port Authority Infrastructure Project following issuance of all permits and approvals necessary for the undertaking of such Phase 1. The Port Authority shall undertake either itself or through others each of the other Phases of the Port Authority Infrastructure Project following issuance of all permits and approvals necessary for each such Phase provided, however, that: (i) the Port Authority shall not be required to undertake Phase 2 of the Port Authority Infrastructure Project until the Phase 2 Milestone has been reached; (ii) the Port Authority shall not be required to undertake Phase 3 of the Port Authority Infrastructure Project until the Phase 3 Milestone has been reached; (iii) the Port Authority shall not be required to undertake Phase 4 of the Port Authority Infrastructure Project until the Phase 4 Milestone has been reached; and (iv) the Port Authority shall not be required to undertake Phase 5 of the Port Authority Infrastructure Project until the Phase 5 Milestone has been reached. For purposes of this paragraph, all permits and approvals shall be deemed to have been issued with respect to any Phase of the Port Authority Infrastructure Project upon the date of the issuance of the last of the federal, state and other permits, consents and approvals by any Governmental Authority which are necessary for the commencing and completing of the work with respect to such Phase.

B. The total amount required to be expended by the Port Authority for the Port Authority Infrastructure Project shall not exceed the Port Authority Infrastructure Project Maximum Cost. The Port Authority may, however, at its sole discretion, expend such additional amounts in excess of the Port Authority Infrastructure Project Maximum Cost, in connection with the Port Authority Infrastructure Project or any portion thereof, as may be required to complete the Port Authority Infrastructure Project or such portion thereof, and such additional amounts shall be included in the Port Authority Investment for all purposes.

C. In the event that a Developer agrees to do any portion of the Port Authority Infrastructure Work, the Port Authority shall have no further obligation under this Agreement with respect to such work provided Developer actually performs such work. Any such work performed by a Developer shall not be included in Port Authority Investment unless such costs are reimbursed by the Port Authority.

D. The City and the Port Authority agree that the nature, quality and extent of individual improvements to be effectuated by the Port Authority as part of the Port Authority Infrastructure Project will depend in part upon the amount of funds available for such improvements. In this connection, given the Port Authority Infrastructure Project Maximum Cost, the City and the Port Authority recognize that the design work for the Port Authority Infrastructure

Project, which it is anticipated will be done by consultants to be selected by the City, will require such consultants to be sensitive to the fact that amounts available for one phase of the Infrastructure Project will depend on amounts allocated to other phases of the Infrastructure Project. The Port Authority and the City will cooperate together and consult with each other and the City's consultants to achieve an overall design plan which will take into account the amount of funds available for each phase of the Port Authority Infrastructure Project. The design plans for each Phase of the Port Authority Infrastructure Project shall require the approval of both the Port Authority and the City.

E. Subject to any Unavoidable Delay, the Port Authority shall effectuate each Phase of the Port Authority Infrastructure Project within the time frames established in the schedule attached hereto as Schedule 4. The times fixed in such schedule for the performance by the Port Authority of each Phase of the Port Authority Infrastructure Project shall be extended by a period of time equivalent to the period of any delay caused or resulting from any Unavoidable Delay. Whenever the Port Authority determines that any of the matters enumerated in the definition of Unavoidable Delay has occurred, it shall undertake to advise the City for information purposes of such occurrence.

F. Within sixty (60) calendar days of the completion of each Phase of the Port Authority Infrastructure Project, the Port Authority shall provide to the City a certification, signed by an architect licensed to practice in the State of New Jersey, that the work covering such Phase has been completed in accordance with the design plans agreed to for such Phase of the Project.

G. In the event that the Port Authority at any time determines that the Port Authority Infrastructure Project cannot be completed without exceeding the Port Authority Infrastructure Project Maximum Cost and the Port Authority does not elect to exceed such Maximum pursuant to Paragraph B hereof, then the Port Authority and the City shall promptly enter into good faith discussions to determine appropriate changes to the design plan or to seek to identify a source of funds which would enable the work for the Port Authority Infrastructure Project to be completed without exceeding the Port Authority Infrastructure Maximum Cost.

5. PAYMENT OF HOBOKEN CONSULTANT COSTS

The Port Authority will reimburse the City for Hoboken Consultant Costs up to the Hoboken Consultant Cost Maximum in accordance with the following procedure: the City may from time to time invoice the Director of the Regional Development Department of the Port Authority, or such other person as the Port Authority may designate from time to time, for Hoboken Consultant Costs paid by the City and not previously reimbursed by the Port Authority. Transmittal of each such invoice to the Port Authority shall constitute a certification by the City that it knows of no reason why the amount requested is not properly payable under the terms of this Municipal Development Agreement. The City represents that each consultant for whose costs the City seeks reimbursement under this section shall be selected in accordance with all applicable legal requirements, including bidding

procedures, where applicable, and that each contract with such consultant shall meet all applicable legal requirements. Each invoice shall be executed by an authorized officer of the City. The Port Authority shall review such request and make the appropriate payment within forty-five (45) days following receipt of such invoice. Each invoice shall describe in reasonable detail the Costs for which payment is sought. The City shall provide such additional information with respect to any invoice as the Port Authority may request and, in the event of any such request for additional information, the period for the Port Authority to review and pay the invoice shall be automatically extended for a period ending ten (10) days after the receipt of such additional information by the Port Authority.

6. PURCHASE OF USDA PROPERTY

Subject to all the provisions of this Agreement, the Port Authority will pay to the City at the closing of the sale of the USDA Property to the City the amount, if any, required to be paid to the United States to purchase the USDA Property. In light of the deteriorated condition of the USDA Building, past use of pesticides and other chemicals in such Building, and asbestos and possible lead-paint contamination in such Building, the City and the Port Authority agree that the amount to be paid to the United States shall in no event be more than the USDA Property Purchase Price Maximum. The Port Authority shall not be required to pay such amount to the City (nor shall it be required to take fee title from the City for the USDA Property) unless (i) the Port Authority has received such documentation as it may request from the City with respect to such purchase, including but not limited to any contract of sale and copies of all closing documents to be exchanged by the City and the United States in connection with such sale; (ii) the City will be receiving clear and marketable title free and clear of all liens and encumbrances to the USDA Property at closing; and (iii) the USDA Property is in an environmental condition (excluding any consideration of asbestos, pesticides, and possible lead paint in the USDA Building) satisfactory to the Port Authority. The City shall transfer fee title to the USDA Property to the Port Authority for the consideration of One Dollar, the form and content of the deed conveying such property to be identical (except to the extent mutually agreed by the parties) to the form of the deed used to transfer title of the Initial Development Property from the City to the Port Authority.

7. PURCHASE OF SUBSEQUENT DEVELOPMENT PROPERTY

Subject to all the provisions of this Agreement, upon Phase 2 Milestone being reached, the Port Authority shall purchase from the City the Subsequent Development Property for the Subsequent Development Property Purchase Price, provided however that the Port Authority shall be under no obligation to purchase the Subsequent Development Property unless (i) all federal, state and other permits, consents and approvals of any Governmental Authority necessary for the development of the Subsequent Development Property in accordance with the Plan and the Amendments have been issued; (ii) the City is able to convey to the Port Authority clear and marketable title, free and clear of all liens and encumbrances; and (iii) the City is able to

convey the Subsequent Development Property in an environmental condition that would not result in the expenditure of a commercially unreasonable amount for remediation to allow for the development of such property in accordance with the Plan and the Amendments. The form and content of the deed and other closing documents for such transaction shall be substantially identical (except to the extent mutually agreed by the parties) in form and content to the deed and closing documents used in connection with the purchase by the Port Authority of the Initial Development Property. The Subsequent Development Purchase Price shall be paid at closing at a location to be agreed to by the Port Authority and the City, the closing to be scheduled for June 30, 1997. At such closing, the City, as lessee, and the Port Authority, as lessor, shall also execute a lease of the Subsequent Development Property containing terms and conditions substantially identical to the Lease of the Initial Development Property.

8. ADDITIONAL PAYMENT

Subject to all the provisions of this Agreement, the Port Authority will make the Additional Payment to the City when and only when the Phase 3 Milestone is reached.

9. REDUCTION OF ADDITIONAL PAYMENT OR ADJUSTMENT OF THE DEVELOPMENT AREA

In the event that the City has not purchased the USDA Property on or before the date that the Phase 3 Milestone is reached, then the Additional Payment shall be reduced by the product obtained by multiplying the Additional Payment by a fraction the numerator of which would be a whole number equal to the Gross Square Footage permitted for the USDA Property and the denominator of which shall equal 2,315,000, provided, however, that the Additional Payment shall not be reduced pursuant to this paragraph in the event that prior to the Phase 3 Milestone being reached the Port Authority and the City have entered into a supplement to this Agreement under which additional Gross Square Footage at least equal to the amount of Gross Square Footage which could have been built within the USDA Property would be permitted to be built within the Development Area or on real property to be added to the Development Area.

10. RECEIPT OF DEVELOPER GROSS REVENUES

(a) The Port Authority shall be paid all amounts payable by each Developer under every Developer Sublease (other than amounts payable by application of the Applicable PILOT Rate) until the Port Authority has received the Requisite Return for the entire Port Authority Investment. In the event that in any year the total of such payments received by the Port Authority is greater than (1) the reimbursement amount required in such year for all components of the Port Authority Investment plus (2) the Yearly Rate Equivalent Amount due with respect to such components in such year, then any surplus over such amounts shall be applied by the Port Authority to reduce the unamortized Port Authority Investment to date.

The City shall immediately transfer to the Port Authority any Developer Gross Revenues which it receives (e.g., if a Developer inadvertently or otherwise pays any Developer Gross Revenues to the City).

(b) After the Port Authority has received the Requisite Return for the entire Port Authority Investment, the City shall thereafter receive Twenty-five Percent (25%) of all Developer Gross Revenues (the City to continue to receive 100% of amounts due under Developer Subleases with respect to application of the Applicable Pilot Rate) and the Port Authority shall receive Seventy-five Percent (75%) of Developer Gross Revenues provided, however, that in the event that the City Investment, determined as of the date that there are in place Developer Subleases covering all of the Development Area, exceeds Twenty-five Percent (25%) of the Port Authority Investment, then in such event the City shall (after the Port Authority has received the Requisite Return for the entire Port Authority Investment) receive a percentage of such payments under this paragraph 10(b) equal to the percentage obtained by dividing the Port Authority Investment into the City Investment and the Port Authority shall receive the remaining percentage of such payments.

11. REPURCHASE OF DEVELOPMENT AREA

(a) Upon occurrence of all the Conditions Precedent, the City shall have the right to repurchase all and only all of the Development Area, subject to and in accordance with all of the provisions of this Agreement, at a purchase price equal to Fair Market Value determined as of the date that the City notifies the Port Authority pursuant to paragraph b of this Section 11 of its intention to exercise said right;

(b) The Port Authority shall notify the City when all the Conditions Precedent have been fulfilled. The City shall notify the Port Authority of its intention to purchase all of the Development Area within two years of the date of its receipt from the Port Authority of the aforesaid notification. Upon receipt of such notification from the City, the Port Authority and the City will determine the Fair Market Value of the Development Area. In the event that the Port Authority and the City are unable to agree on the Fair Market Value of such property, the Port Authority and the City shall each appoint an appraiser for such purpose. In the event such appraisers are unable to agree on such Fair Market Value, they will agree to the appointment of a third appraiser who will determine such Fair Market Value after consultations with the other two appraisers. The Port Authority and the City shall each bear the cost of its own appraiser and shall share equally the cost of a third appraiser if required. In the event that the above procedures do not result in a Fair Market Value being determined because a third appraiser cannot be agreed upon by the other two appraisers, Fair Market Value shall be determined in accordance with such procedures as may be recommended by the Governor of the State of New Jersey.

The form and substance of the deed and other closing documents to effectuate the transfer of title shall be substantially similar to the form of deed and closing documents utilized in the purchase of the Initial

Development Property by the Port Authority from the City. Transfer of title to the property shall occur as promptly as possible following determination of its Fair Market Value. The City may request, in connection with the repurchase of the Development Area pursuant to this Section, that the purchase price for the Development Area be payable in other than a lump sum amount upon closing and the Port Authority will enter into good faith discussions with the City with respect to any such request.

12. INDEPENDENT PORT AUTHORITY ACTION

In the event that Developer Sublease(s) have not been entered into covering at least 487,500 square feet of the Gross Square Footage of building space permitted on Block A under the Plan on or before February 28, 1997, or covering at least 900,000 square feet of Gross Square Footage of building space permitted for the Development Area under the Plan on or before February 28, 1998, or covering at least 1.3 million square feet of Gross Square Footage of building space permitted for the Development Area under the Plan on or before February 28, 1999, or covering at least 1.9 million square feet of Gross Square Footage of building space permitted in the Development Area under the Plan on or before February 29, 2000, or covering at least 2.3 million square feet of Gross Square Footage of building space permitted for the Development Area under the Plan on or before February 28, 2001, then, in any such event, the Port Authority shall have the right, to be exercised in each case no later than the last day of the sixth full calendar month following the applicable date, to notify the City of its intention to take Independent Action with respect to all or any portion of the Development Area owned by the Port Authority at the time of giving such notification and with respect to which a Developer Sublease is not then in effect. In the event the Port Authority sells any property pursuant to any exercise of its right of Independent Action, the City shall not be entitled to any portion of the purchase price received for any such sale or any other payment or consideration with respect to such sale. Neither shall the City be entitled to any share of any revenues received by the Port Authority from the development of such property in the event that the Port Authority chooses not to sell such property, provided, however, that any lease or other arrangement which the Port Authority makes with a developer pursuant to any exercise of its right of Independent Action shall include a requirement that such developer pay to the City as PILOT an amount equal to the same amount that the developer would have paid the City under a Developer Sublease with respect to the Applicable PILOT Rate and provided, further, however, that in the event that the Port Authority develops any portion of the Development Area directly pursuant to any exercise of its right of Independent Action without entering into an agreement with a developer, the Port Authority shall pay to the City the same amount that a developer would have paid the City with respect to the applicable PILOT Rate. The Developer Solicitation and Selection Process shall not be applicable to (and shall cease with respect to) any property with respect to which the Port Authority exercises its right of Independent Action. In the event that the Developer Solicitation and Selection Process is underway with respect to such property, the Port Authority may but shall not be obligated to continue discussions with any of the Persons then being considered in connection with

such Process. Neither the failure of the Port Authority to exercise its right of Independent Action nor its exercise of such right shall waive or impair in any way its right to exercise such right of Independent Action in the future.

Any Person with whom the Port Authority enters into an agreement to develop any portion of the Development Area pursuant to this Section or any Person to whom the Port Authority sells any portion of the Development Area pursuant to this Section shall be entitled to develop such Area in accordance with the Plan and the Amendments and the City shall not alter the Plan or Amendments in a way that would impair in any way such development rights or take any other action that would result in such impairment. The City hereby waives all fees, including without limitation fees for building permits and certificates of occupancy, which would otherwise be payable with respect to any portion of the Development Area being developed pursuant to any Port Authority exercise of its rights of Independent Action under this Section.

13. APPROVALS AND PERMITS

The City shall be solely responsible for obtaining the issuance of all permits and approvals required to be obtained pursuant to any provision of this Agreement. The City may in its discretion request the Port Authority's technical assistance in securing any such permits or approvals and the Port Authority shall use reasonable efforts to provide such technical assistance. With respect to any requests for technical assistance which the Port Authority is not able to provide to the City, the City may retain consultants to obtain such assistance. Such costs shall be considered part of Allowable Hoboken Consultant Costs and shall be subject to the Allowable Hoboken Consultant Costs Maximum.

14. OTHER DEVELOPMENT

In the event that the Port Authority at any time determines that the Port Authority Investment will be less than Ninety-three Million Dollars ($93,000,000), then the Port Authority shall so notify the City and, if requested to do so by the City within thirty (30) days of the receipt of such notification by the City, the Port Authority will enter into discussions with the City regarding possible additional projects to be undertaken within the City by the Port Authority consistent with Port Authority legislative authority and which will provide a return to the Port Authority comparable to the Requisite Return. In the event that such discussions fail to lead to execution of a binding and enforceable agreement by the City and the Port Authority (following appropriate authorizations by the City Council and the Port Authority Board of Commissioners) with respect to such additional project or projects no later than one year from the date of the City's request to commence such discussion, this Section shall be deemed of no further force or effect and the Port Authority shall have no further obligation to discuss additional projects with the City.

15. RIGHT OF ENTRY

The City hereby grants to the Port Authority, its officers, employees, agents and contractors, the right to enter upon, use and occupy lands of the City included in the Right of Entry Area, and any other City-owned property, for the performance of any work forming part of the Port Authority Infrastructure Project.

16. RECONFIGURATION OF INITIAL DEVELOPMENT PROPERTY

The City acknowledges that it has advised the Port Authority that it is in the process of attempting to acquire the USDA Property. Both the City and the Port Authority recognize that the preferred order of Development for Block B would be the two most southerly parcels ("parcels 5 and 6") as shown in diagonal hatching on Exhibit E and then the remaining two parcels ("parcels 7 and 8"). Accordingly, the parties agree that upon purchase of the USDA Property by the City, the City shall immediately convey title to the USDA Property to the Port Authority and upon such conveyance parcels 5 and 6 of Block B shall along with Block A constitute the Initial Development Property. Thereafter, parcels 7 and 8 of Block B shall along with Block C constitute the Subsequent Development Property. In this connection, if the Port Authority has not previously purchased the Subsequent Development Property, the Port Authority shall convey back to the City title to parcel 8 of Block B.

17. PORT AUTHORITY RELATIONSHIP WITH DEVELOPERS

Nothing in this Agreement is intended to preclude the Port Authority from entering into agreements with Developers with respect to the financing of the Developers' improvements to the Development Area. With regard to improvements which may be so financed by the Port Authority, selection of ultimate tenants who are to use the improvements to be constructed with such financing shall be consistent with the policy set forth herein on Exhibit I attached hereto and made a part hereof. Any investment or other improvements made by the Port Authority on behalf of any Developer shall be paid back to it pursuant to negotiated agreements between said parties and is not part of Developer Gross Revenues.

18. HEADHOUSE DECK

The City agrees, upon request by the Port Authority, to execute and record a Declaration of Environmental Restrictions (DER) and any other documents required by the New Jersey Department of Environmental Protection (NJDEP) and/or the United States Environmental Protection Agency in connection with the NJDEP Memorandum of Agreement referenced in Section 7 of the Agreement of April 12, 1993 between the Port Authority and the City, relating to the oil condition under the Headhouse Deck.

19. HOBOKEN INFRASTRUCTURE WORK

The City hereby represents to the Port Authority that it is performing and will complete in the area north of Block C all infrastructure work shown or described in the Plan, and the City acknowledges that the Port Authority is relying on such representation in agreeing to undertake the Port Authority Infrastructure Project.

20. INTERIM USES

Subject to all the provisions of this Section, the City, by itself or through third parties, may continue and/or provide for such interim uses ('Interim Uses') in the Development Area as parking, special events and concessions as the City and the Port Authority may mutually agree upon. Revenues received for Interim Uses shall belong solely to the City. The City shall cause any Interim Uses to be terminated no later than thirty (30) days following a notice from the Port Authority requesting such termination. The City shall not allow any Interim Uses except pursuant to a written agreement to be consented to in advance by the Port Authority, which consent shall not be unreasonably withheld.

21. ACCOUNTING

(a) The Port Authority shall, in accordance with good accounting practice, keep separate records and accounts in regard to Developer Gross Revenues and the City's duly designated representatives shall have the right to inspect such records and accounts during regular business hours at the Port Authority's office after prior notice.

(b) Within one hundred eighty (180) days following the close of the first Annual Period in which a Developer Sublease has been executed by all parties thereto and following the close of each Annual Period thereafter, the Port Authority shall provide to the City an Annual Statement of Developer Gross Revenues certified by the Port Authority Comptroller, which certification shall be subject to audit by the City. In the event that any such audit reflects a discrepancy which exceeds five (5%), the Port Authority shall reimburse the City for the actual cost of said audit. Notwithstanding the foregoing, the Port Authority may elect to provide an Annual Statement of Developer Gross Revenues certified by an independent certified public accountant in which event the Port Authority shall bear the cost of retention of said accountant but the cost of any such audit by the City shall be borne by the City. In either event, such statement shall contain a detailed compilation of Developer Gross Revenues by source for such year.

(c) In the event there shall be any dispute or difference of opinion between the City and the Port Authority with respect to the determination of Developer Gross Revenues or any other accounting questions arising under this Agreement which cannot be resolved by agreement of the parties, then each such dispute or difference shall be submitted to arbitration consistent with the rules of (but not necessarily under the auspices of) the

American Arbitration Association within thirty (30) days after notice served by one party upon the other demanding that such dispute or difference be so submitted for arbitration. Each party shall select a certified public accountant to act as arbitrator and the two arbitrators selected shall select a third certified public accountant and, if neither they nor the parties shall agree upon a third, such third accountant shall be selected by the Governor of New Jersey or the Governor's designee for such purpose. The award, ruling or determination which shall be made by a majority of the arbitrators shall be final and binding upon the City and the Port Authority and the parties hereto agree to comply or commence compliance with such award or determination within sixty (60) days after the making of the same, provided the determination shall be made in writing within forty-five (45) days next after the submission to the arbitrators of the dispute or difference, or on or before any later date to which said arbitrators, by any writing signed by them, shall extend the time for making their award. The cost of such arbitration shall be borne solely by the losing party. If it is determined that the Port Authority or the City is prohibited by law from agreeing to submit to arbitration or to be a party to an agreement providing for arbitration, then the provisions of this Agreement relating to arbitration shall be null and void and the other provisions of this Agreement shall nevertheless remain in full force and effect.

22. EVENTS OF DEFAULT

An event of default ("Event of Default") under this Agreement shall be deemed to have occurred with respect to either party whenever such party fails to perform any material obligation when and as required under this Agreement provided, however, that no Event of Default shall be deemed to have occurred with respect to either party until forty-five (45) days after written notice of default by the non-defaulting party and only if the defaulting party has not during such period proceeded diligently to cure the default.

23. COOPERATION

The Port Authority and the City recognize that effectuation of the Development will be a complex undertaking requiring the good faith cooperation of each party to assure the effectuation of the Development. In this connection, the Port Authority recognizes the importance to the City of the effectuation of the Port Authority Infrastructure Project and the development of the Development Area in accordance with the Plan. Also, in this connection, the City recognizes that the Port Authority in purchasing the Initial Development Property and in agreeing to make the other payments provided for in this Agreement and to perform and pay for the Port Authority Infrastructure Project is bearing virtually the entire "up-front" risk with respect to the initial development of the Project. Without limiting or modifying in any way any of their rights or obligations under this Agreement, the City and the Port Authority agree to cooperate in good faith for the benefit of the Development and to refrain from taking any actions which would harm the effectuation of the Development.

24. CONDEMNATION

(a) Subject to the provisions contained in any Developer Sublease, if at any time following the Effective Date, all or substantially all of the Initial Development Property or the Subsequent Development Property shall be taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among the City, the Port Authority and those authorized to exercise such right, the Initial Development Property Lease or the Subsequent Development Property Lease or both, as the case may be, shall terminate and expire on the date of such taking.

(b) The term "substantially all" shall be deemed to mean such portion as, when so taken, would leave remaining a balance which, due either to the area so taken or the location or the part so taken in relation to the part not so taken, would not readily accommodate the construction of a new building which would likely result in Developer Gross Revenues capable of providing the Port Authority its Requisite Return on such building.

(c) With respect to any such condemnation, the award shall be divided in the following manner:

(i) First, to the Port Authority, an amount equal to the Requisite Return determined as of the date of the entry of such award;

(ii) Second, the balance, if any, to the City and the Port Authority in equal amounts.

(d) The City and the Port Authority shall execute any and all documents that may be required in order to facilitate collection by them of such awards.

(e) Date of Taking. For the purpose of this Section, any real property shall be deemed to have been taken or condemned on the date on which actual possession of such property is acquired by a lawful power or authority or the date on which title vests therein, whichever is earlier.

(f) Less Than Whole Taking. If less than substantially all of the Initial Development Property or Subsequent Development Property is taken, any condemnation award with respect to such taking or condemnation shall be divided in the same manner as provided in paragraph (c) immediately above and the lease with respect to the untaken portion of such Property shall continue without diminution of any of the City's obligations thereunder, except that the lease shall terminate as to the portion of such Property so taken.

(g) Temporary Taking. If the temporary use of the whole or any part of the Initial Development Property or Subsequent Development Property shall be taken at any time for any public or quasi-public purpose by any lawful power or authority, by the exercise of the right of condemnation or eminent domain, or by agreement between the Port Authority, the City and

those authorized to exercise such right, the Port Authority shall be entitled to receive for itself any award or payments for such use; provided, however, that the amount of such award paid to the Port Authority shall be included in Developer Gross Revenues.

(h) Governmental Action. In case of any governmental action not constituting a taking or condemnation of any portion of the Initial Development Property or Subsequent Development Property, but creating a right to compensation therefor, such as the changing of the grade of any street upon which any portion of such Property abuts, the award shall be shared by the parties on an equitable basis.

(i) Condemnation by the Port Authority or the City. Neither the Port Authority nor the City shall condemn or exercise the power of eminent domain with respect to the Development Area or any part thereof.

25. CITY SERVICES TO THE DEVELOPMENT AREA

(a) The City shall furnish to the Development Area in substantially the same manner as elsewhere in Hoboken and without additional compensation therefor, the following services, it being understood that the City's obligation to deliver such services will be in accordance with the City's ordinances and laws applicable elsewhere in Hoboken, as the same may be amended from time to time: (i) fire protection service, (ii) sanitation service, including pick up and disposal of garbage from residential and commercial premises but only to the extent made available in Hoboken to comparable residential and commercial premises, and (iii) normal police services.

(b) The City shall provide or cause to be provided to occupants of the Development Area potable water; the City shall also provide or cause to be provided to the Development Area sewerage service (including treatment and disposal thereof) on the same terms and conditions and at the same rates and charges as are charged to other users for the same type, class and amount of consumption or service. The City shall meter or caused to be metered the services in a manner similar to the practice elsewhere and shall bill or cause to be billed the occupants directly therefor and shall be responsible for collection thereof. The City shall also continue to maintain those now existing water mains, pipes, sewers and drainage ditches, tide gates and regulators, if any, within the Development Area and the portion of the Right of Entry Area not included in the Development Area.

26. REPORTS ON PORT AUTHORITY INVESTMENT

The Port Authority shall, in accordance with Accounting Principles, keep separate records and accounts in regard to each cost includable in Port Authority Investment. On or before the one hundred eightieth day following the end of any Annual Period in which the Port Authority incurs any cost includable in Port Authority Investment, the Port Authority shall deliver to the City a certified statement of the Comptroller of the Port Authority (or his successor in functions and duties) describing in reasonable detail all such costs

so incurred by the Port Authority during such Annual Period. The City reserves the right to audit such statements.

27. CITY WATERFRONT OPERATIONS AND MAINTENANCE FUND

The City and the Port Authority agree that Developers entering into Developer Subleases pursuant to the Developer Selection and Solicitation Process should be required to make "City Waterfront Operations and Maintenance Payments" to a "City Waterfront Operations Maintenance Fund" ("O & M Fund"). The O & M Fund shall be established to pay for certain operation and maintenance costs and expenses for certain areas to be designated by mutual agreement of the Port Authority and the City located within the Right of Entry Area, such areas to be open and accessible to the public for recreational and other public purposes.

Costs and expenses to be paid for out of the O & M Fund include those for: (a) operating, maintaining, cleaning, repairing, improving and restoring all the public access areas including the costs of periodic replacement of plantings, street lighting and other electricity costs, potable and firefighter water charges and insurance; and (b) for inspection and maintenance of the bulkhead between Newark Street and the southern edge of Pier A, as well as between the northern edge of Pier A and the southern edge of Pier C. Unless otherwise agreed by the City and the Port Authority, the O & M Fund will not pay for the following costs: police and fire protection, garbage pickup and public road maintenance and other general government costs and expenses associated with the public access areas which will be paid for by the City. Additionally, the O & M Fund will not pay for the inspection of or maintenance of the Piers A and C themselves including bulkheads, decks and pilings thereon, which are the obligations of the City.

It is anticipated that the O & M Fund will be administered by the City in cooperation with the Authority and Developers and that an entity created jointly by Developers and the City will administer the O & M Fund and all payments will be made thereto. The Authority will have an ex-officio member on this entity.

Unless otherwise agreed by the City and the Port Authority, annual payments to the O & M Fund will be made by each Developer executing a Developer Sublease on the date specified in such Sublease. Amounts to be contributed by each Developer shall be specified in each Developer Sublease.

28. REVERTER

At the option of the Port Authority to be exercised within two (2) years following the expiration or earlier termination of the letting under the Lease of Initial Development Property, the Port Authority may require the City to repurchase from the Port Authority such Property or portion thereof that is not covered by a Developer Sublease at its fair market value, such fair market value to be determined in accordance with the same procedures for the determination of such value provided for in Section 11 of this Agreement.

Such purchase price shall be paid by the City in ten (10) equal annual installments. The form of the Deed and other closing documents shall be substantially identical to the Deed and other closing documents required in connection with the purchase by the Port Authority of the Initial Development Property from the City. The Port Authority shall have the same right to require the City to repurchase the Subsequent Development Property following the expiration or earlier termination of the letting under the Lease of Subsequent Development Property, as it has under this Section with respect to the Initial Development Property, the exercise of such right to be subject to the same terms and conditions as set forth above in this Section with respect to the Initial Development Property.

29. GENERAL

(a) All notices, demands, requests, designations, consents, approvals or other communication required to be given to or by either party shall be in writing and all such notices shall be deemed sufficiently given or delivered if dispatched by one of the overnight mail services, personally delivered to the duly designated officer of such party during regular business hours or forwarded to such officer by registered or certified mail. Until further notice, the duly designated officers upon whom notices and requests shall be served and their respective addresses are as follows:

For the City:
City Clerk
City Hall
Hoboken, New Jersey 07030

For the Port Authority:

Executive Director
The Port Authority of New York
and New Jersey
One World Trade Center
New York, New York 10048

If mailed, the giving of notice shall be deemed complete upon receipt.

(b) The failure of either party hereto to enforce any agreement, condition, covenant, or term, by reason of its breach shall not be deemed to void or affect any right to enforce the same or any other provision, condition, covenant or term on the occasion of a subsequent default or breach.

(c) The headings, titles in this Agreement and Table of Contents are inserted only as a matter of convenience and for reference and they in no way define or limit or describe the scope or intent of any provision hereof and shall be disregarded in construing or interpreting any of the provisions hereof.

(d) This Agreement shall not be assigned by the Port Authority or by the City except with the written consent of the other party. No assignment by the Port Authority or by the City in violation of the provisions of this Agreement shall vest in any such successor, assignee or sublessee any right, license or privilege.

(e) Nothing herein contained shall be understood or construed to create or grant any third party benefits or rights or property interests.

(f) This Agreement shall be construed under and in accordance with the laws of the State of New Jersey.

(g) It is acknowledged by the parties that their execution of this Agreement is based upon the powers granted to them by the Waterfront Development Legislation and the Marine Terminals Act.

(h) A final judgment of any court having jurisdiction determining that any section, clause or provision of this Agreement to be invalid shall not affect the validity of the remaining sections, clauses or provisions of this Agreement unless the absence of the affected section, clause or provision would deprive either or both parties of a material portion of the consideration bargained for as reflected in this Agreement.

(i) This Agreement is executed in four (4) counterparts. All such counterparts shall be deemed to be originals and each shall constitute but one and the same instrument.

(j) Neither the Commissioners of the Port Authority nor any of them, nor any officer, agent or employee thereof, shall be charged personally with any liability, or held personally liable under any term or provision of this Agreement, or because of its execution, or because of any breach of attempted or alleged breach thereof.

(k) Neither the members of the Council of the City of Hoboken, the Mayor of the City of Hoboken nor any of them, nor any officer, agent or employee thereof, shall be charged personally with any liability, or held personally liable under any term or provision of this Agreement, or because of its execution or attempted execution, or because of any breach thereof.

(l) The City hereby authorizes the Mayor or other City official as allowed by law to approve as to form and content and to consent to and/or execute all documents necessary or convenient to effectuate any of the provisions of this Agreement, including without limitation execution of any deed or lease or other document required in connection with any transaction provided for in this Municipal Development Agreement, without necessity for any further review or approval by the governing body or any agency of the City. Whenever any provision of this Agreement requires or provides for the mutual agreement of the City and the Port Authority or the consent of the City or consultation by the City and the Port Authority, the Mayor of the City

of Hoboken, acting personally or through his/her designee, including the City Development Corporation, shall have full authority to act on behalf of the City and to provide any such agreement or consent.

(m) It is understood that nothing contained in this Agreement shall be deemed to authorize, permit or obligate the Port Authority itself to finance, construct, rehabilitate, improve, maintain or operate any form of housing.

(n) The construction of the Development shall conform to the policies of the State of New Jersey in accordance with N.J.S.A. 32:1-35.36(d), with respect to affirmative action and equal employment opportunities.

(o) This Agreement consists of the following: pages 1 through 34 inclusive, plus the Exhibits and Schedules attached hereto and enumerated on the List of Schedules and Exhibits on the following page.

This Agreement and the aforesaid Exhibits and Schedules constitute the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the City and the Port Authority. In the event of conflict or inconsistency between the provisions of this Agreement, the Plan, the Amendments or any design guidelines, this Agreement shall govern.

30. RECORDING

The parties hereto agree to execute a Memorandum of Agreement in form sufficient for recordation in the office of the Hudson County Registrar's Office in lieu of recording this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

City Clerk

(Seal)

THE CITY OF HOBOKEN

By: Anthony Russo
Mayor

(Seal)

ATTEST:

(Seal)

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

BY:

(Seal)

LIST OF SCHEDULES AND EXHIBITS

SCHEDULE 1	The Waterfront at Hoboken Redevelopment Plan of 1989: Amended
SCHEDULE 2	City of Hoboken Zoning Ordinance Amendments
SCHEDULE 3	Metes and Bounds Descriptions
EXHIBIT D	Initial Development Property
EXHIBIT E	Initial Development Property
EXHIBIT D-1	Subsequent Development Property
EXHIBIT E-1	Subsequent Development Property
EXHIBIT F	Project Site/Right of Entry Area
EXHIBIT G	Headhouse Deck
EXHIBIT P-A	Pier A
EXHIBIT P-C	Pier C
EXHIBIT U	U.S.D.A. Property
EXHIBIT A-1	Block A Upland Infrastructure Improvements
EXHIBIT B-1	Block B Upland Infrastructure Improvements
EXHIBIT C-1	Block C Upland Infrastructure Improvements
SCHEDULE 4	Outside Dates for Completion of Infrastructure Development
EXHIBIT I	Interstate Relocation Policy

SCHEDULE 1

Hoboken, New Jersey
The South Waterfront

Redevelopment Plan: Amended

Adopted by the City Council as "The Waterfront at Hoboken", on November 17, 1989

Brown & Keener Urban Design
Urban Partners
2401 Locust Street
Philadelphia, PA 19103
(215) 751-1133
Fax (215) 561-6507

Brown & Keener Urban Design:
Robert F. Brown, Partner

Urban Partners:
James Hartling, Partner

30 January 1995

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Chapter One: Overview

The Redevelopment Area is generally bounded on the south by the New Jersey Transit train terminal and tracks as well as the old ferry terminal, on the east by the Hudson River west of the pierhead line, on the north by the Stevens Institute of Technology property at Sixth Street if extended to the Hudson River and on the west by the center lines of Fifth Street extended to the center line of River Street, Newark Street east of River Street, the easterly ends of the Hoboken Land and Improvement Co. building and Baker Waterfront Plaza building, and the easterly end of Lot 1, Block 229, owned by New Jersey Transit. The area is comprised of approximately 72.26 acres of which approximately 30.69 acres is land and pier area and approximately 41.57 acres is under water. The area also consists of Block 139, Lot 3; Block 231, Lots 1, 2, 3 and 4; Block 233, Lot 1; and Block 258; Lot 2 on the tax assessment map of the City of Hoboken. See Exhibit 1, Redevelopment Area Boundary Map.

The Redevelopment Project will include ~~nine~~ twelve development parcels on three blocks ~~and two piers~~ along the Hudson River waterfront. ~~With the exception of one of the piers, the blocks and the other pier are subdivided into two building parcels each~~. These blocks are subdivided into four building parcels each, with a service alley running north-south within them. In addition, the waterfront area between the piers is proposed to be developed for marina facilities. The Redevelopment Project will also include certain open space improvements on properties adjacent to the development parcels. See Exhibit 2, Parcels.

This Redevelopment Plan sets forth an approach for flexible development controls, including land use, density, street layouts and orientation, pedestrian and vehicular circulation, waterfront amenities, and special design opportunities. The plan also addresses necessary support facilities including ~~public transportation~~, public utilities, recreational and community facilities and other public improvements. Demolition of existing structures, if appropriate, may be undertaken to effectuate the Redevelopment Plan. The overall objective of the Plan is to establish a balance between unified planning and individual creativity.

The Redevelopment Plan for the development of ~~"The Waterfront at Hoboken"~~ "The South Waterfront" is based on several planning and design principles. These more clearly link the city of Hoboken to the water's edge by extending its east-west streets to the waterfront. ~~Hoboken's traditional urban grid street system has not, up to now, extended to the waterfront. It is the goal of these documents to make the waterfront accessible by providing esplanades along the perimeter of the piers, and along the edge of the river. Heretofore, all of Hoboken's interesting streets have been oriented north-south, but the east-west streets have tied the city together. The proposed development for The Waterfront at Hoboken adds a north-south street to the city's circulation system: a riverfront one~~. by setting design standards that assure compatibility with the existing building fabric of the city, and by creating a new riverfront road and park.

~~The Proposed development is designed to respond to the city's existing configuration with the project's more dense commercial component being placed closer to mass transit and the less dense residential component placed to the north~~. The proposed pattern of development suggests that uses which require proximity to public transportation (e.g. hotel, offices) be located in the southern parcels, while other uses such as residential be located at the north end. Street level retail and restaurant uses are recommended both as an extension of the Washington Street core and as a new riverfront activity.

Chapter Two: Redevelopment Plan Goals

1. ~~Creating~~ Create a world class development that would enhance rather than alter the essential character of the City of Hoboken.

2. Reconnect the waterfront to a vibrant urban center.

3. Restore the beauty of the riverfront to the people of the city.

4. ~~Extend the existing land use clusters: commercial at the south, residential in the center, park land to the north.~~ Encourage commercial development at the southern end, near the transit center and other existing office buildings; encourage residential uses near the existing residential developments at the north.

5. ~~Concentrate higher~~ Higher density and bulk is permitted at the southern end of the site, adjacent to the existing ~~high density area and transit~~ mass transit facilities.

6. Design the project so that it complements Hoboken's low scale and rich urban texture.

7. Commercial development should take advantage of Hoboken's unique public transit access and be compatible with the City's other commercial buildings.

8. ~~Coordinating~~ Coordinate retail development so that it strengthens rather than weakens the existing retail cluster on Washington Street.

9. ~~Promoting~~ Promote residential development which is compatible with the scale and texture characteristic of Hoboken.

10. ~~Creating~~ Create a high-quality mixed-use development which will eventually provide a substantial increase in the City's ratable base.

11. ~~Developing~~ Develop extensive infrastructure, including but not limited to roadways, utilities, drainage and sewage, to enable the redevelopment of the Waterfront.

12. ~~Developing~~ Develop recreational and community facilities which will be compatible with the proposed development's waterfront location.

13. ~~Providing~~ Provide economic development benefits to the City of Hoboken, including employment and revenue benefits.

14. Ensure that the project does not turn its back on the existing neighborhood by requiring lobbies, retail, and professional office space along the River St. frontage.

Chapter Three: The Waterfront Redevelopment Plan

The Plan Concept in General

The proposed development extends the city to the water's edge by creating an urban neighborhood which echoes Hoboken's historic architectural character. This character is comprised of intimate residential streets, low-scale buildings and masonry materials. The proposed development will enhance these textures by juxtaposing them with the Hudson River waterfront and its spectacular views.

The Plan addresses proposed allocation of land use, development densities and other ~~traditional zoning concepts~~ urban design issues. Development on the parcels included within the Redevelopment Area must follow this Redevelopment Plan, and the Zoning contained in Appendix B. In addition, when the City contracts for the effectuation of this Redevelopment Plan, it will reflect the Building ~~Design~~ and Open Space ~~Guidelines~~ Design Standards to ensure the realization of the redevelopment goals. The Building ~~Design~~ and Open Space ~~Guidelines~~ Design Standards contain detailed guidelines and objectives that are distinct from zoning regulations and are attached as Appendix A.

The major physical features of the Redevelopment Plan are as follows; note that details of these features are described in the Design Standards:

- ~~Two~~ Street Types: east-west and north-south streets parallel to the water echoing the scale of the surrounding city. ~~, and one major north-south street of urban scale and importance, parallel to the water.~~

- Uses: ~~dense~~ commercial, ~~and less dense~~ residential, and retail.

- ~~Bulk: concentrated in designated locations so that towers cast the least shadow on public open space. The towers should be located so as not to obstruct each other's view of the harbor.~~

- Heights: building heights on the individual parcels are to be limited ~~according to the location of those parcels~~ to those designated in the Design Standards; the primary maximum height limit is that of the top of Castle Point, or 125' above sidewalk level.

- Density: overall, density shall be compatible with the existing pattern in the City in the nearby higher-density areas.

- Permitted Uses: the Plan suggests the location of each basic land use. In addition, ground floor building entrances, retail space, professional offices, and/or restaurants along both River St. and Sinatra Drive are mandated, to ensure activity and security along those avenues.

- ~~Mix of Uses: the Plan proposes the mix of square footage allocated to each land use.~~

- Emphasis on Open Spaces: The ~~Waterfront Esplanade~~ Hudson River Waterfront Walkway, the ~~Great Lawn~~ Linear Park, Ferry Terminal Plaza, Soccer Field and Pier ~~Plaza and Gardens~~ Open Spaces.
- Streetwall buildings, constructed up to the front property line without plazas, create the most urban environment. ~~On the sidestreets of the project, the streetwalls are kept low to continue Hoboken's small scale. These~~ ,and the sidestreets create view corridors to the river.

- Access to parking and service areas for the new development will be provided from ~~River Street, the project's major vehicular entry. Access to parking and servicing for Pier A will be provided along First Street. For Pier C, parking and servicing will be provided on Fourth Street~~ east-west streets.

- Water Use: utilization of the water area for a potential marina and other passenger / excursion vessel uses.

~~Private developers will be required to construct the sidewalks and landscaped areas along each parcel's street frontage. Developers must maintain the established design pattern for spacing of street trees and lights, and coordinate building entrances and utility hook-ups with their pattern. These issues are further discussed in the Open Space Guidelines for the Waterfront at Hoboken.~~

Land Use Plan

The ~~southeastern~~ uses at the southern portion of the site (Blocks A and B) ~~is programmed for~~ should be commercial ~~uses~~, which may include a hotel, retail and office components. These ~~dense~~ commercial components are ~~placed in~~ proposed for this location because of their proximity to the mass transit facilities provided by PATH, New Jersey Transit, local bus lines, and the ferry service to Manhattan. See Exhibit 3, Transportation ~~Nodes at South Edge.~~

The remainder of the project site (Blocks B and C) ~~is devoted~~ should ~~to~~ include residential ~~use~~ uses of varying ~~density and in conformance with traditional housing patterns existing in the City. All residential development should include necessary parking. See Exhibit 4, Illustrative Land Use Plan.~~ densities, as well as a mix of commercial uses, including street-level retail. See Exhibit 4A, Land Use Locations, for all three development blocks. On-site parking for all uses shall be limited to a range, defined by a required minimum as well as a proscribed maximum number of spaces, These limitations are described below, and in the Design Standards, since this land has been judged to be too valuable to be used extensively for parking. Reductions in the provision of all parking should be considered because of the availability of mass transit; in addition, methods for providing parking off-site should also be evaluated, and must be provided for any project which exceeds 125' in height.

The development design emphasizes public spaces, which define the character of the overall plan and create an urban environment. Given the water-oriented nature of the site, the key to the open space design is the creation of a variety of visual relationships to the water. The plan provides for both passive and active uses of the water. The south side of the project contains Ferry Terminal Plaza and the paved areas surrounding the hotel and office building. At the center of the project, flanked by Piers A and C, is ~~the~~ a marina, which will be ~~the focus of water activities~~ for

recreational boating only. ~~To the north, the Great Lawn will offer expansive views of the water and the Manhattan skyline while providing a sloping area for quiet recreation~~. Piers A and C will be maintained as recreational open spaces; details and their uses and design are suggested in Appendix A as Open Space Design Standards. The Waterfront Walkway and its adjoining Linear Park, and the Soccer Field to the north of Pier C, are also described in detail in those Design Standards.

See Exhibit 4A, Land Use Locations, for recommendations concerning all land use types; see Exhibit 4B, Site Dimensions, which indicates the sizes of both private development areas and public improvement areas.

Interim Land Use

Interim uses shall be permitted within the Redevelopment Area, pending the full implementation of the Redevelopment Plan. Interim uses shall include those uses permitted by the Zoning Ordinance. However, preference should be given to those uses which are of a temporary nature, including temporary parking facilities, commercial passenger excursion operations, concessions, and special events. ~~, and temporary waste water treatment facilities.~~

Prohibited Maritime Uses

Due to the proposed change in the character of the Redevelopment Area from maritime / industrial use to a mix of commercial and residential uses, those uses associated with cargo maritime use will be prohibited. These include buildings, structures, facilities and improvements necessary to accommodate cargo vessels or railroad freight. However, prohibited uses do not include recreational marina facilities, fishing piers or ~~other water-oriented light commercial~~, recreational ~~or~~ and passenger uses.

Vehicular Circulation Plan

Hoboken's existing street system has been extended to connect the city's historic core with the waterfront. Vehicular and pedestrian access to the development occurs via Newark, First, Second, Third, and Fourth and River Streets, and via ~~Marina Drive~~, a new waterfront drive which could be considered an extension of 'Sinatra Drive. ~~First and Fourth Streets are continued to the water's edge on Piers A and C, respectively~~. See Exhibit 5, Vehicular Circulation.

A key principle is the enhancement of the pedestrian environment while providing vehicular access to all of the blocks, but through traffic on the new 'Sinatra Drive' will be discouraged. ~~due to the dead-end nature of the project streets. On Pier A, there will be vehicular access through the extension of First Street. On Pier C, vehicular access will occur on the north side of the pier with limited access to the marina area. These configurations will permit pedestrians to walk along the river's edge without vehicular traffic.~~

Service and garage entry points will be located in the least prominent places, and concentrated in curb cut zones to ensure adequate safety standards. The number of curb cuts ~~should~~ will be minimized, as ~~should~~ will the number of potential conflicts with building entrances. These curb cuts may only be located on the east-west streets. North-south service alleys shall be required at the centers of these blocks, to avoid the presence of large open truck docks facing the streets; furthermore, all trucks must move in and out of any parcel in forward gear only. The locations and design are shown in more detail in the Design Standards, and are indicated in ~~See~~ Exhibit 6, ~~Illustrative Parking and Service Zones~~ Service and Parking Access.
~~To emphasize the small scale residential and pedestrian nature of the sidestreets (First, Second, Third and Fourth), and to prevent truck traffic from detracting from the views of the water, no curb cuts will be permitted on these streets.~~

Pedestrian Circulation

Pedestrian circulation is ~~the~~ key to the design of ~~The Waterfront at Hoboken~~ South Waterfront. It is concentrated along the major open spaces, and along the active and accessible waterfront edges. Locating building front doors along the ~~Esplanade~~ new 'Sinatra Drive' further encourages use and activity in the open spaces, while lobbies and retail uses on River St increase activity and security on that street as well.

At-grade pedestrian crossings across ~~Marina Drive~~ 'Sinatra Drive' are provided at First, Second, Third and Fourth Streets. Pedestrian access to the waterfront will occur along the ~~Esplanade~~ Waterfront Walkway and on ~~the north, south and east sides of~~ Piers A and C. ~~Direct pedestrian access to the Great Lawn via Marina Drive will also be provided.~~ See Exhibit 7, Pedestrian Circulation.

Parking Plan

It is the intention of this Plan to limit the amount of parking in the area, as a part of an overall goal to create a pleasant pedestrian environment and to take advantage of the nearby public transportation systems. The off-street parking spaces will therefore be ~~provided~~ ~~at~~ limited to a maximum ratio of .7 per 1,000 square feet of gross commercial space and 1 space for every residential dwelling unit. The Plan also recognizes the need to accept some parking here, however, to prevent its intrusion on other parts of the City; therefore a minimum of 0.35 parking spaces per 1,000 square feet of gross commercial space, and 0.5 spaces per residential dwelling unit must be provided. The result of these criteria is that some parking is encouraged to be located elsewhere. Each proposal for development in this area must therefore include a description of the total plan for the provision of both the on-site and off-site spaces. ~~All but three hundred of the parking spaces must be provided on the site in garages. The three hundred spaces which may be provided off-site shall be located in municipal or private garages in the vicinity of the Redevelopment Area.~~

The location of the curb cuts for entry into all garages is shown in Exhibit 6. In addition, on-street metered parking will be allowed on the ~~west~~ east side of ~~Marina Drive from the midpoint between First and Second Streets, extending to Fourth Street. Thus, there will be no on-street~~

~~parking opposite Parcel 2. There will be no parking on First Street, as this will be a two-way street. Metered parking will also be provided on one side of Second and Third Streets.~~ 'Sinatra Drive', on one side of First, Second, Third, and Fourth Streets, and on both sides of River Street. Note that this on-street parking may not count toward any project's parking requirements.

~~There will be approximately 80 feet of parallel parking reserved for move-ins and deliveries on the east side of River Street. These allocated areas will be intermittently placed for most of its length between First and Fourth Streets. Opposite the areas where parking is prohibited on the east side of River Street, there will be metered parking spaces on the west side of the street.~~

~~Access to parking for the existing residential building located on the bleckfront bounded by River, Second, Hudson and Third Streets will be provided from River Street.~~

As an off-site improvement, parking on the south side of Hudson Place will be eliminated, and parking will be provided on the north side instead.

Open Space, Recreation and Community Facilities Plan

~~The varied public open spaces will comprise approximately 18% of the project footprint. These~~ All open spaces should be designed to complement the waterfront, which is the project's major amenity. The combination of parks and streets should create diversity while forming a single unified system. The buildings should give shape and character to the open spaces, but should also serve as a backdrop, rather than being the focal point.

Unity among the open spaces will be achieved by the use of certain uniform elements, such as lighting, paving materials, street furniture and the continuity of the open space itself.

The three major open spaces are discussed below; their recommended details are described in the Open Space Design Guidelines:

Hudson River Waterfront Walkway and Linear Park

Because of its location at the water's edge, its public nature and its role as a connection between the other project components, the ~~Esplanade~~ Walkway and Park will be the most important and intensively used element of the open space system. It is planned to accommodate as many trees, shrubs and ground plantings as practicable. The trees will provide both a visual amenity and protection from the sun. The Walkway itself will be a wide paved area in keeping with the proposed future Hudson River Waterfront Walkway throughout the City.

The ~~Esplanade~~ Walkway will be closed to all but emergency, police and maintenance vehicles, and must be designed according to the regulations of NJ DEPE, as required in the Hoboken Zoning Ordinance.

~~*Great Lawn*~~

~~The semi-circular Great Lawn will be surrounded by a bosque of trees as it slopes gently down toward the Hudson River. This 1 acre park may offer picnic tables under the trees and will provide a superb panorama of the water and Manhattan skyline. The Redevelopment Plan permits but does not require that a barge may offer theatre, dance, music or other performances, and the Great Lawn may constitute an outdoor amphitheater.~~

Ferry Terminal Plaza

An existing forecourt to the major transportation node at the Ferry Terminal, the role of Ferry Terminal Plaza will be emphasized by its proximity to The Waterfront ~~at Hoboken's office building on Pier A~~. It will serve as the southern starting point of ~~the Esplanade~~ Waterfront Walkway, and has the potential to serve as the primary site of community festivals and fairs.

~~*Pier Plazas and Gardens*~~ *Open Spaces on Piers A and C*

~~Located at the eastern ends of Piers A and C, these special areas will be landscaped. On Pier A, a modest fence enclosed garden will be integrated with the building on Parcel 1 and with the Esplanade. This would include vegetation indigenous to river peninsulas. The eastern end of Pier C will provide access to the Marina as well as short term parking for enjoying the view. A small plaza located at this end would be landscaped with windblown riverfront planting~~. The program of uses for the Open Spaces to be located on Piers A and C must permit continuous public access to each entire pier. They must also include open areas for casual, unplanned activities, as well as areas for specific recreational events, such as softball, swimming, and basketball. They should accommodate festivals and other city events, and may include a few smaller buildings for both public and commercial uses. The commercial (and other non-public) buildings must be accessible to the public, and must be limited to a maximum total floor area of 20,000 sf, in order to preserve the required openness and public accessibility. The commercial / non-public uses may include, for example, restaurants, retail pavilions, marina facilities, maritime-related museums, etc.. Note that the structures for public open spaces uses (e.g., picnic shelters, swimming pool structures, open air amphitheater facilities, etc..) can be in addition to the area limitation on the non-public buildings.

Soccer Field

A grass soccer field, with stands and other related structures, will be developed on the land north of Pier C. This open space must be coordinated with improvements to Sinatra Drive, and to the Waterfront Walkway and Linear Park which are planned to extend continuously north to the Weehawken border.

Utilities Plan

The project will require that utility systems be installed underground and where appropriate in the public streets. The individual building developer will be responsible for connecting to the main utility lines provided in the streets and sidewalks. The individual building developers will be required to locate utility connections so as to minimize conflicts with preferred tree and street light locations. The private utilities will be maintained by the private utility companies, and the public utilities, once conveyed to the City of Hoboken, will be maintained by the City.

Water System

Hoboken water will be available to all blocks within the project area for both potable and fire-fighting uses. The locations of existing and proposed water mains are illustrated in Exhibit 8, Infrastructure: Water. Hydrants will be placed along all streets and landscaped areas as required.

Sanitary Sewers

Sanitary sewage from all developments within the project will be connected to the sewer lines of Hoboken. The locations of existing sanitary sewer lines are indicated in Exhibit 9, Infrastructure: Sanitary Sewer.

Storm Water Drainage

Storm water from all sites, streets and areas within the project will be collected via a system of catch basins and pipes and released into the Hudson River through outfalls placed in First, Second, Third and Fourth Streets.

Electricity

All blocks within the project will be serviced by underground electrical lines running in the rights of way (R.O.W.). The locations of the proposed lines are illustrated in Exhibit 10, Infrastructure: Electricity. It will be the responsibility of each developer to arrange with Public Service Electric and Gas (PS&G) to bring service to each building.

Electric service will consist of multiple high and low feeders to be installed by PSE&G. The developer will be required to apply to PSE&G and meet its normal requirements. Developers will be required to coordinate the location of the transformer vaults with PSE&G so that they do not disrupt the established locations of the street lights and trees on the streets.

Telephone and Fire Communication

All blocks within the project will be serviced by underground telephone lines lying in the R.O.W. The proposed locations for these lines are illustrated in Exhibit 11, Infrastructure: Telephone and Fire Communication. It will be the responsibility of each developer to

arrange with New Jersey Bell to bring service to each building. Each developer will provide a conduit raceway system to the building from the telephone company manholes located in the R.O.W. Cabling will be provided by New Jersey Bell.

Gas

All blocks within the project will be serviced by a gas main running in the R.O.W. The proposed locations for these lines are illustrated in Exhibit 12, Infrastructure: Gas. It will be the responsibility of each developer to arrange with Public Service Electric and Gas to bring service to each building. The developer will provide the extension and service entrances to the development in accordance with the requirements of PSE&G.

Density / Bulk Controls

Urban complexity should be created through a variety of building heights, forms and styles. Streetwalls should be used extensively, on Marina Drive, First, Second, Third, and Fourth Streets. ~~and on Piers A and C to maintain a familiar and human scale~~. The bulk controls regulate the ~~density~~ height of development and the configuration of the buildings on the parcels. ~~Fifty percent of the gross building area should be commercial (office, hotel and retail) space, and approximately 50% should be residential, but a variation of up to 15% in either category is permitted.~~ These controls are described in more detail in the Building Design Standards.

The maximum height of ~~residential~~ buildings in the project will be no more than ~~200~~ 125 feet, ~~and for commercial buildings no more than 220 feet, except that the office building on Pier A will rise no more than 320 feet. The exact height of the building will be contingent upon the approval of the New Jersey Department of Environmental Protection. The other buildings on the waterfront will be lower scale, ranging from approximately three to ten stories, as will the smaller buildings along Marina Drive~~. which is the height of the trees and lower buildings on Castle Point. This fixed height is compatible with the existing mid-rise residential buildings on Hudson Street, and with the (Baker) office building facing the Terminal Plaza. It also permits substantial new development, which will help realize the goal of adding significantly to the City's tax base.

It is permissible to exceed the 125' height limit however, but only under certain circumstances. Within a (reasonable walking) distance of 1500' from the Terminal Building entrance, buildings may be 175' high, in order to better accommodate the need for uses that require proximity to public transportation. If buildings exceed the 125' height limit, they must meet the additional regulations set forth in the Building Design Standards.

The project ~~will~~ could contain under these controls approximately 1,820,000 ~~a maximum of 3,220,000~~ gross square feet of floor area if the buildings adhere to the 125' height limit. It is estimated that, of the total floor area, ~~1,600,000~~ 407,000 gross square feet ~~will~~ could be devoted to residential development (or about 380 dwelling units) and ~~1,620,000~~ 1,413,000 gross square feet will be devoted to commercial development. Of this total commercial development, 1,050,000 s.f. could be offices, 238,000 s.f. could be a 300 room hotel, and 125,000 s.f.

could be ground floor retail.(including professional offices and restaurants). It is also estimated that approximately ~~11.67~~ 6.60 acres of the project area will be devoted to residential and commercial usage. ~~Residential development will be limited to a maximum of 171 units per acre as applied to total residential and commercial acreage, excluding roadways and open space, and a maximum of 2,000 dwelling units. Commercial development will be limited by floor area ratio of 9.7 as applied to commercial acreage.~~ If, on the other hand, the buildings exceed the 125' height limit, and reach the 175' height, the project could contain 2,315,000 gross square feet of floor area, with 407,000 s.f. as residential and 1,908,000 s.f. as commercial. Of this total commercial development, 1,545,000 s.f. could be offices, 238,000 s.f. could be a 300 room hotel, and 125,000 s.f. could be ground floor retail (including professional offices and restaurants).

Bulk controls and regulations regarding streetwalls and ~~tower~~ building locations define each building's placement and its coordination and compatibility with adjacent developments, streets and parks. These controls are the most important tools for preventing any one building from dominating the ensemble, and are described here:

Streetwalls, Height and Setbacks

A streetwall may be defined as the enclosure to the street, defining the relationship of the facade to the public environment. It creates a pedestrian area of consistent width parallel to the roadway. Streetwalls provide visual continuity, yet they should have some individualized architectural details to provide expression and distinction to each building. ~~On those blockfronts where streetwalls are required, 70% of the frontage should have a mandatory streetwall. Where there are no streetwalls, development is encouraged to follow the property line. Over thirty (30) feet above grade, a maximum of 50% of the frontage may be wall.~~ Therefore, on all streets in this area, building facades must be located within 5' of the property / sidewalk line. Furthermore, retail spaces and building lobbies must be located in certain areas in the base of the buildings; all the details of the streetwall (facade) design, the location and types of ground floor uses are outlined in the Building Design Standards. In addition, parking structures may not be visible at the ground floor of a streetwall, and where they occupy upper floors their facades must be compatible with those at the base and the other upper floors of the building; for instance, openings for the parking floors should have decorative grill work that is similar to window patterns elsewhere on the building.

~~On the residential buildings, where applicable, there must be a setback above the fifth story, which approximates the height of existing residential buildings in Hoboken. This setback is to be a minimum of five (5) feet deep, and should occur at an elevation of +50'-+65', depending on the elevation of the underlying street.~~

~~All of the above elevations are from planned grades and are approximate.~~

~~On the commercial buildings, there should be a setback at either the fifth story level (el. +60'-+65') or at the eleventh story level (el. +100'-105'), or at both. At the alternative level, if a second setback is not used, there should be an expression line.~~

~~All setbacks above the fifth story should be a minimum of ten (10) feet deep. Setbacks also occur above the fifteenth story in the case of the high rise buildings.~~

~~The residential towers in excess of ten stories should be aligned with the narrowest side facing the Hudson River to maintain views.~~

~~With the exception of development along River Street, structured parking will be concealed behind residential development and / or commercial development. Parking garage structures as part of the project will be visually screened from River Street.~~

~~The heights of residential buildings should not be uniform, but should vary for architectural diversity. The heights of buildings on Pier C (Parcel 9) should be limited to eight (8) stories.~~

Chapter Four: Acquisition Plan

Most of the property within the Redevelopment Plan Area is already under the City's control. However, certain property located within the Redevelopment Plan area will be needed for the Project. In addition, if any private property interests, such as reversionary interests, easements, etc. are determined to exist within the Redevelopment Area, they may also need to be acquired to effectuate the Redevelopment Plan implementation. To the extent that the property or property interests cannot be acquired voluntarily, the City will use its powers to eminent domain to acquire those properties or property interests, where necessary, for the implementation of the Redevelopment Plan. This Redevelopment Plan authorizes acquisition of all properties or property interests not already under the City's control, with the exception of the buildings located in Block 231, Lots 1 and 2.

~~Only one parcel located within the Redevelopment Area is privately held and occupied by private tenants.~~ All ~~other~~ parcels are owned by quasi-public or public entities. Furthermore, the majority of the Redevelopment Area is comprised of vacant or unoccupied land and structures.

~~It is not anticipated that there will be a need to relocate any of the occupants of the privately held property located within the Redevelopment Area.~~ Therefore, it is not anticipated that relocation assistance will be necessary as a result of the implementation of the Redevelopment Plan. However, in the unlikely event that any of the occupants of private property should be relocated, the City of Hoboken will provide all displaced tenants and land owners with the appropriate relocation assistance, pursuant to applicable State and Federal law. Such assistance will be provided through an appropriately designated office, which will be staffed by qualified personnel, who will actively assist in the relocation of any persons, entities, or businesses.

Chapter Six: Conformance with Master Plan

The Redevelopment Plan conforms to the general plan of the City of Hoboken as embodied in its Master Plan, which acknowledges the future redevelopment of the waterfront area. Furthermore, The Zoning Ordinance of the City of Hoboken delineates a waterfront zoning district and provides for a flexible zoning scheme which authorizes a mixed-use, commercial / residential development, as proposed herein. This Redevelopment Plan incorporates the Hoboken Zoning Ordinance, except where specific provisions of the Hoboken Zoning Ordinance are inconsistent with the terms of this Redevelopment Plan.

Schedule A: Building and Open Space Design Standards

1. General Purposes:

   1) The design of new buildings should be consistent with the appearance and character of the existing fabric of the City, where there is pedestrian activity on all the sidewalks, where the buildings are located at or near the sidewalk property lines, where the dominant building types are three and five stories high, and where there is a richness of building details on the street facades.

   2) New building development should be permitted and encouraged that adds significantly to the City's tax revenues.

   3) New streets should be located and designed so that they appear as extensions of the City's street system: orderly, tree-lined, and compact.

   4) New public open spaces should be integrated into the fabric of the City, and should be designed as part of an overall waterfront open space system that serves all of the City's neighborhoods.

2. Standards:

   1) The Hoboken Block

      In keeping with the rest of the City, where the typical "Hoboken Block" consists of a continuous row of buildings that surrounds the entire 200' x 400' block, these guidelines must apply:

      - Buildings must be located within 5' of the street property lines.

      - Retail, offices, residences, and / or building lobbies must be located along the entire lengths of the River Street and Sinatra Drive blocks.

      - Retail, offices, residences, and / or building lobbies must be located along at least two-thirds of the length of the east-west streets. Truck docks and parking entrances are permitted only in the remaining one-third. Because of this requirement, a service alley running north-south may be useful; in addition, building developments along the east-west streets must permit service access via north-south easements to developments located at the center of the blocks.

      - More specifically, retail uses must be provided at the corners (for at least 50' in each direction) of the east-west streets and Sinatra Drive. These areas are especially suitable for restaurants, with outdoor dining on the sidewalk, and

would be consistent with the corner stores and outdoor eating facilities that are so common throughout the rest of the City.

2) Hoboken Character:

Because the design of new buildings in this area should be consistent with the appearance and detail characteristics of the older buildings of the City, these guidelines must apply:

- No building may be less than 40' high (or about four stories) at the sidewalk.

- The openings in all the facades (windows, doors, storefronts, etc.) must be of the "punched" type, and not in continuous vertical or horizontal strips; one result is that no all-glass facades are permitted either. This design characteristic is consistent with the rowhouse facades of the City, and applies no matter how large (e.g. storefronts) or small (e.g. apartment windows) the opening.

- All facades along the sidewalks (except in those areas where service openings are permitted) must be designed to appear as storefronts, whether or not retail uses are located there. The storefront must include large clear-glass, with sills no higher than 30" and with opportunities for entrances at least every 60' (or about two normal older building widths). The basic intention is to have no blank walls along sidewalks, and to make the walk as interesting as possible. Washington Street's stores are the ideal precedent for this intention.

- Openings in the base for service (trucks, parking, etc.) should be designed as "gateways", much as the portals in older buildings which led to stables at the centers of the blocks.

- The base of each building must be designed to have a character that feels as if it is similar to the older rowhouses and apartment buildings of the city - no matter the total height of the new building. This character is dominated by a rhythm of vertical elements, which typically are 25' to 30' apart (e.g. bay windows, columns and piers), a height to a horizontal element (e.g., a cornice) that is 30' to 50' above the sidewalk, and many entrances located at the sidewalk. In addition to these design features, buildings should also rise straight up from the sidewalk with no setbacks greater than 5' in the street facade unless the building exceeds the 125' height; and no setbacks of any kind are permitted below the 40' height. All the older houses, even though not so tall, are designed in this way.

3) Continuity and Variety:

The existing buildings of Hoboken have a remarkable design variety, in spite of the continuous repetition of facade dimensions (heights, widths, doors, windows). This balance of continuity and variety must occur in the new buildings on the Waterfront, also:

- The dominant material of all facades must be of masonry; brick is especially desirable for its visual and durability characteristics, but other masonry types are acceptable if they have similar color characteristics to the bricks.

- The facades of all buildings must appear as essentially vertical, from the sidewalk to the roof; they must not look like large horizontal blocks. If a building has a wide dimension along any street, the facade must be divided into large elements that create this sense of verticality. A precedent for this arrangement is Central Park West, where taller vertical-appearing buildings stand side-by-side as a "wall" on the park.

4) The River Skyline:

The buildings on the Waterfront will be seen from afar, as well as from the adjacent sidewalks. The heights and forms of these buildings, while bigger than the typical rowhouse and older apartments (which are three to five stories), must nevertheless be compatible with the rest of the City:

- Buildings on the Waterfront should not be so tall as to dominate the rest of the skyline of the City. In an effort to establish a memorable and fixed maximum height that is compatible with the City yet also permits sufficient tax paying development, the elevation of Castle Point, plus the height of the lower buildings and trees should be the limit. This height is 125', which is also the approximate height of the Baker Building and the apartment building at Third and Hudson Streets.

- In addition to this height limit of 125', which is the measure to the parapet at the top of a building's facades, decorative roof forms that hide elevator penthouses and roof-top mechanical equipment are permitted to exceed that limit. The result should be a sequence of buildings that appear to be part of a larger design that includes the great Lackawanna Terminal.

- Buildings may exceed this 125' height limit, but only after satisfying all of the following conditions:

  a) Buildings which exceed the recommended 125' height limit must step back at that elevation a minimum of 10', on all sides which adjoin a street.

b) Buildings which exceed the 125' height limit must be designed in a way that they not appear as long, monolithic, slabs, but more as a series of taller and narrower buildings. As a result, in addition to the general guidelines for verticality (see No. 3, above), a major interruption to the walls facing Sinatra Drive must occur at least every 100'. This interruption is best accomplished by a large (say 20' x 20') recess, but other possibilities can be acceptable also.

c) Buildings which exceed the 125' height limit must also be developed initially for one user and/or tenant only (and not as a speculative multi-tenanted building).

d) Buildings which require the entire city block for very large floor plates must include multiple elevator / toilet / stair cores, so that multiple entrances can permit future rental to more than one large tenant.

e) The developer must make an additional cash contribution to the City, sufficient to construct off-site parking spaces at the ratio of 0.7 spaces per 1,000 square feet of the additional floor area above the 125' height limit(the exact cost to be determined by the Hoboken Parking Authority). The specifics of such a contribution must be agreed upon at the time of approval by the City and could be, for example, in one of two forms: one as a direct financial payment to the City (for use in creating public improvements in the area or for the development of the necessary off- site parking facilities), and the other as the actual construction by the developer of (City-designed) open spaces or off-site parking facilities.

f) Buildings taller than 125' are permitted to be located only within 1500' of the Lackawanna Terminal (a reasonable maximum walking distance); this limit falls at the midpoint of Block B, between Second and Third Streets, and applies to Parcels 1 through 6.

- Because buildings must appear as vertical (as described in "Continuity and Variety" above), any two new building forms in one city block must be at least 50' apart (or each building must be setback at least 25' from a common property line), except at the base described above. Not only does this reinforce verticality, but it can offer some views to Manhattan from the city neighborhood to the east.

5) Open Spaces, Streets, and Sidewalks

Within the underlying goals of creating more public space in a city that dramatically lacks such facilities, and of creating a waterfront edge that is continuously accessible to the public, the guidelines described here should apply. Note that they are organized into five categories: Hudson River Waterfront

- The only paving areas which are permitted are to be for bikeways and cross-walks.

Piers A and C:

- Both piers should be used for publicly-accessible purposes, generally for open spaces; they must also be designed for access by security patrols.

- Permitted open space uses include recreation fields (e.g. softball, basketball), swimming, jogging and walking paths, picnicking, sitting, and all the circumstantial uses of open parks (walking the dog, reading, lying in the sun, and so on).

- Permitted building uses include restaurants, marina offices, water-related museums, retail pavilions, outdoor amphitheaters,and sitting gazebos and shelters. As stated in Chapter Three, the total maximum area of all non-public buildings is 20,000 sf, while the area of public buildings may be in addition to that amount.

- The pier edges must include railings, walkways, lights, benches, etc. that are similar to the walkway, to give complete and safe access to the water edge.

Marina:

- The new Marina, located between Piers A and C, must be for recreational boating only; ferry access to the waterfront should be adjacent to the Ferry Terminal Plaza, south of Pier A.

- The individual floating docks of the Marina must not in anyway prevent public access to the entire pier and bulkhead waterfront edge.

- If a Marina management office is required, its design, size, and location must not prevent public access to the water edge, and it must be designed to minimize obstruction of the views to Manhattan beyond.

Soccer Field:

- The City has obtained funding for, and has begun work on the construction of, a new soccer field on the land area which is north of Pier C.

- This field should be seen as part of the overall waterfront open space system, and should be coordinated with the Riverfront Walkway and the Linear Park.

Streets and Sidewalks:

Each block must be bounded by streets that follow these guidelines:

- New east-west streets must be extensions of the existing streets, in their locations, sidewalk widths, and curb-to-curb dimensions; they must be paved in asphalt.

- New east-west streets must include deciduous shade trees planted at the curb edge of each sidewalk, and be located 25' to 30' on center.

- New east-west sidewalks must be paved in concrete, with a finish and scoring pattern that is consistent with the existing sidewalks.

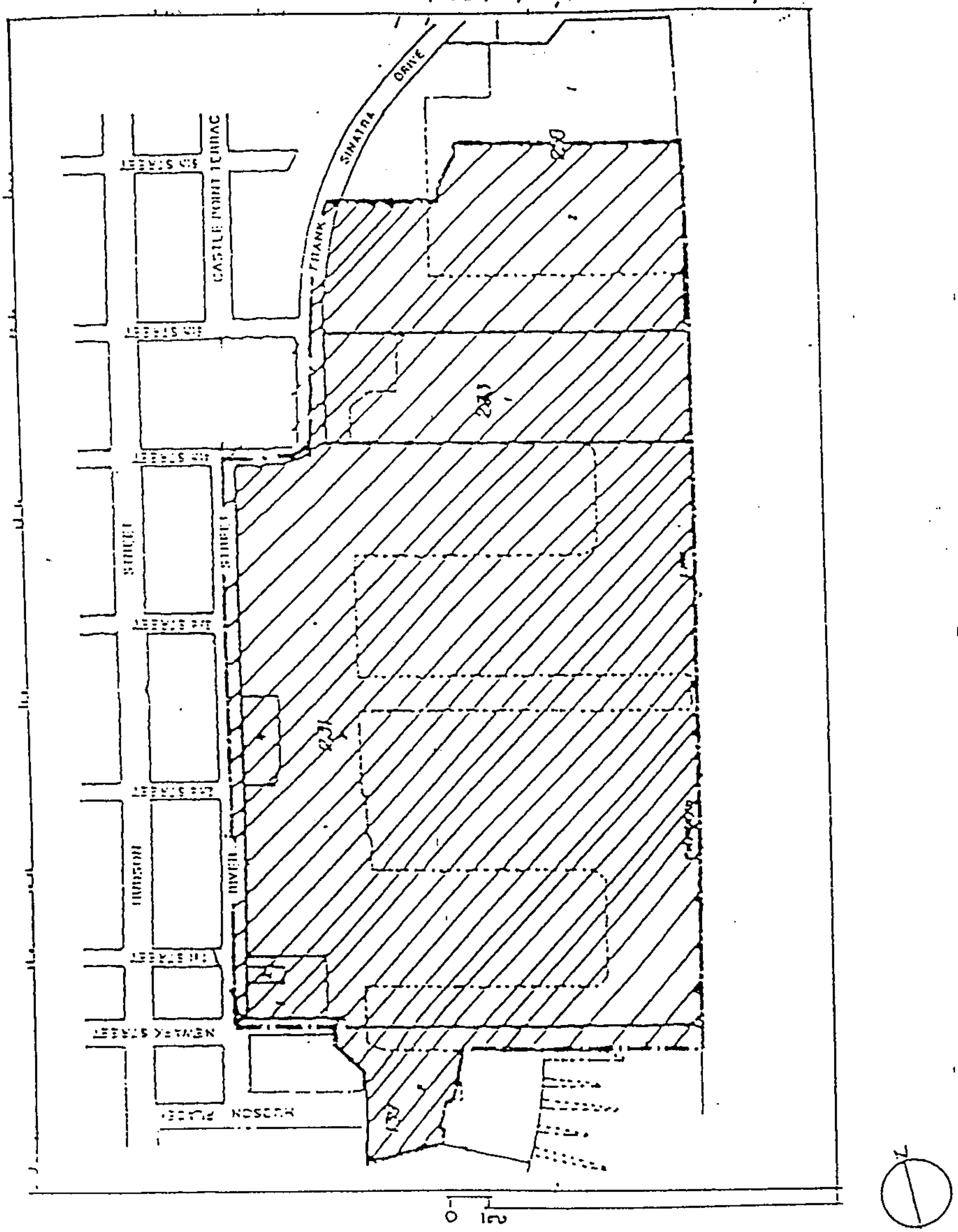
- The new sidewalks on River Street must have the same characteristics as the east-west streets.

- The sidewalks adjacent to the building facades on the new Sinatra Drive must be 20' wide, to accommodate outdoor dining and other public activities (see Exhibit 4B). They too must be lined with large shade trees at the curb edge. The paving, lighting, and furniture must be of a character and scale that is appropriate to its riverfront setting, and be compatible with those on the Waterfront Walkway.

- The new extensions of Sinatra Drive in this area must have a cartway that is capable of carrying two lanes of traffic only (one in each direction), or a width of 24'; note that the parallel parking described for the Linear Park is accessible from Sinatra Drive, but is an addition to the Drive's 24' width. The drive must be paved with unit pavers that are compatible equally with automobiles and pedestrians. The intention is to have slow-moving traffic that permits other activities to take place along and across it. Indeed, the entire paved area of 20' sidewalk and 24' street must feel as an extension of the green linear park and Hudson River Waterfront Walkway which are adjacent.

  Note: The importance of the design of the sidewalk and Sinatra Drive cannot be emphasized enough; they must be of the highest quality in terms of appearance and durability, and must be part of a single overall design that includes the Linear Park and Walkway.

HOBOKEN, NEW JERSEY



THE SOUTH WATERFRONT REDEVELOPMENT PLAN

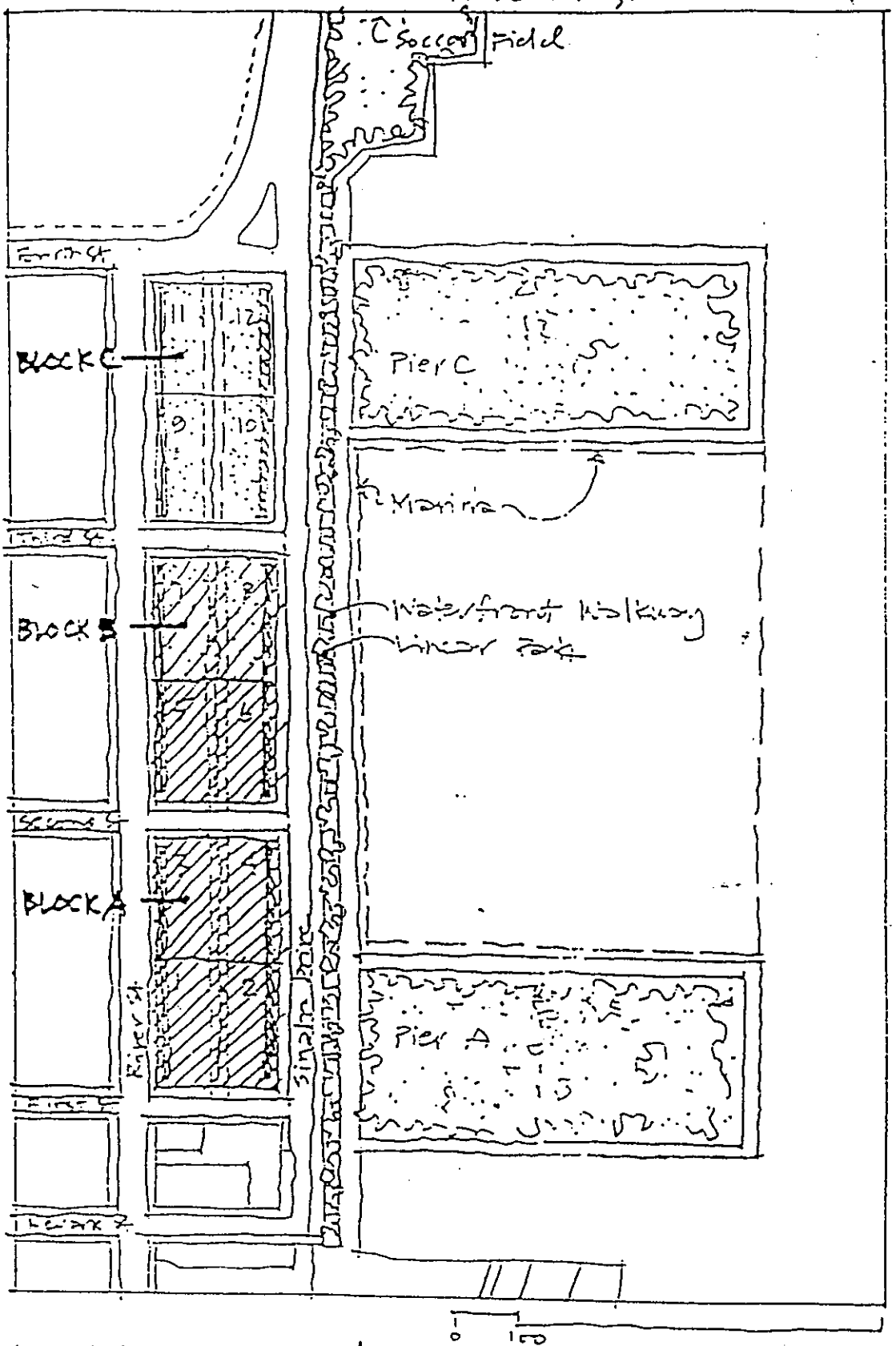
Redevelopment Area Boundary

Brown & Keener

Urban Partners

November 1994 (Amended)

HOBOKEN, NEW JERSEY



REQUIRED location of Commercial (Office, etc.)

REQUIRED location of Residential

REQUIRED location of Retail

Preferred location of Retail

Open Spaces/Parks

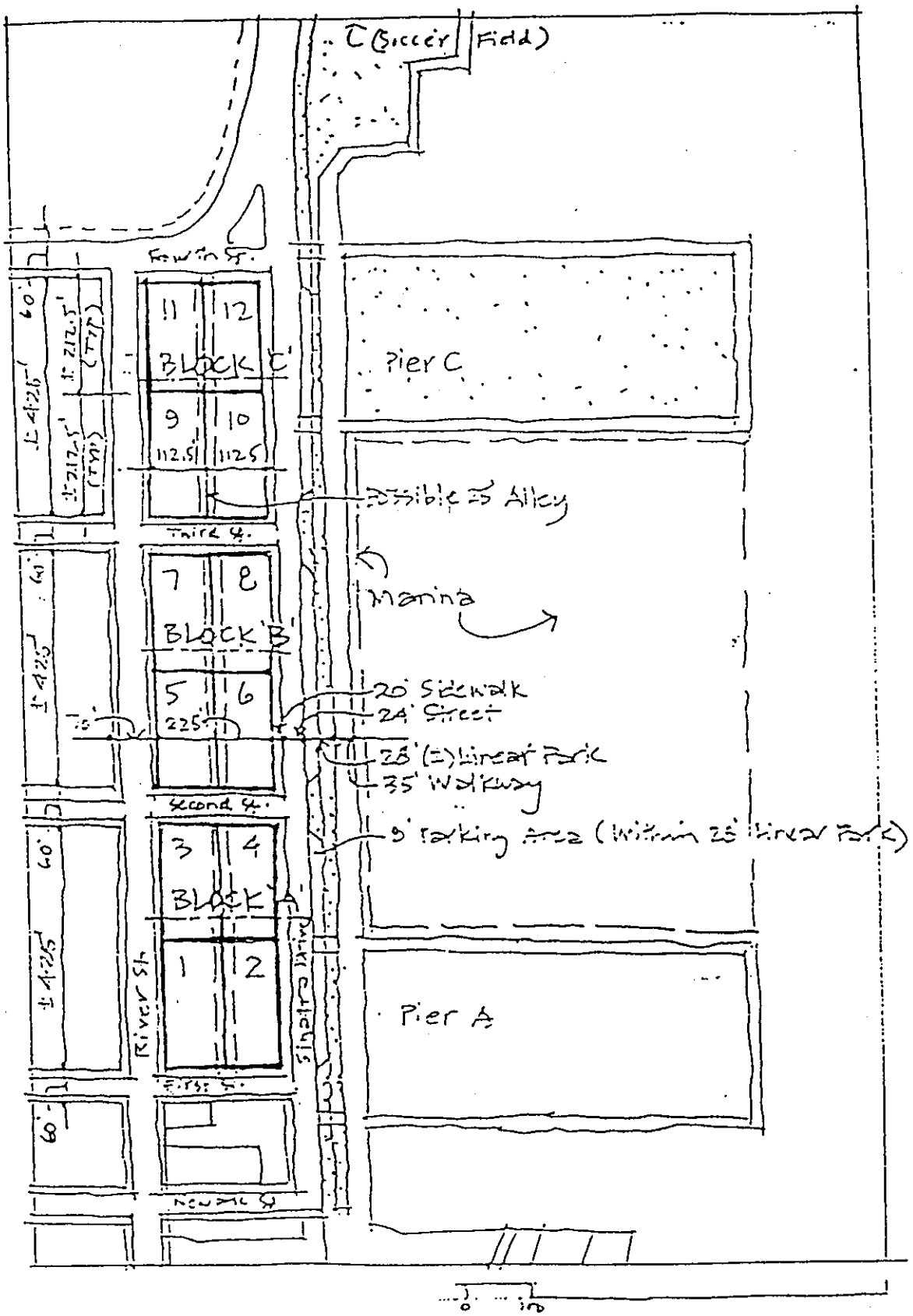
THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Required Land Use Locations

Brown & Keener

Urban Partners

November 1994 (Amended)



3 Individual Development Parcels

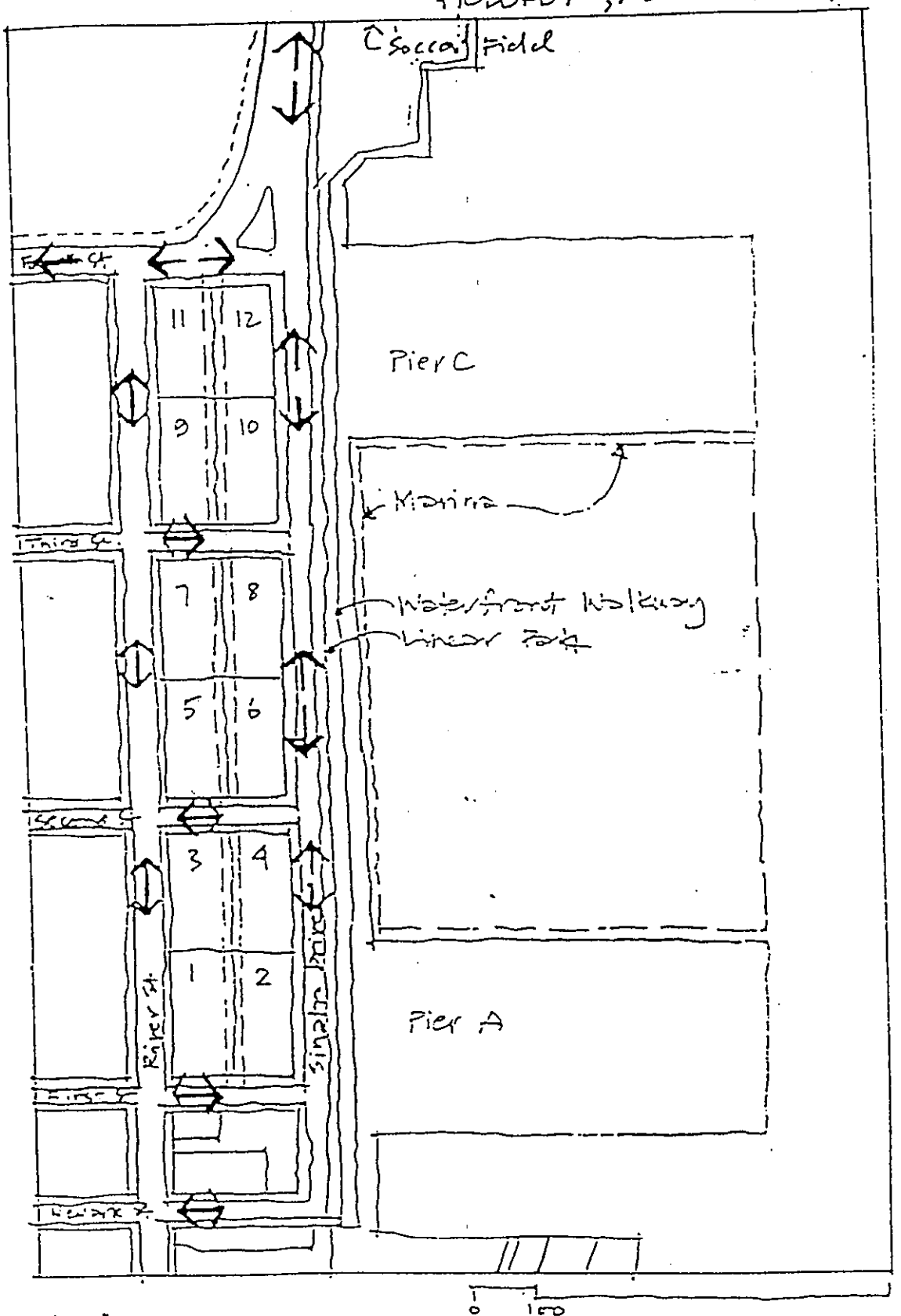
THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Site Dimensions

Brown & Keener
Urban Partners
November 1994 (Amended)

Exhibit 4-2 (View)

HOBOKEN, NEW JERSEY



← → Traffic Direction

=== Suggested Service Alley

0 100

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

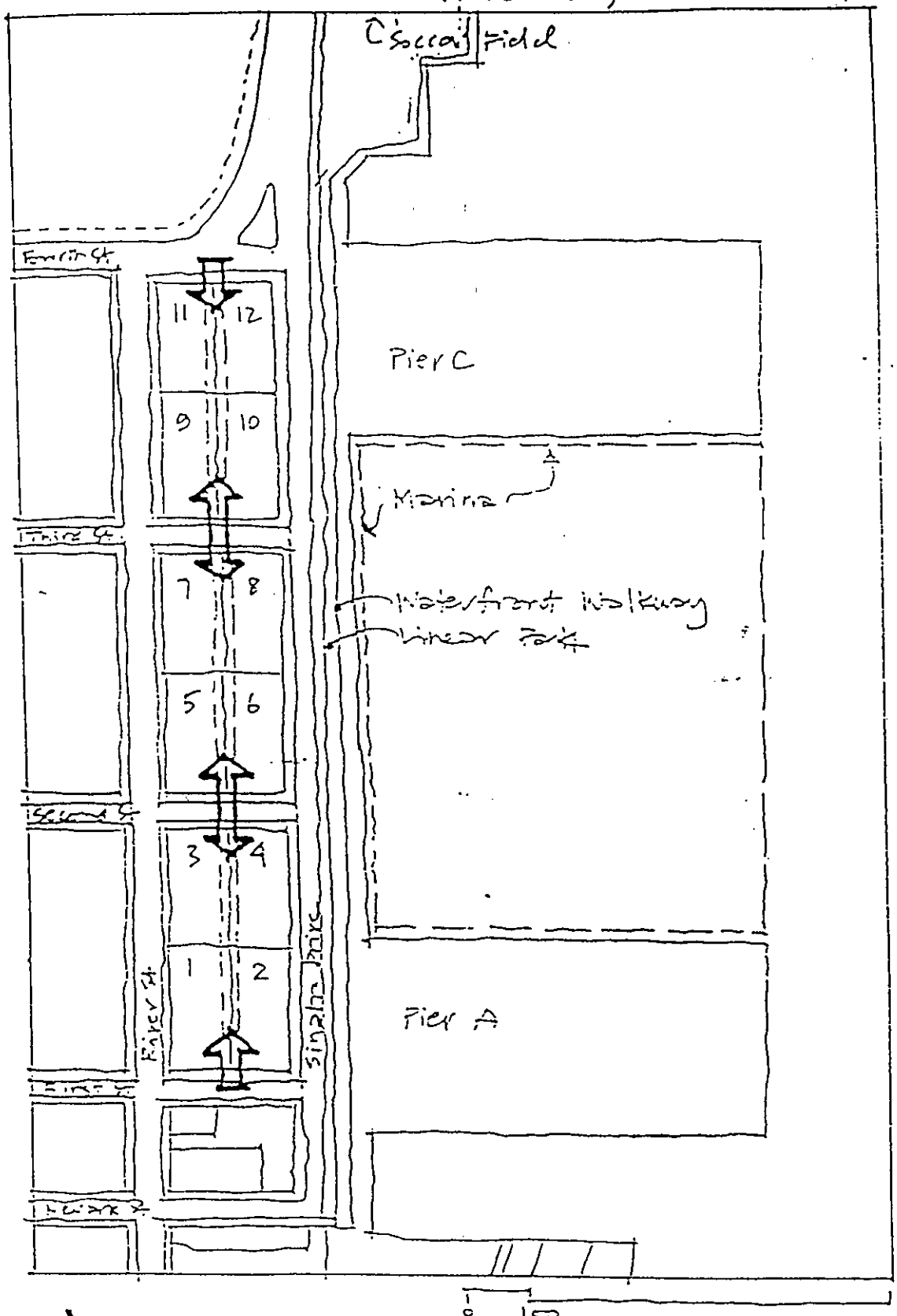
Vehicular Circulation

Brown & Keenan

Urban Partners

November 1994 (Amended)

HOBOKEN, NEW JERSEY



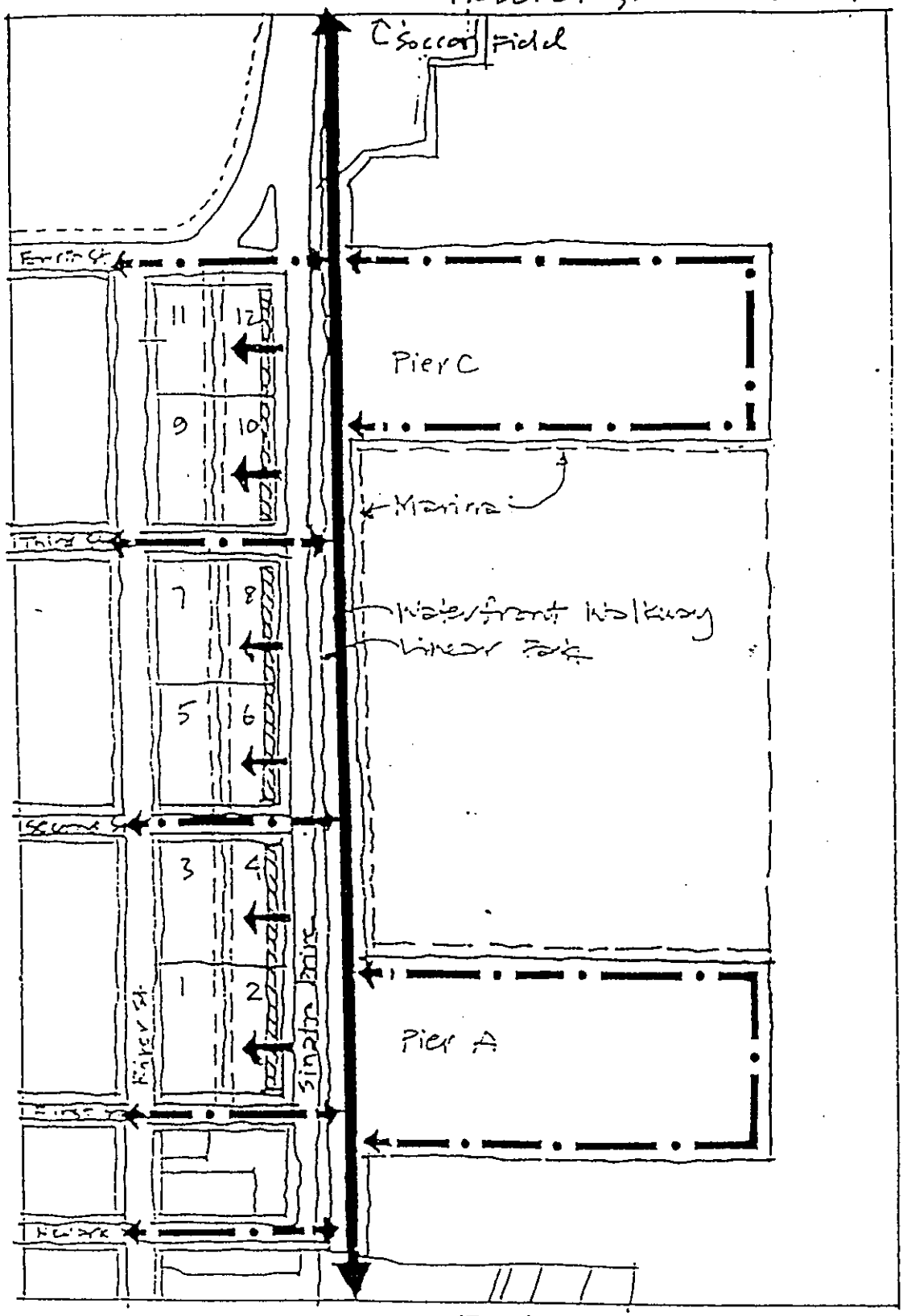
Permitted Locations of Entrances to Parking & Service

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Service and Parking Access

EDSC Architects
Urban Partners
November 1994 (Amended)

HOBOKEN, NEW JERSEY



Primary Public Circulation

Secondary Public Circulation

Preferred Setting Locations

Recommended Entrances

0 100

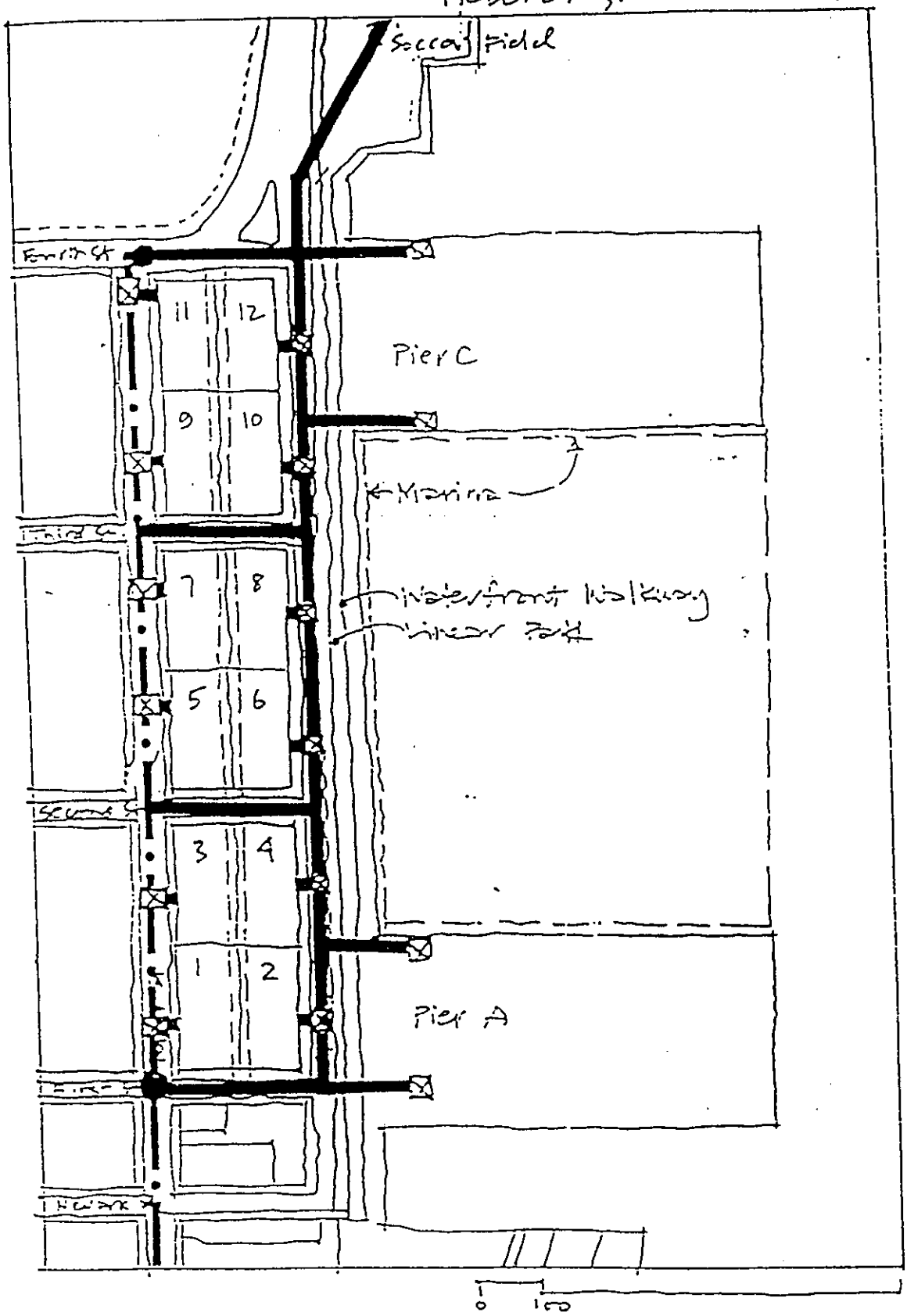
THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Pedestrian Circulation

Brown & Keener Urban Partners

November 1994 (Amended)

HOBOKEN, NEW JERSEY



Proposed Water Main

Proposed Water Valve

Proposed Manhole

Existing Water Main

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

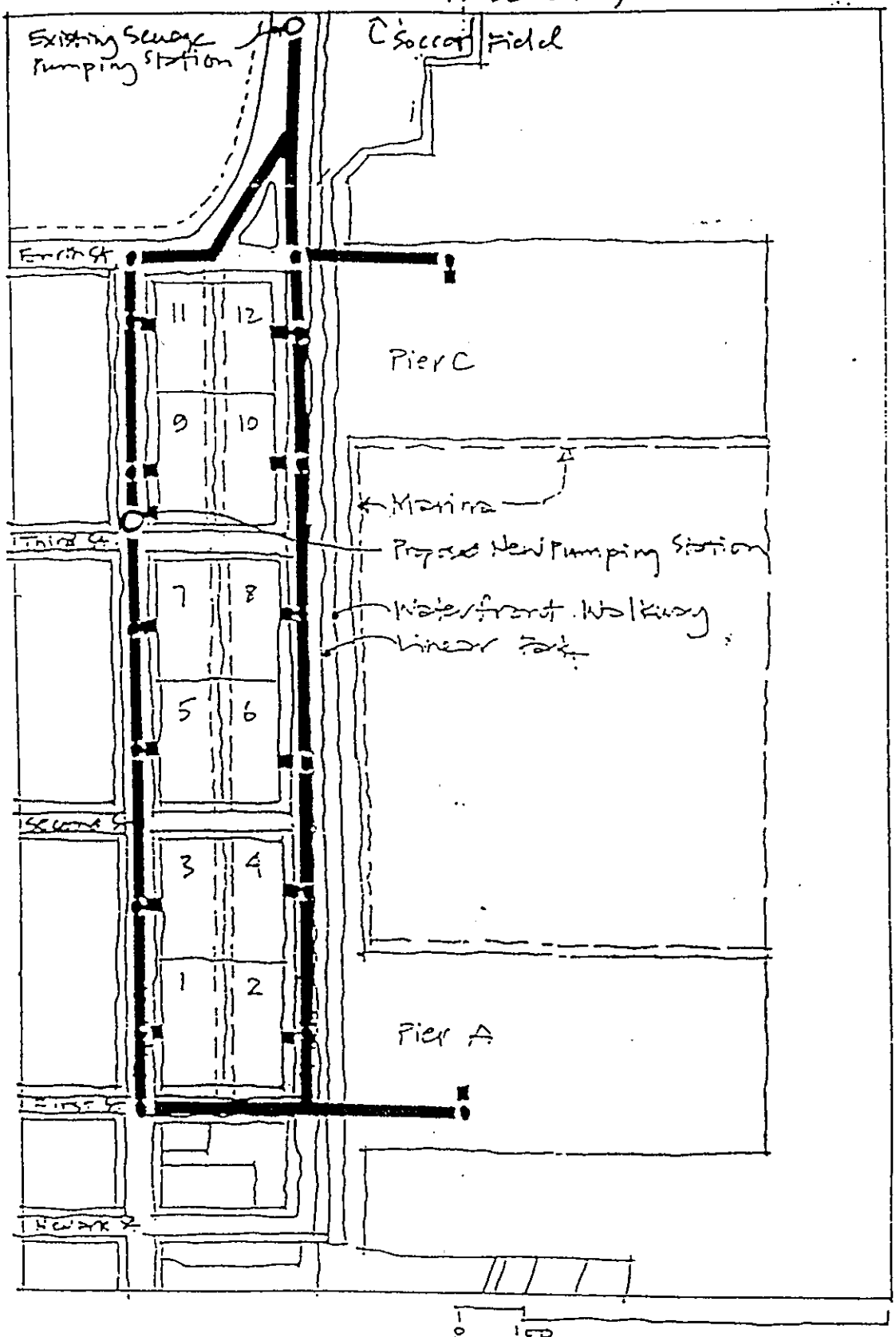
Infrastructure: Water

Parsons & Keane

Urban Partners

November 1994 (Amended)

HOBOKEN, NEW JERSEY



Proposed Sewer

Proposed Manhole

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

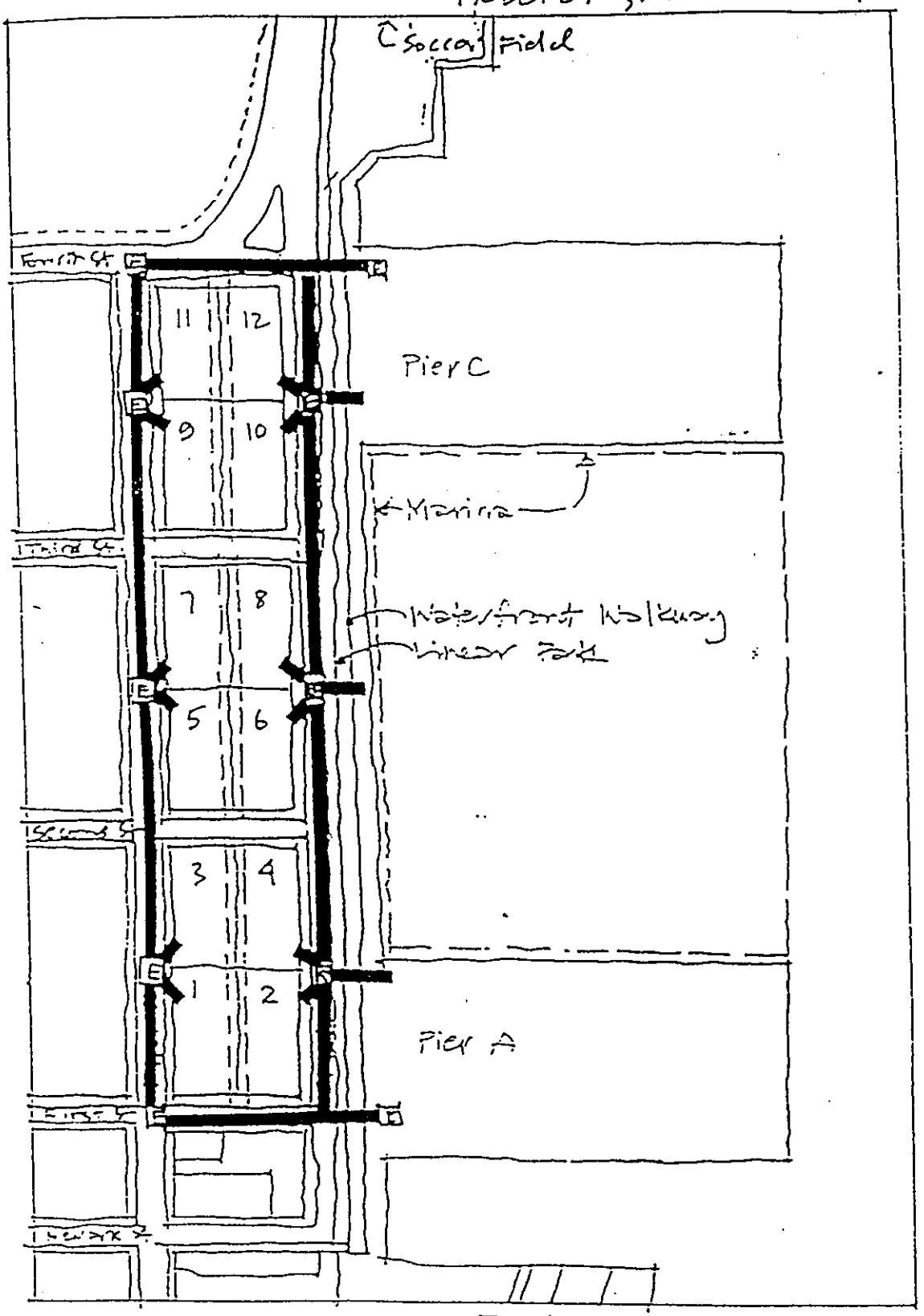
Infrastructure: Sanitary Sewer

Brown & Keener

Urban Partners

November 1994 (Amended)

HOBOKEN, NEW JERSEY



Proposed Electric Duct Bank

E Proposed Electric Manhole

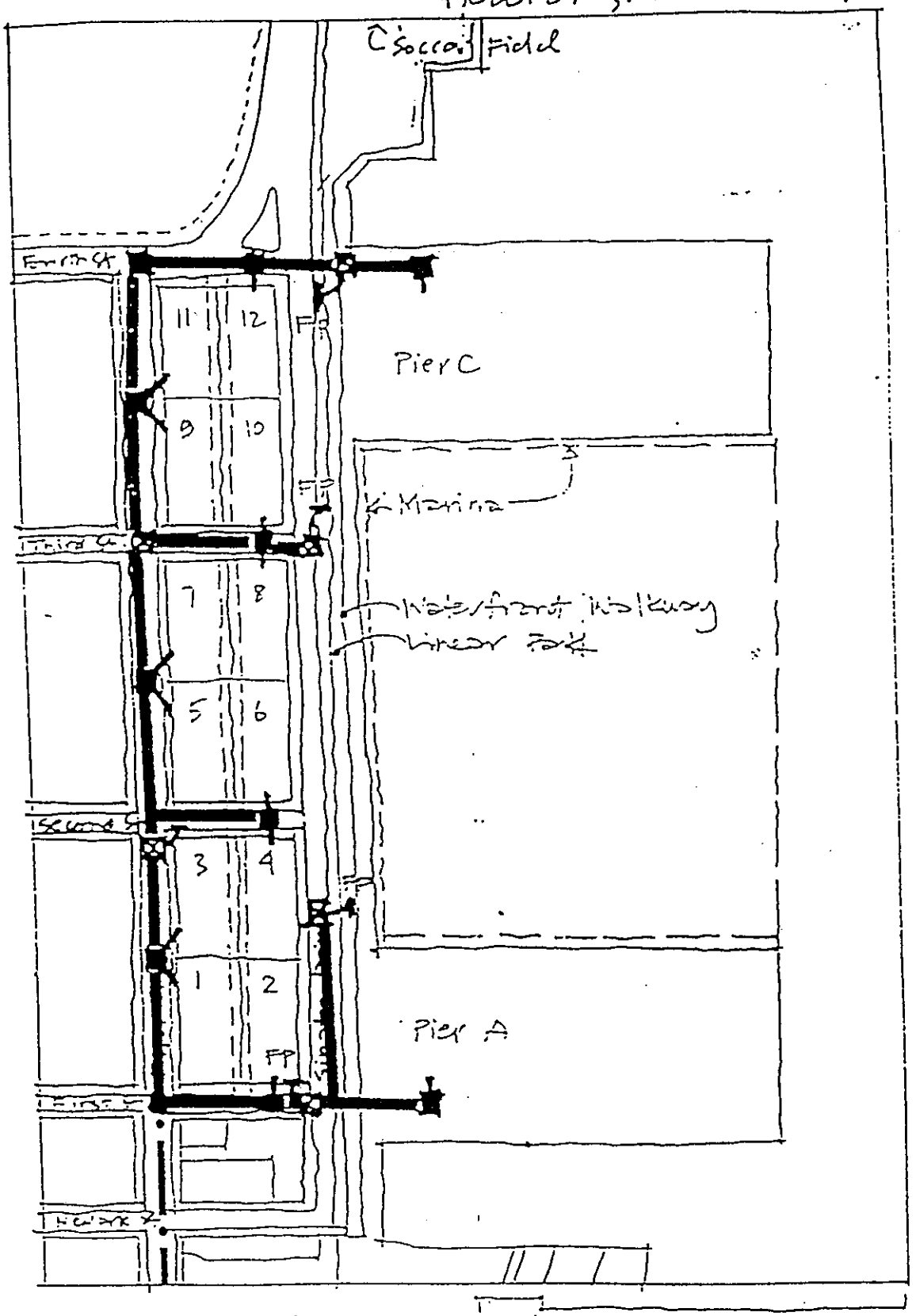
0 100

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Infrastructure: Electricity

Brown & Keener
Urban Partners
November 1994 (Amended)

HOBOKEN, NEW JERSEY



Proposed Telephone & Fire Comm. Line

Proposed Telephone Manhole

Proposed Fire Alarm, Police Call, & Fire Dept. Manhole

Existing ECS Duct Bank

0 100

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Infrastructure: Tele & Fire Comm.

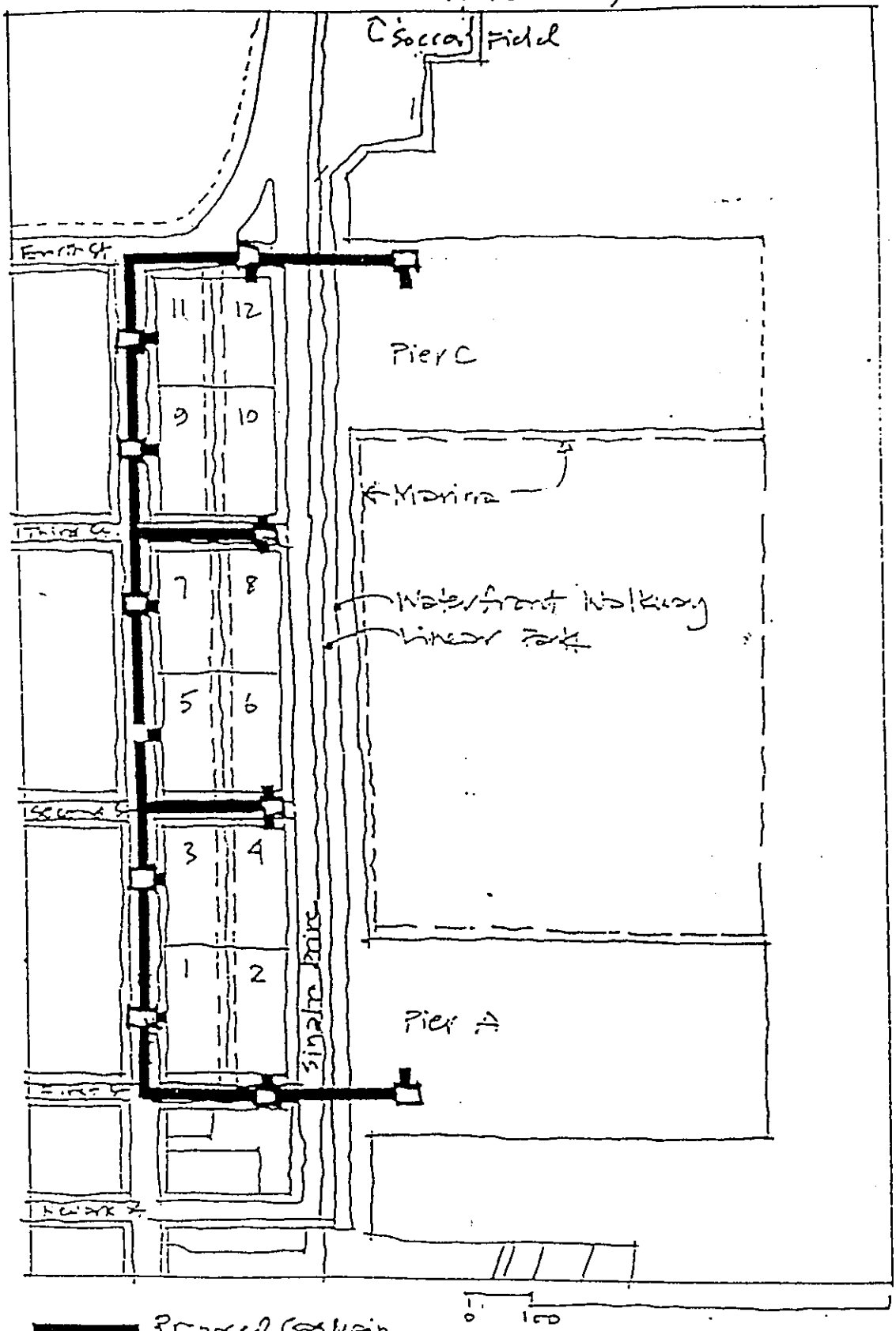
Brum & Keen

Urban Partners

November 1994 (Amended)

Exhibit 11 (Revised)

HOBOKEN, NEW JERSEY



Proposed Gas Main

Proposed Gas Valve

0 100

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Infrastructure: Gas

Prism & Keane

Urban Partners

November 1994 (Amended)

SCHEDULE 2

Proposed amendments to current zoning to accommodate amended "Waterfront at Hoboken South Redevelopment Plan", adopted 3/13/95
Words to be deleted are ~~stricken out~~
Words to added are shown [in brackets]

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§196-7 Designation of districts and historic sites.

A. Zoning districts established...as follows:

W[RDV] Waterfront [Redevelopment Sub-] District (Special Review)

W(H) Historic Subdistrict (Waterfront)

W(N) ~~Waterfront North Overlay Subdistrict~~ [Castle Point Subdistrict]

§196-8 Zoning Map [Amended ___/95 by Ord.No.___]

§196-20. W Waterfront District

A. Purpose. The purpose of this district is to promote comprehensive ~~planned~~ development which includes a mix of commercial office, retail and residential uses at varying densities, with visual and physical access to the Hudson River waterfront and linking other commercial and residential areas of the City to the waterfront.

B. The Waterfront District shall include the [W(RDV)], W(H) and W(N) ~~Overlay~~ Subdistricts. Development in the [W(RDV) Subdistrict is subject to the special use, bulk and parking regulations of the Waterfront at Hoboken Redevelopment Plan as amended __/95; the] W(H) Historic [Sub]district is subject to review procedures of the Historic Commission and development in the W(N) Waterfront North ~~Overlay~~ Subdistrict is subject to height limitations as specified herein.

C. Principal permitted uses shall be as follows:

[W(H) & W(N) Subdistricts:]

(1) ~~Planned unit development subject to §196-27.1, Urban design review for planned development.~~

(2) Educational uses.

(3) Public recreational uses.

(4) Marina facilities, fishing piers and water-oriented light commercial, recreational or passenger uses ~~associated with a planned unit development~~.

(5) Interim land uses pending the completion of a ~~planned unit~~ development, limited to temporary

uses such as parking facilities, concessions, commercial passenger excursion operations, [and] special events ~~and temporary wastewater treatment facilities.~~

(6) Accessory uses customarily incidental to a principal use.

D. Conditional uses shall be as follows:
[W(N) only]
(1) Maritime industrial uses, including marine shipping terminals and repair facilities, see §196-38T.

[W(H) & W(N)]
(2) Transportation terminal facilities, see §196-38U.

E. Area, yard and building requirements.
~~(1) For planned unit development~~.

~~(a) Minimum tract area: ten (10) acres~~.

~~(b) Maximum residential density...space)~~.

~~(c) Maximum FAR...(9.7)~~.

~~(d) Minimum open space...(15%)~~.

~~(e) Permissable range...commercial...maximum~~.

~~(f) Permissable range...residential...maximum~~.

~~(g) Maximum height, commercial...§196-27G~~.

~~(h) Maximum height, residential...§196-27G~~.

(2) For all permitted uses [in the W(H) and W(N) subdistricts], ~~other than planned unit developments,~~ and for all conditional uses:

(a) Minimum lot area: n.c.

(b) Minimum lot width: n.c.

(c) Minimum lot depth: n.c.

(d) Maximum lot coverage: n.c.

(e) Building height, maximum: n.c.

F. Off-street parking and loading shall be as follows: See generally Article XI, ~~except see §196-27.1B(2)(a) for special standards applicable to planned unit development in the W District~~

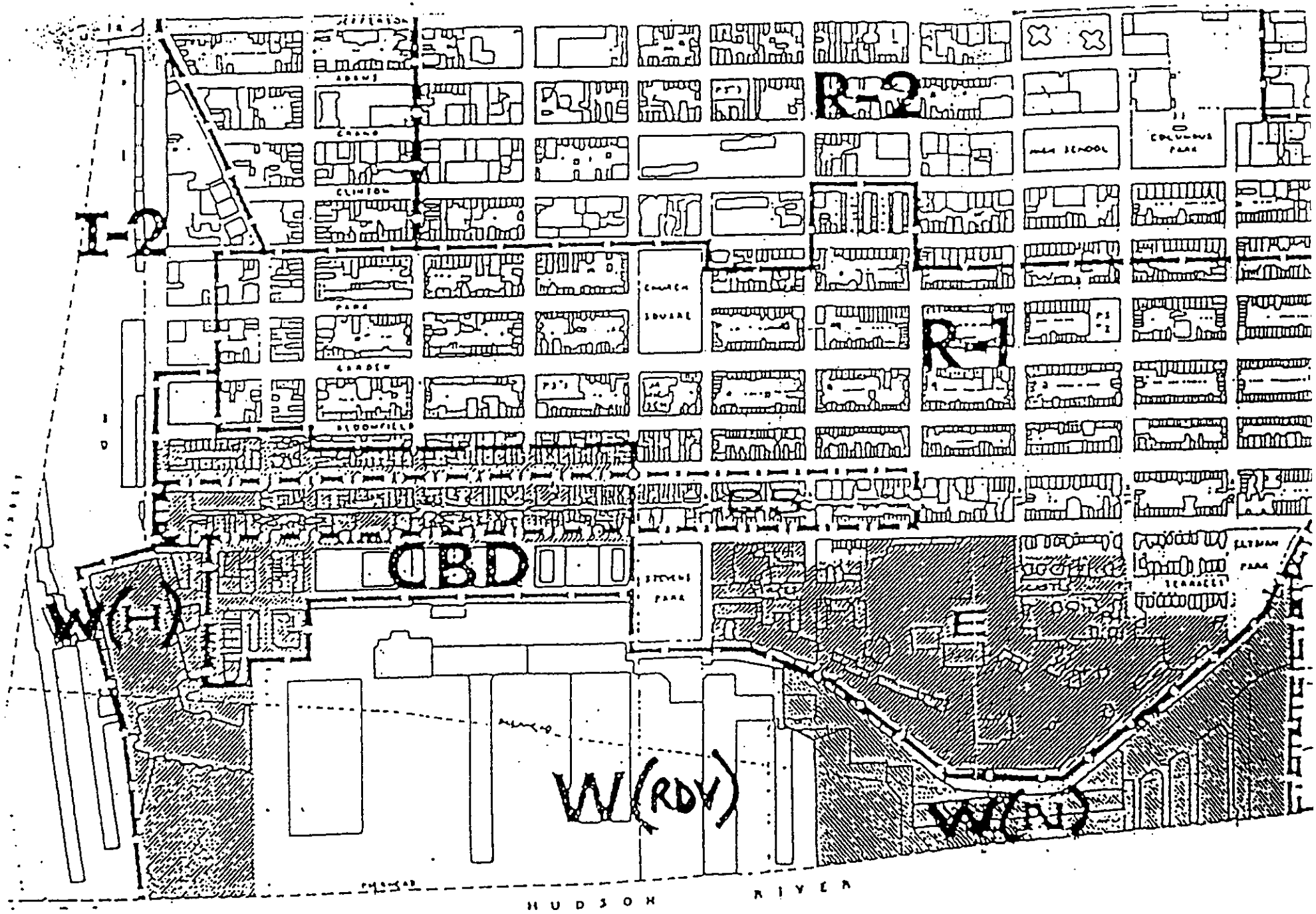
§196-27. Overlay Districts
The R-1(E), R-1(CS), CBD(H), CBD(H)(CS), W(RDV), W(H), W(N) and I-1(W)...

F. [W(RDV). The Waterfront Redevelopment Subdistrict represents the plan area within which the "Waterfront at Hoboken, South Redevelopment Plan applies."]

§196-27.1 Urban Design review for planned developments

A. Urban design review is intended to be applied to planned developments in the ~~I-2~~, I-1(W) ~~and W~~ districts ...amended.

B. Action by the Planning Board
(1) That the...in the ~~W District and~~ I-1(W)...
(2) n.c.
(3) That the...~~except that the following bulk controls shall not apply to planned unit development in the W District [Planned unit development in the W District shall be subject only to bulk controls set forth at §196-29E(1) and Subsection B(4) hereinbelow].~~
~~(4) That general design requirements for planned development located in the W District has been applied as follows:~~
~~(a) Residential...deep.~~
~~(b) Commercial...deep.~~
~~(c) Except on...way.~~


R-2
R-1
I-2
CBD
W(H)
W(RDV)
W(R)
E
CLINTON
CHURCH SQUARE
HUDSON RIVER

Proposed design guidelines to express building and bulk standards of the "Waterfront at Hoboken South Redevelopment Plan" as adopted 3/25/95

Private Development Zones

- Block A (Parcels 1,2,3 &4)
- Block B (Parcels 5 & 6)

  - Principal Permitted Uses: commercial offices, hotel
    - Ground floor/Sinatra Drive: building lobbies, retail business & services, professional offices and restaurant uses required along 100% of the frontage of Sinatra Drive, restaurant and retail uses required at the corners and for 50 linear ft. in both directions from the corner

    - Ground floor/River Street: lobby space required at least once every 200 ft. (i.e. at least one lobby per parcel); same ground floor uses permitted as for Sinatra Dr. along 50% of the frontage of River St.

  - Accessory Uses (as found in the Hoboken Zoning Ordinance)
    - Off-street parking & loading
    - Signs
    - Uses customarily incidental to a principal use

  - Conditional Uses (interim land uses pending initiation or completion of construction)
    - temporary parking facilities
    - commercial passenger excursion operations
    - concessions
    - special events

  - Area, yard and building requirements
    - Development area, minimum: 1 parcel (as defined in parcelization plan)

    - Parcel coverage, maximum
      - -- For base building (including ground floor service area and upper floor parking up to a maximum of 50 ft.): 100%
      - -- For balance of building, see setback requirements under "Yards/Setbacks"

    - Building Height
      - -- Commercial offices & hotels, located on Parcels 1 through 6:
        - .. As-of-right: 125 ft. above sidewalk elevation
        - .. Public bonus provision: up to a maximum of 175 ft. pursuant to the alternate provisions specified in the plan:

... Developer pays to city an amount equal to 1% of total construction cost; or

... Developer pays to city an amount equal to cost of providing off-site parking for the additional floor area above 125 ft. at ratio of 0.7 pkg. space per 1000 sq.ft. of additional floor area

- Yards/Setbacks
  - -- Ground level: no building base may be set back at ground level greater than 5 ft. from the parcel boundary
  - -- Base building must rise at least 40 ft. before setting back; setback of 5 ft. required at the 40 ft. elevation from parcel boundaries along First, Second, and Third Sts.
  - -- No setback required along River St. & Sinatra Dr.; "expression line" must be provided
  - -- Buildings built higher than 125 ft. must set back 10 ft. at the 125 ft. elevation on all sides of the building adjoining a street
  - -- Any two new building forms in one block must be a minimum of 50 ft. apart or, each building must be setback a minimum of 25ft. from a common property line above the building base

- Off-street Parking and Loading
  - Access
    - -- Service alley: an alley is to be created running north-south through every block in such a fashion as to provide a 25 ft. wide passageway straddling the north-south mid-line of each block and providing access to both the required on-site parking and loading areas of each parcel
    - -- Entry will be from the east-west streets and will not occupy more than a total of one-third of the east-west street frontage.
    - -- Entry point shall be designed as a "gateway"
    - -- Trucks must enter and leave the site in forward gear

- Parking
  - -- Minimum required parking spaces on-site:
    - .. Commercial: 0.35 spaces/1000 sq.ft. of office floor area
    - .. *Hotel: 1 space per room for the first 15% of a hotel's rooms and 0.3 spaces/1000 sq.ft.of all other non-room hotel space*
    - .. Ground floor uses: none required

  - -- Maximum permitted parking spaces on-site:
    - .. Commercial: 0.7 spaces/1000 sq.ft.of floor area; hotel maximum same as minimum; ground floor use maximum, zero.

  - -- Design & layout
    - .. No parking area shall be visible above the street level; parking floors above street level shall be clad in a manner identical to that of the rest of the building above; openings for ventilation shall have decorative iron grill work over the openings

- Loading
  - -- *Dimensions: minimum of forty (40) ft. long, twelve (12) ft. wide and fourteen (14) ft. high; sufficient turning spaces and access in accordance with industry standards*

  - -- *Calculation of minimum loading berths*
    - .. *Office & hotel (1 berth for first 10,000 sq.ft. of floor area, additional berth for each additional 90,000 sq.ft.)*
    - .. Ground floor uses (no separate requirement; floor area shall be added to that of predominant building use as part of calculation for entire parcel)

- Block B (Parcels 7 & 8)
  - Principal Permitted Uses: commercial offices, hotel, residential
    - Ground floor uses & location (same as Block A above)

  - Accessory Uses (same as Block A above)
    - *Home occupations*

  - Conditional Uses (same as Block A above)

- Off-street Parking & Loading
  - Parking
    - -- Minimum parking spaces on-site:
      - .. Commercial & hotel (same as Block A)
      - .. Residential: 0.5 spaces/ dwelling unit; no parking required for ground floor uses
    - -- Maximum on-site:
      - .. Commercial & hotel (same as Block A)
      - .. Residential: 1.0 spaces/ dwelling unit; no parking required for ground floor uses
  - Loading
    - -- Location, access & dimensions same as Block A above
    - -- *Calculation of minimum loading berths*
      - .. *Commercial & hotel (same as Block A above)*
      - .. *Residential use (1 berth for the first 25,000 sq.ft. of floor area, additional berth for each additional 75,000 sq.ft.)*
      - .. *Ground floor uses (same as Block A above)*

- Block C (Parcels 9,10,11 & 12)
  - Principal Permitted Uses: residential
    - Ground floor use & location (same as Blocks A & B above)
  - Accessory Uses (same as Block B, Parcels 7&8 above)
    - *Home occupations*
  - Conditional Uses (same as Block B, Parcels 7&8 above)
  - Area, yard and building requirements
    - Development area, minimum: 1 parcel (as defined in parcelization plan)
    - Parcel coverage, maximum
      - -- For base building (including ground floor service area and upper floor parking up to a maximum of 50 ft.): 100%
      - -- For balance of building, see setback requirements under "Yards/Setbacks"

- Building Height
  - -- Residential buildings: 125 ft. maximum above sidewalk elevation

- Yards/Setbacks
  - -- Ground level: no building base may be set back at ground level greater than 5 ft. from the parcel boundary
  - -- Base building must rise at least 40 ft. before setting back; setback of 5 ft. required at the 40 ft. elevation from parcel boundaries along Third and Fourth Streets.
  - -- No setback required along River St. & Sinatra Dr.; "expression line" must be provided
  - -- Any two new building forms in one block must be a minimum of 50 ft. apart or, each building must be setback a minimum of 25ft. from a common property line above the building base

- Off-street Parking & Loading (same as shown for residential use Block B, Parcels 7&8 above)

Public Development/Open Space Zones
(maximum of 20,000 sq.ft. permitted on both piers for restaurants, other retail, museum & marina-related buildings)

- Pier A (to be designed entirely as a unity)
  - Principal Permitted Uses: publicly-accessible open space/recreational
    - recreation fields (e.g., softball, basketball)
    - jogging and walking paths
    - fishing areas; shelters
    - picnic and sitting areas; gazebos
    - public swimming pool
    - museum (water-related) - one only for total area of piers
    - restaurants and other retail

  - Accessory Uses: uses customarily incidental to a principal use but in no event shall there be any parking

  - Conditional Uses (same as Block A above)

- Pier C (to be designed entirely as a unity)
  - Principal Permitted Uses: publicly-accessible open space/recreational; public recreational marina
    - fishing areas
    - picnic and sitting areas; gazebos
    - public swimming pool

- museum (water-related) - one only for total area of piers
- restaurants and other retail
- public recreational marina (including related management office, toilet/shower facility, gas dock)

- Accessory Uses: uses customarily incidental to a principal use but in no event shall there be any parking

- Conditional Uses (same as Block A above)

- Soccer Field
  - Principal Permitted Uses: soccer field; fishing areas

  - Accessory Uses: uses customarily incidental to a principal use but in no event shall there be any parking

  - Conditional Uses (same as Block A above)

- Infrastructure/Linear Park Zone
  - Principal Permitted Uses: infrastructure; parks
    - streets (extensions of First, Second, Third and Fourth Streets; extension of Sinatra Drive)
    - waterfront walkway
    - linear park

  - Accessory Uses (none)

  - Conditional Uses (same as Block A above)

SCHEDULE 3

Hoboken South Waterfront
METES AND BOUNDS DESCRIPTIONS

This Schedule describes by metes and bounds the 12 Parcels of real property constituting the Development Area as defined in the Municipal Development Agreement (the "Agreement") to which this Schedule is an attachment.

For purposes of describing certain real property terms used in the Agreement, the following descriptions apply:

Block A means Parcels 1, 2, 3 and 4 described below.

Block B means Parcels 5, 6, 7 and 8 described below.

Block C means Parcels 9, 10, 11 and 12 described below.

Initial Block B for the Initial Development Property means Parcels 6 and 8.

Substitute Block B for the Initial Development Property means Parcels 5 and 6.

Initial Block B for the Subsequent Development Property means Parcels 5 and 7.

Substitute Block B for the Subsequent Development Property means Parcels 7 and 8.

USDA Property means Parcel 5.

PARCEL 1

BEGINNING at a point in a line 70.00 feet east of and parallel with the westerly line of River Street where the same is intersected by the northerly line of First Street (50' wide) projected easterly and running:

(1) N-13°-04'-29"-E along said line 70.00 feet east of westerly line of River Street, a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street a distance of 212.50 feet to a point in the northerly line of First Street projected easterly, thence

(4) N-76°-55'-31"-W along said northerly line of First Street, a distance of 112.50 feet to the point and place of beginning.

PARCEL 2

BEGINNING at a point in the northerly line of First Street (50' wide) projected easterly, distant 182.50 feet easterly as measured along the northerly line of First Street projected easterly from a point formed by the intersection of the northerly line of First Street with the westerly line of River Street and running:

(1) N-13°-04'-29"-E, parallel with the westerly line of River Street a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E and parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street, a distance 212.50 feet to a point in the northerly line of First Street projected easterly, thence

(4) N-76°-55'-31"-W and along the northerly line of First Street projected easterly, a distance of 112.50 feet to a point said place of beginning.

PARCEL 3

BEGINNING at a point distant 70.00 feet easterly measured at right angles to the westerly line of River Street and 212.50 feet northerly measured at right angles to the northerly line of First Street (50' wide) projected easterly and running:

(1) N-13°-04'-29"-E, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(4) N-76°-55'-31"-W, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 4

BEGINNING at a point distant 182.50 feet easterly measured at right angles to the westerly line of River Street and 212.50 feet northerly measured at right angles to the northerly line of First Street (50' wide) projected easterly and running:

(1) N-13°-04'-29"-E, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(4) N-76°-55'-31"-W, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 5

BEGINNING at a point formed by the intersection of the easterly line of River Street (70' wide) with the northerly line of Second Street projected easterly (50' wide) and running thence:

(1) N-13°-04'-29"-E and along the easterly line of River Street a distance of 240.20 feet to a point; thence

(2) S-76°-55'-31"-E and parallel to Second Street projected easterly a distance of 108.00 feet to a point; thence

(3) S-13°-04'-29"-W, parallel to River Street a distance of 154.62 feet to a point of curvature; thence

(4) Southerly, on a curve to the right, having a radius of 256.00 feet an arc distance of 87.26 feet to a point in the northerly line of Second Street projected easterly; thence

(5) N-76°-55'-31"-W and along the northerly line of Second Street projected easterly a distance of 93.27 feet to a point in the easterly line of River Street, said point being the point or place of beginning.

PARCEL 6

BEGINNING at a point in the northerly line of Second Street (50' wide) projected easterly distant 93.00 feet easterly from the intersection formed by the easterly line of River Street (70' wide) with the northerly line of Second Street projected easterly and running thence:

(1) S-76°-55'-31"-E and along the northerly line of Second Street projected easterly a distance of 132.00 feet to a point; thence

(2) N-13°-04'-29"-E and parallel to Second Street a distance of 240.20 feet to a point; thence

(3) N-76°-55'-31"-W and parallel to the northerly line of Second Street prolonged easterly a distance of 117.00 feet to a point; thence

(4) S-13°-04'-29"-W and parallel to River Street a distance of 154.62 feet to a point of curvature; thence

(5) Southerly on a curve to the right having a radius of 256 feet an arc

PARCEL 9

BEGINNING at a point formed by the intersection of the easterly line of River Street (70' wide) with the northerly line of Third Street projected easterly (50' wide) and running thence:

(1) N-13°-04'-29"-E and along the easterly line of River Street a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E and parallel to Third Street a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel to River Street and along the centerline of an easement a distance of 212.50 feet to a point in the northerly line of Third Street; thence

(4) N-76°-55'-31"-W and along the northerly line of Third Street a distance of 112.50 feet to a point being the point or place of beginning.

PARCEL 10

BEGINNING at a point in the northerly line of Third Street (50' wide) projected easterly, distant 112.50 feet easterly from the intersection formed by the easterly line of River Street (70' wide) with the northerly line of Third Street projected easterly and running thence:

(1) N-13°-04'-29"-E, parallel to River Street and along the centerline of an easement a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E and parallel to Third Street a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel to River Street a distance of 212.50 feet to a point in the northerly line of Third Street project easterly; thence

(4) N-76°-55'-31"-E and along the northerly line of Third Street projected easterly a distance of 112.50 feet to a point, said point being the point or place of beginning.

PARCEL 11

BEGINNING at a point in the easterly line of River Street (70' wide) distant 212.50 feet northerly from the intersection formed by the northerly line of Third Street (50' wide) projected easterly with the easterly line of River Street and running thence:

(1) N-13°-04'-29"-E and along the easterly line of River Street a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E and parallel to Third Street projected easterly a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel to River Street a distance of 212.50 feet to a point in the northerly line of Third Street projected easterly; thence

(4) N-76°-55'-31"-W and along the northerly line of Third Street projected easterly a distance of 112.50 feet to a point in the easterly line of River Street, said point being the point or place of beginning.

PARCEL 12

BEGINNING at a point distant 212.50 feet northerly measured at right angles to the northerly line of Third Street projected easterly and 112.50 feet easterly measured at right angles to the easterly line of River Street and running:

(1) N-13°-04'-29"-E, parallel to River Street a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E and parallel to the northerly line of Third Street projected easterly a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel to River Street a distance of 212.50 feet to a point; thence

(4) N-76°-55'-31"-W and along the northerly line of Third Street projected easterly a distance of 112.50 feet to a point, said point being the point or place of beginning.

FIRST STREET EASEMENT AREA

BEGINNING at a point formed by the intersection of the southerly line of First Street (50' wide) with the easterly line of River Street (75' wide) and running thence:

(1) N-13°-04'-29"-E and along the easterly line of River Street a distance of 25.00 feet to a point; thence

(2) S-76°-55'-31"-E and parallel with the southerly line of First Street projected easterly a distance of 225.00 feet to a point; thence

(3) S-13°-04'-29"-W, parallel to River Street a distance of 25.00 feet to a point in the southerly line of First Street projected easterly; thence

(4) N-76°-55'-31"-W and along the southerly line of First Street projected easterly, a distance of 225.00 feet to a point in the easterly line of River Street, said point being the point or place of beginning.

The bearings used in the above descriptions are in a rectangular system established by the U.S. Engineer Office, New York District, New York, N.Y. with axes perpendicular and parallel to the true meridian through the spire of Memorial Church, Manhattan, New York, N.Y., the geographical position of which is North 40°-46'-57.599" Latitude and West 73°-57'-25.659 Longitude.

Reference to named streets in the above description for descriptive purposes only and shall not be construed as nor are same intended to be an offer to dedicate any property to public use.

Being shown and designated as Lot 4 and part of Lot 3 in Block 231 on the Tax Map of the City of Hoboken.

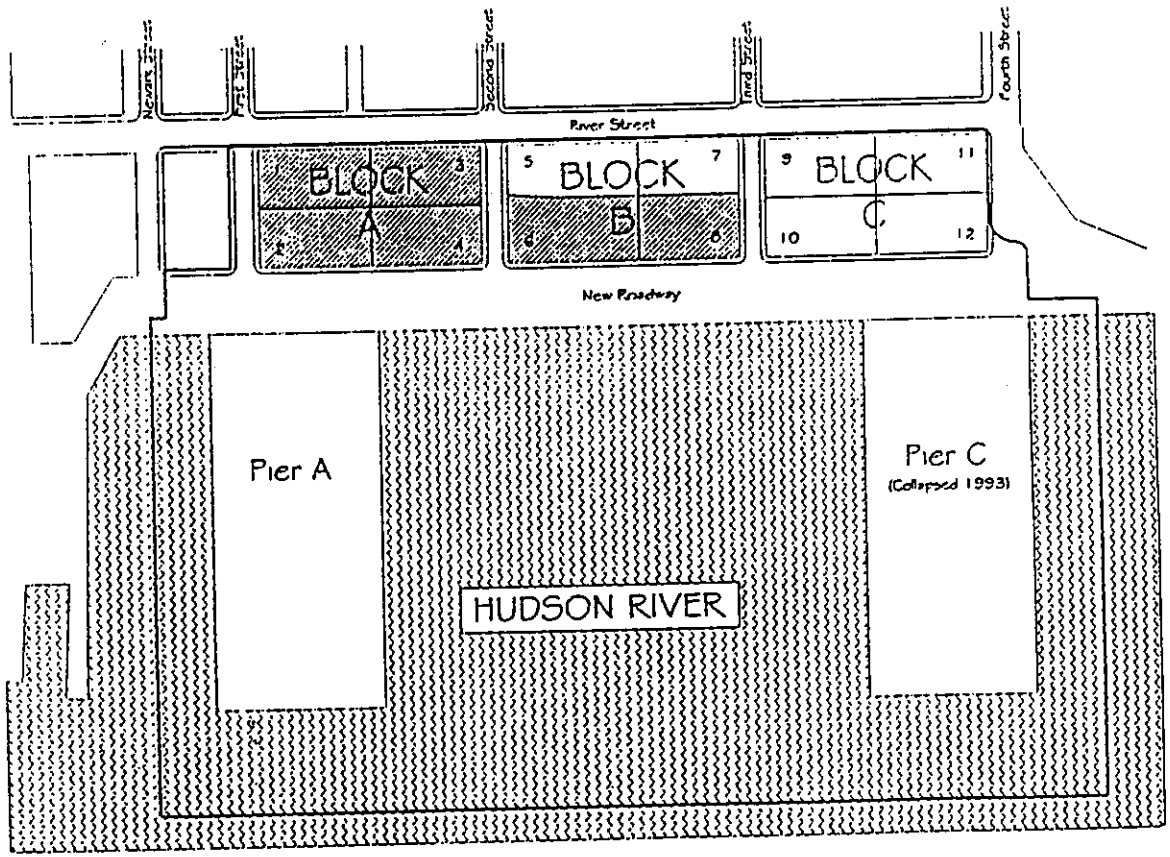
The above descriptions are subject to such statement of facts that an accurate survey may disclose.

The above descriptions are subject to such statement of facts that an up to date title report may disclose.

EXHIBIT D

Hoboken South Waterfront

Initial Development Property



Legend

Right of Entry Area Boundary

Initial Development Property

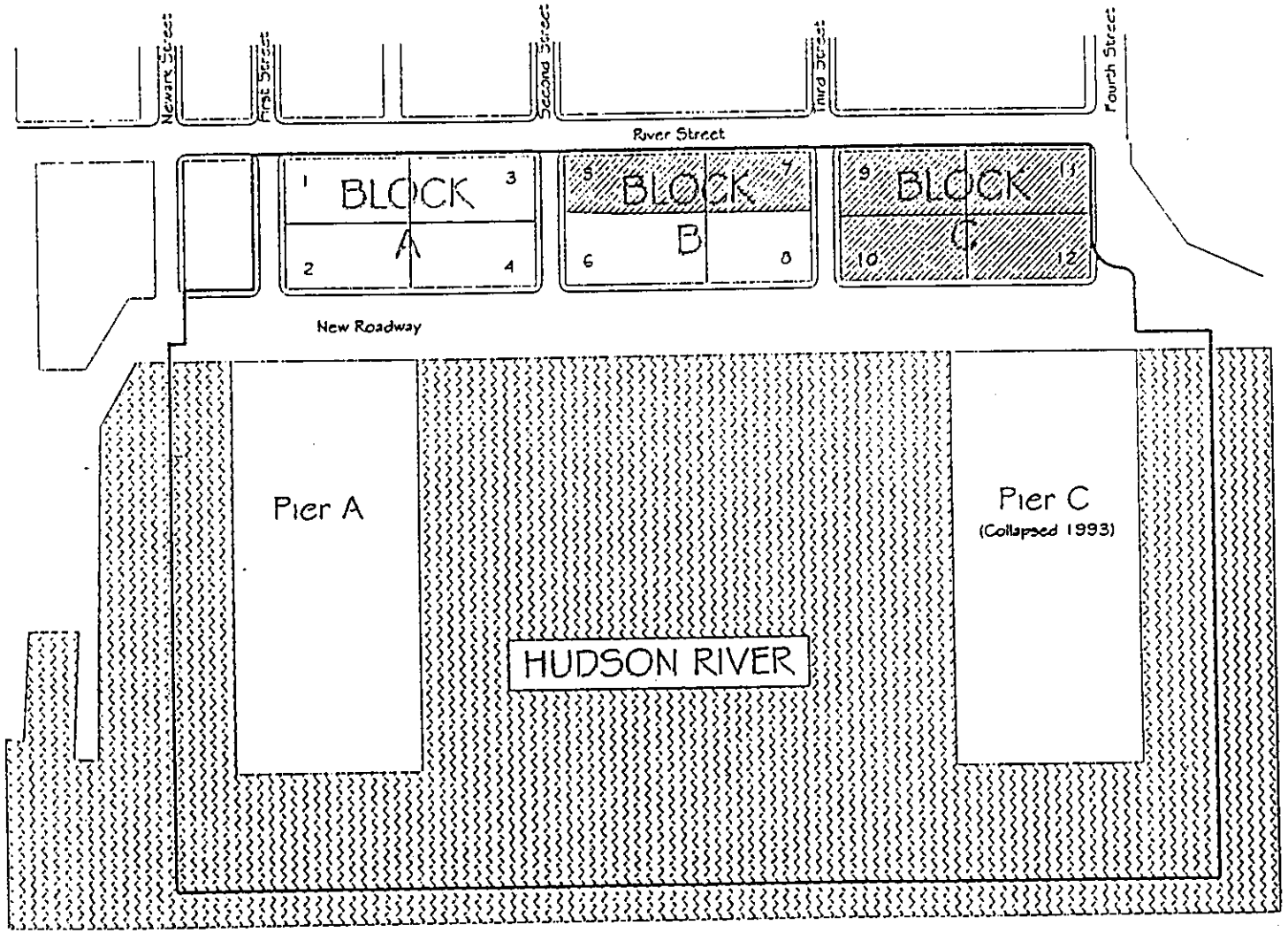
North

All boundaries are approximate.

EXHIBIT D-1

Hoboken South Waterfront

Subsequent Development Property



Legend

Right of Entry Area Boundary

Subsequent Development Property

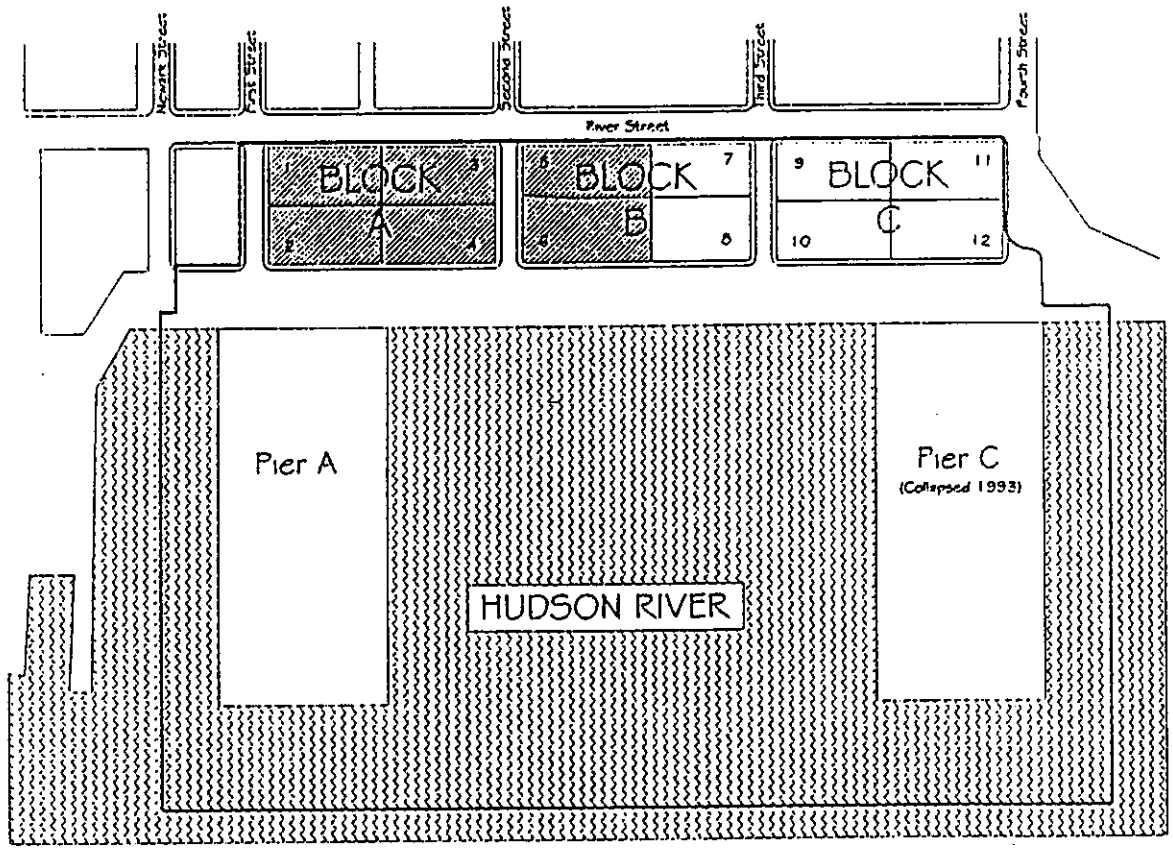
North

All boundaries are approximate

EXHIBIT E

Hoboken South Waterfront

Initial Development Property



Legend

Right of Entry Area Boundary

Initial Development Property

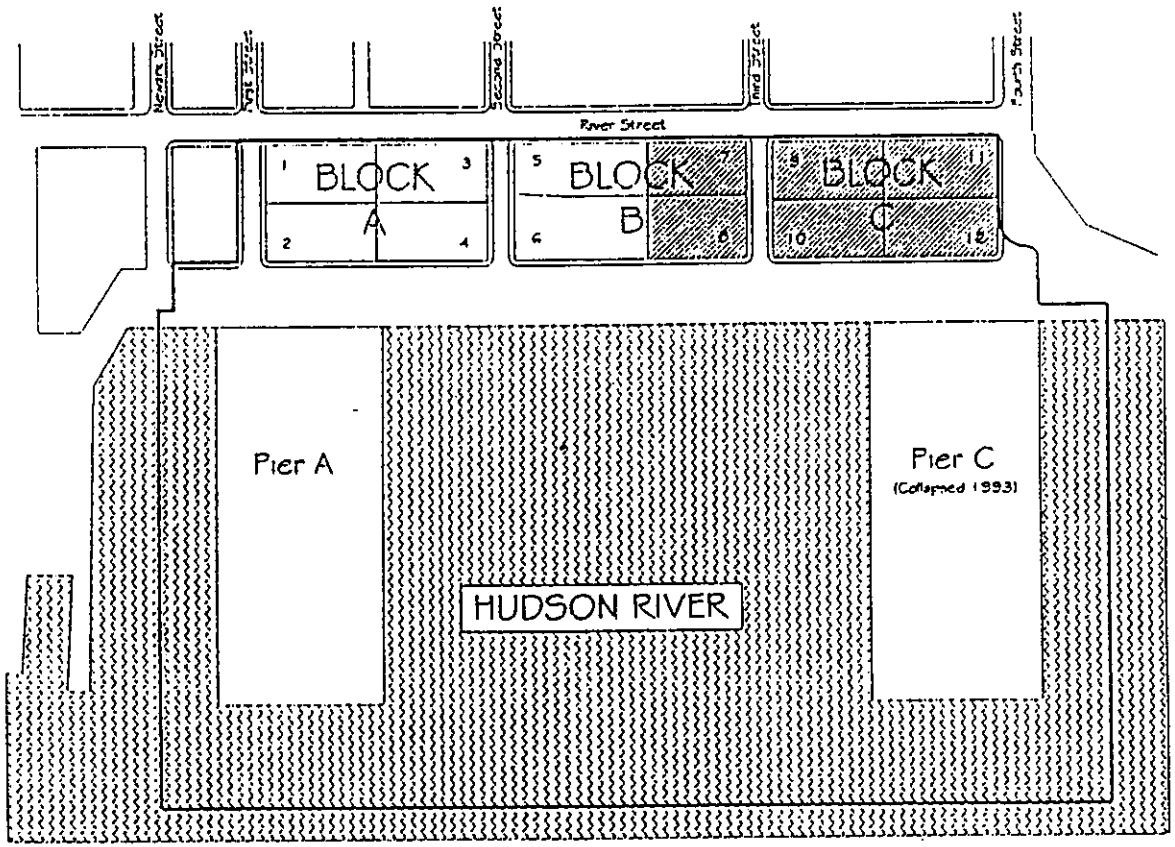
North

All boundaries are approximate.

EXHIBIT E-1

Hoboken South Waterfront

Subsequent Development Property



Legend

Right of Entry Area Boundary

Subsequent Development Property

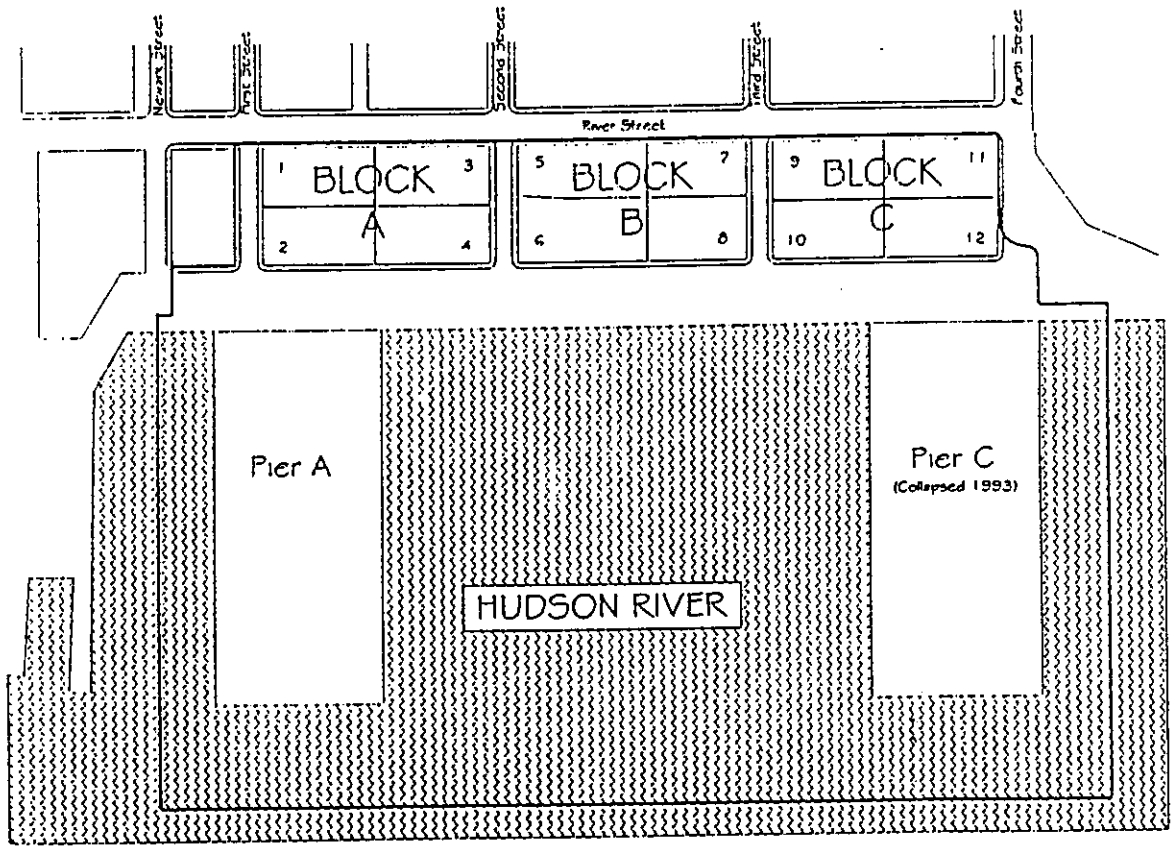
North

All boundaries are approximate.

EXHIBIT F

Hoboken South Waterfront

Project Site / Right of Entry Area



The City of Hoboken will provide right of entry within the site area or adjacent thereto as necessary for the Port Authority to undertake certain project elements necessary for the effectuation of the project.

All boundaries are approximate.

Legend

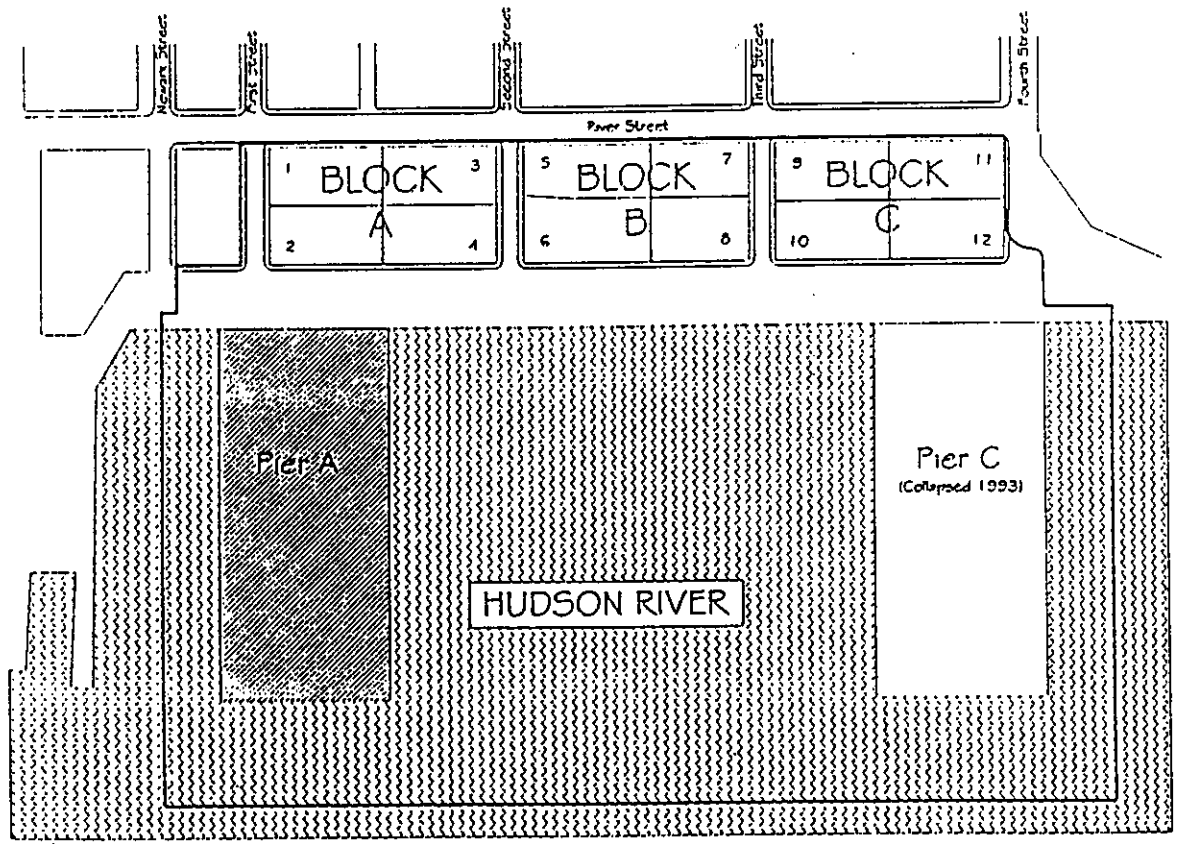
Right of Entry Area Boundary

North

EXHIBIT P-A

Hoboken South Waterfront

Pier A



Legend

Right of Entry Area Boundary

Pier A Area

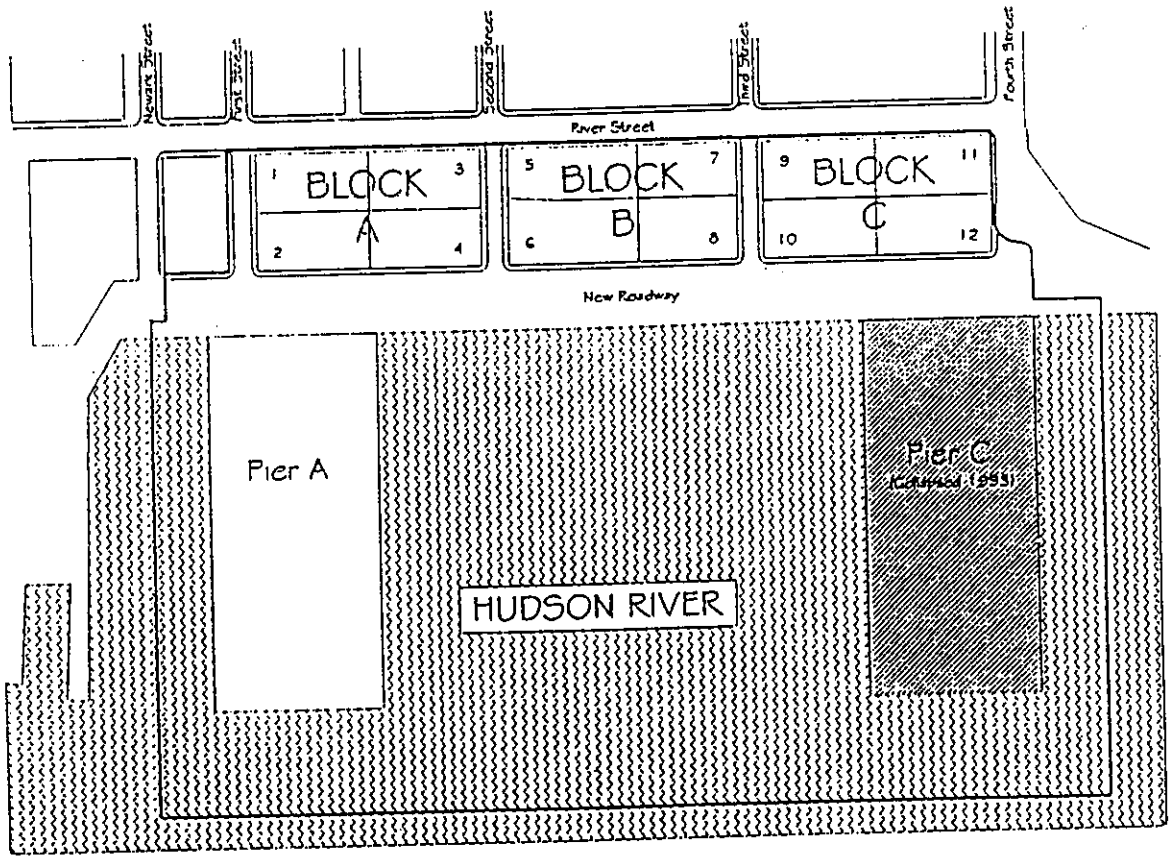
North

All boundaries are approximate.

EXHIBIT P-C

Hoboken South Waterfront

Pier C



Legend

Right of Entry Area Boundary

Pier C Area

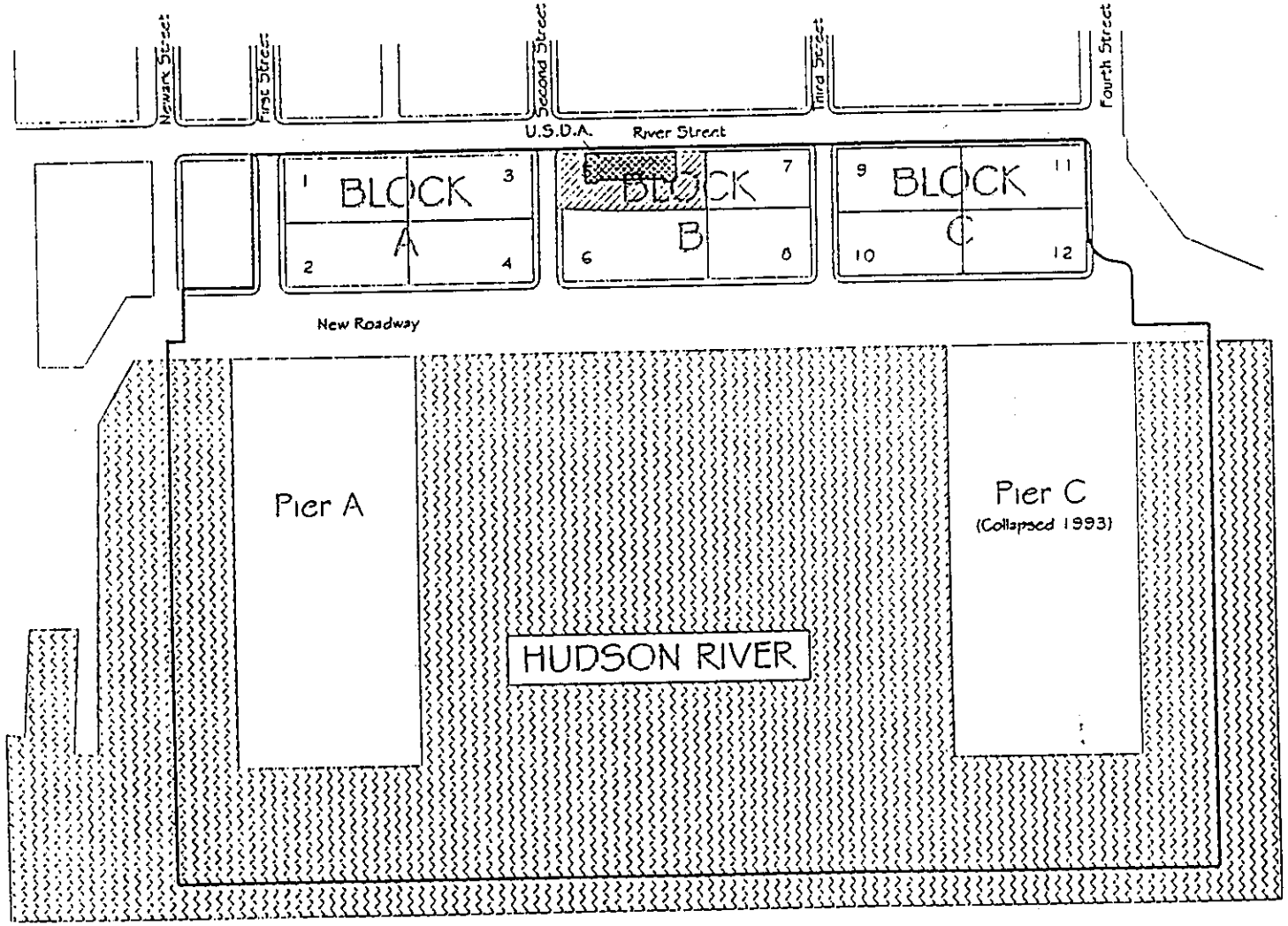
North

All boundaries are approximate.

EXHIBIT U

Hoboken South Waterfront

U.S.D.A. Property



Legend

Right of Entry Area Boundary

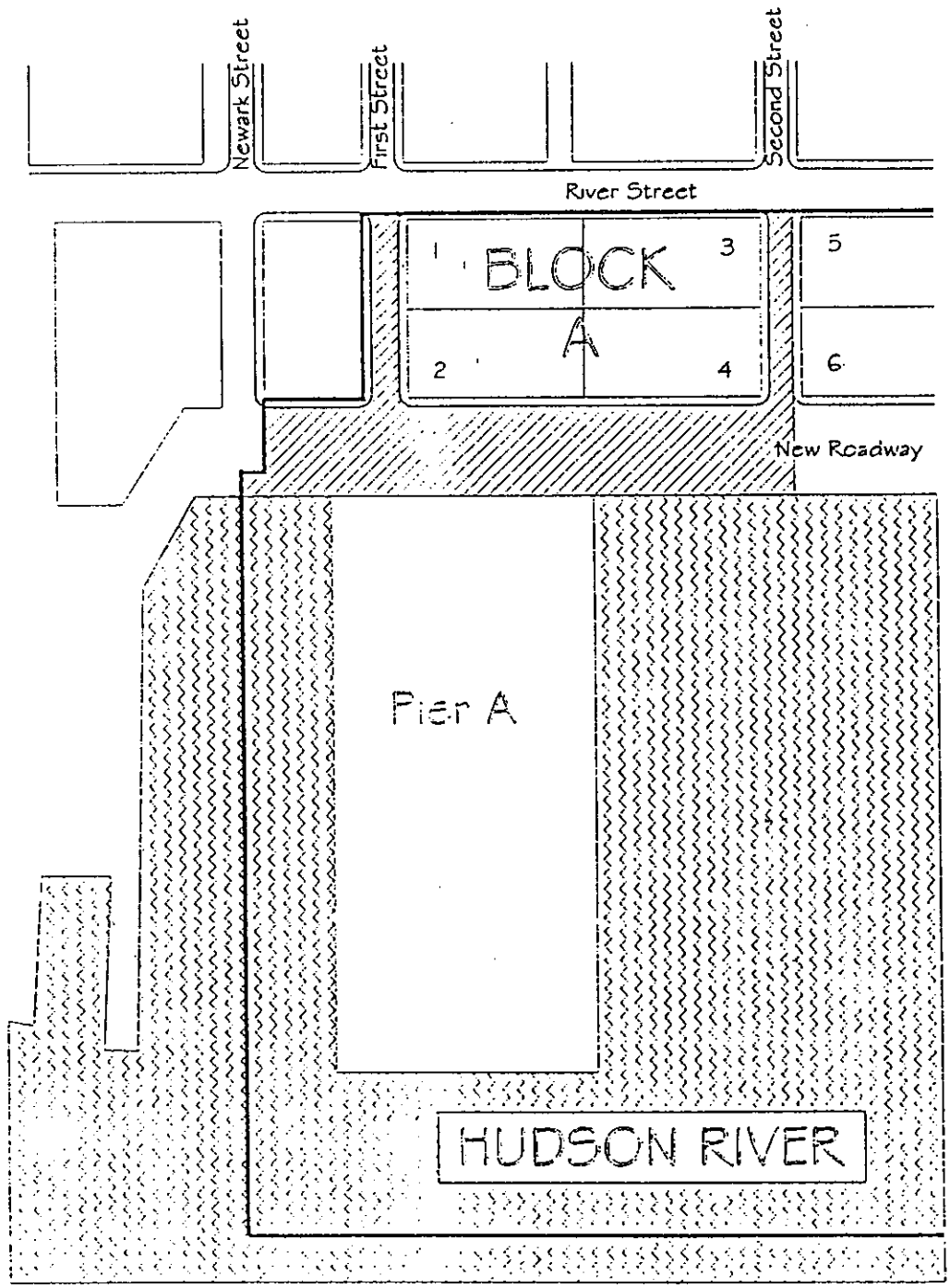
U.S.D.A. Property Area

North

EXHIBIT A-1

Hoboken South Waterfront

BLOCK A UPLAND INFRASTRUCTURE IMPROVEMENTS



Legend

Right of Entry Area Boundary

Infrastructure Improvement Area

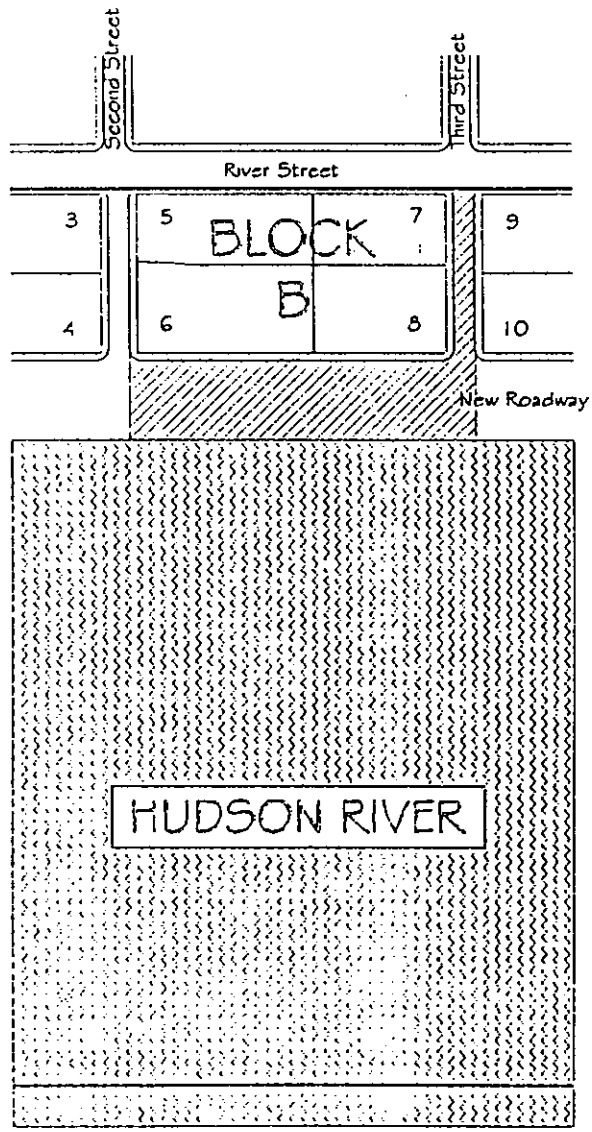
North

All boundaries are approximate.

EXHIBIT B-1

Hoboken South Waterfront

BLOCK B UPLAND INFRASTRUCTURE IMPROVEMENTS



Legend

Right of Entry Area Boundary

Infrastructure Improvement Area

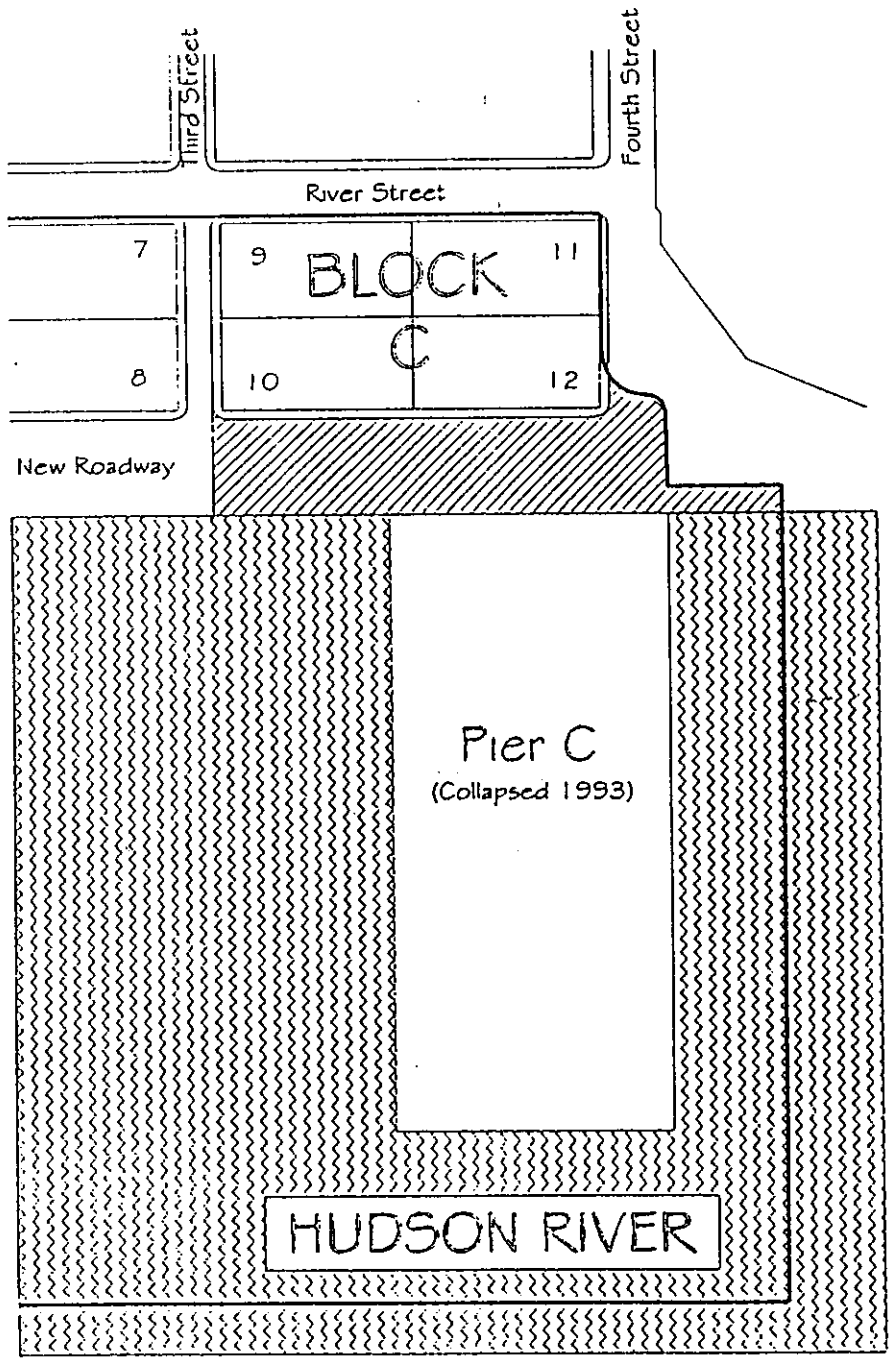
All boundaries are approximate.

North

EXHIBIT C-1

Hoboken South Waterfront

BLOCK C UPLAND INFRASTRUCTURE IMPROVEMENTS



Legend

Right of Entry Area Boundary

Infrastructure Improvement Area

North

All boundaries are approximate.

SCHEDULE 4

Hoboken South Waterfront

OUTSIDE DATES FOR COMPLETION OF INFRASTRUCTURE DEVELOPMENT

Demolition of Headhouse	24 months after issuance of necessary approvals and permits following execution of Agreement
Block A Upland Infrastructure	30 months after Phase 2 Milestone
Pier A Open Space	30 months after Phase 2 Milestone
Demolition of USDA (if required)	30 months after Phase 2 Milestone
Block B Upland Infrastructure	30 months after Phase 3 Milestone
Block C Upland Infrastructure	30 months after Phase 4 Milestone
Pier C Open Space	30 months after Phase 5 Milestone

EXHIBIT I

INTERSTATE RELOCATION POLICY

In accord with established Port Authority policy, commercial or industrial space developed by the Port Authority or any part directly financed by the Port Authority under its waterfront development or industrial development legislation will not be used to encourage or assist in relocation of existing business operations from one State to the other, except when such action is required to retain jobs for the Region.

DISCUSSION

Examples of how the above policy will be applied are described below in order to provide prospective developers with a clear understanding of limitations, if any, that may be imposed on tenanting the commercial or industrial space they may own or control as participants in the waterfront or industrial development projects.

Example #1

A developer finances, owns and operates a building in the project. He constructs it from the piles to the roof. The Port Authority's role is restricted to site preparation and the provision of public space, an appropriate share of the cost which will be recovered over time from the developer. In this case, the developer would be free to market his project as he chooses.

Example #2

In order to fill a gap in his financial arrangements for doing a building in the project, a developer arranges financial assistance from the Port Authority. In this case, the developer would be restricted in securing tenants for his space from one State to the other, unless it can be conclusively demonstrated that such action is required to retain jobs for the Region.

Example #3

No private sector developer is willing to undertake the development of a particular parcel of the project. The Port Authority undertakes the financing and constructing of such a building. No interstate relocation would be permitted unless it was agreed that such tenancy was necessary for retaining jobs in the Region.

WHEREAS, the City of Hoboken has entered into negotiations with the Port Authority of New York and New Jersey which has resulted in an Agreement, which is attached hereto and made a part of this resolution, entitled "Municipal Development Agreement;" and -

WHEREAS, the City Council has determined and finds that it is in the best interest of the City to enter into this Agreement for a waterfront development project located within the City of Hoboken which is described in the attached Agreement; now, therefore, be it -

RESOLVED by the City Council of the City of Hoboken, assembled this First Day of July 1995, that:

1. The approval of the City of Hoboken is herewith given to the waterfront development project located within the City of Hoboken under the terms and conditions being contained in the Municipal Development Agreement which is attached to and made a part of this resolution; and

2. The Mayor, Anthony Russo, and the City Clerk, James J. Farina, of the City of Hoboken are directed to execute and attest, respectively, the Municipal Development Agreement, which provides for the undertaking of a waterfront development project located within the City of Hoboken under the terms and conditions being contained in such Municipal Development Agreement; and

3. The Mayor, City Clerk and all other officers and employees of the City of Hoboken are directed and authorized to execute contemporaneously with the execution of the Municipal Development Agreement, and from time to time thereafter, all such grants, deeds, easements, leases, bills of sale, agreements and other documents and instruments necessary or appropriate for the performance of the City of Hoboken's obligations under the Municipal Development Agreement and to perform all such acts as are required of the City of Hoboken or as are necessary or appropriate to perform all obligations of the City of Hoboken under the Municipal Development Agreement or to effectuate the waterfront development project.

Date of Meeting: July 1, 1995

A TRUE COPY OF A RESOLUTION ADOPTED BY THE COUNCIL OF THE CITY OF HOBOKEN, N.J. AT A MEETING HELD ON:

JUL 1 1995

JAMES J. FARINA CITY CLERK

RESOLUTION REAFFIRMING THE ACTION TAKEN BY THE CITY COUNCIL ON JULY 1, 1995 AUTHORIZING THE CITY OF HOBOKEN TO ENTER INTO THE ATTACHED AGREEMENT WITH THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, ENTITLED "MUNICIPAL DEVELOPMENT AGREEMENT"

WHEREAS, the following resolution was properly advertised and voted upon on July 1, 1995; nevertheless, a member of the public speaking at that meeting claimed that he failed to be informed of the time of the meeting although he was present and allowed to speak at the meeting; and

WHEREAS, it is in the best interest of the City to reaffirm and ratify the July 1, 1995 resolution authorizing the attached agreement, thereby avoiding potential and costly yet frivolous litigation; and

WHEREAS, the City of Hoboken has entered into negotiations with the Port Authority of New York and New Jersey which has resulted in an Agreement, which is attached hereto and made a part of this resolution, entitled "Municipal Development Agreement;" and -

WHEREAS, the City Council has determined and finds that it is in the best interest of the City to enter into this Agreement for a waterfront development project located within the City of Hoboken which is described in the attached Agreement; now, therefore, be it -

RESOLVED by the City Council of the City of Hoboken, assembled this Twelfth Day of July 1995, that:

1. The Council hereby reaffirms the approval given on July 1, 1995 to the waterfront development project located within the City of Hoboken under the terms and conditions being contained in the Municipal Development Agreement which is attached to and made a part of this resolution; and

2. The Mayor, Anthony Russo, and the City Clerk, James J. Farina, of the City of Hoboken are directed to execute and attest, respectively, the Municipal Development Agreement, which provides for the undertaking of a waterfront development project located within the City of Hoboken under the terms and conditions being contained in such Municipal Development Agreement; and

3. The Mayor, City Clerk and all other officers and employees of the City of Hoboken are directed and authorized to execute contemporaneously with the execution of the Municipal Development Agreement, and from time to time thereafter, all such grants, deeds, easements, leases, bills of sale, agreements and other documents and instruments necessary or appropriate for the performance of the City of Hoboken's obligations under the Municipal Development Agreement and to perform all such acts as are required of the City of Hoboken or as are necessary or appropriate to perform all obligations of the City of Hoboken under the Municipal Development Agreement or to effectuate the waterfront development project.

Approved as to form:

CORPORATION COUNSEL

Date of Meeting: July 12, 1995

A TRUE COPY OF A RESOLUTION ADOPTED BY THE COUNCIL OF THE CITY OF HOBOKEN, N.J. AT A MEETING HELD ON:

JUL 12 1995

CITY CLERK

JAMES J. FARINA

DEED	Dated: August 16, 1995

The City of Hoboken

Grantor

TO

The Port Authority of New York
and New Jersey

Grantee

RECORD AND RETURN TO:
Port Authority of New York & New Jersey
One World Trade Center
Suite 66 East
New York, New York 10048

RTF-1 (Rev. 1/1/86)

STATE OF NEW JERSEY
AFFIDAVIT OF CONSIDERATION OR EXEMPTION
(c. 49, P.L. 1968)
or
PARTIAL EXEMPTION
(c. 176, P. L. 1975)

ALL-STATE LEGAL SUPPLY CO.
One Commerce Drive, Cranford, N. J. 07016

VST-2

To Be Recorded With Deed Pursuant to c. 49, P.L. 1968, as amended by c. 225, P.L. 1985 (N.J.S.A. 46:15-5 et seq.)

STATE OF NEW JERSEY
COUNTY OF HUDSON } ss.

FOR RECORDER'S USE ONLY
Consideration $ _____
Realty Transfer Fee $ _____ *
Date _____ By _____

*Use symbol "C" to indicate that fee is exclusively for county use.

(1) PARTY OR LEGAL REPRESENTATIVE (See Instructions #3, 4 and 5 on reverse side)

Deponent, ANTHONY RUSSO (Name), being duly sworn according to law upon his/her oath deposes and says that he/she is the Mayor of the City of Hoboken, Grantor (State whether Grantor, Grantee, Legal Representative, Corporate Officer, Officer of Title Co. Lending Institution, etc.) in a deed dated August 16, 1995 transferring real property identified as Block No. 231 Lot No. 3 located at Southern Waterfront, Hoboken, Hudson County (Street Address, Municipality, County) _____ and annexed hereto.

(2) CONSIDERATION (See Instruction #6)

Deponent states that, with respect to deed hereto annexed, the actual amount of money and the monetary value of any other thing of value constituting the entire compensation paid or to be paid for the transfer of title to the lands, tenements or other realty, including the remaining amount of any prior mortgage to which the transfer is subject or which is to be assumed and agreed to be paid by the grantee and any other lien or encumbrance thereon not paid, satisfied or removed in connection with the transfer of title is $ 17,000,000.00

(3) FULL EXEMPTION FROM FEE Deponent claims that this deed transaction is fully exempt from the Realty Transfer Fee imposed by c.49, P.L. 1968, for the following reason(s): Explain in detail. (See Instruction #7.) Mere reference to exemption symbol is not sufficient.

Conveyance between the City of Hoboken, a body politic of the State of NJ and the Port Authority of New York and New Jersey, a bi-state agency

(4) PARTIAL EXEMPTION FROM FEE *NOTE: All boxes below apply to grantor(s) only. ALL BOXES IN APPROPRIATE CATEGORY MUST BE CHECKED. Failure to do so will void claim for partial exemption. (See Instructions #8 and #9)*

Deponent claims that this deed transaction is exempt from the increased portion of the Realty Transfer Fee imposed by c.176, P.L. 1975 for the following reason(s):

a) **SENIOR CITIZEN** (See Instruction #8)
- ☐ Grantor(s) 62 yrs. of age or over.*
- ☐ One or two-family residential premises
- ☐ Owned and occupied by grantor(s) at time of sale.
- ☐ No joint owners other than spouse or other qualified exempt owners.

b) **BLIND** (See Instruction #8)
- ☐ Grantor(s) legally blind.*
- ☐ One or two-family residential premises.
- ☐ Owned and occupied by grantor(s) at time of sale.
- ☐ No joint owners other than spouse or other qualified exempt owners.

DISABLED (See Instruction #8)
- ☐ Grantor(s) permanently and totally disabled.*
- ☐ One or two-family residential premises.
- ☐ Receiving disability payments.
- ☐ Owned and occupied by grantor(s) at time of sale.
- ☐ Not gainfully employed.
- ☐ No joint owners other than spouse or other qualified exempt owners.

*IN THE CASE OF HUSBAND AND WIFE, ONLY ONE GRANTOR NEED QUALIFY.

c) **LOW AND MODERATE INCOME HOUSING** (See Instruction #8)
- ☐ Affordable According to H.U.D. Standards.
- ☐ Meets Income Requirements of Region.
- ☐ Reserved for Occupancy.
- ☐ Subject to Resale Controls.

d) **NEW CONSTRUCTION** (See Instruction #9)
- ☐ Entirely new improvement.
- ☐ Not previously used for any purpose.
- ☐ Not previously occupied.

Deponent makes this Affidavit to induce the County Clerk or Register of Deeds to record the deed and accept the fee submitted herewith in accordance with the provisions of c. 49, P.L. 1968.

Subscribed and Sworn to before me this 16th day of August, 19 95

John M. Carbone
An Attorney at Law
of New Jersey

Anthony Russo
Name of Deponent (sign above line)

City of Hoboken
94 Washington Street
Hoboken, NJ 07030
Address of Deponent

City of Hoboken
Name of Grantor (type above line)

Address of Grantor at Time of Sale

FOR OFFICIAL USE ONLY This space for use of County Clerk or Register of Deeds.
Instrument Number _____ County _____
Deed Number _____ Book _____ Page _____
Deed Dated _____ Date Recorded _____

IMPORTANT - BEFORE COMPLETING THIS AFFIDAVIT, PLEASE READ THE INSTRUCTIONS ON THE REVERSE SIDE HEREOF.
This form is prescribed by the Director, Division of Taxation in the Department of the Treasury, as required by law, and may not be altered or amended without the approval of the Director.
ORIGINAL — White copy to be retained by County.
DUPLICATE — Yellow copy to be forwarded by County to Division of Taxation on partial exemption from fee (N.J.A.C. 18:16—8.12).
TRIPLICATE — Pink copy is your file copy.

WHITE AND YELLOW COPIES MUST BE SUBMITTED WITH DEED TO COUNTY RECORDING OFFICER

LEASE AGREEMENT

This LEASE AGREEMENT, made as of this 16th day of August, 1995, between the CITY OF HOBOKEN, a municipal corporation of the State of New Jersey acting by and through the Mayor and the City Council (hereinafter referred to as the "Lessee"), and THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America (hereinafter referred to as the "Lessor");

WITNESSETH THAT:

WHEREAS, at its meeting held on March 15, 1995, the Hoboken City Council (the "Council") amended the "Waterfront at Hoboken Redevelopment Plan of 1989", a copy of such Plan as amended (the "Plan") being attached hereto as Schedule 1; and

WHEREAS, at said meeting held on March 15, 1995, the Council also adopted certain amendments to the City Zoning Ordinance in furtherance of the Plan, a copy of such amendments (the "Amendments") being attached hereto as Schedule 2; and

WHEREAS, the City is embarking upon plans for the redevelopment of certain land located on the City's southern waterfront on the Hudson River (hereinafter sometimes referred to as the "South Waterfront Development" or the "Development"); and

WHEREAS, the Port Authority and the City on April 10, 1995 established certain general principles of agreement ("Principles of Agreement") in which the City and the Port Authority stated their intent to enter into a Municipal Development Agreement in accordance with the Major Terms and Conditions set forth in the Principles of Agreement; and

WHEREAS, as anticipated in the Principles of Agreement, the leased premises as hereinafter defined have been sold to the Port Authority by the City contemporaneously with the execution of a Municipal Development Agreement by the City and the Port Authority; and

WHEREAS, the letting of the leased premises provided for in this Agreement was also anticipated under the Principles of Agreement; and

WHEREAS, the parties are entering into this Lease Agreement in direct reliance on the power and authority granted to them under bi-state legislation ("Waterfront Development Legislation") adopted by the States of New Jersey and New York (Chapter 9 Laws of New Jersey, 1983 and Chapter 107 Laws of New Jersey, 1984 and Chapters 676 and 677 of the Laws of New York,

1984, amending and supplementing respectively Chapter 44 of the Laws of New Jersey of 1947 and Chapter 631 of the Laws of New York and 1947);

NOW, THEREFORE, for and in consideration of the foregoing and of the covenants and mutual agreements hereinafter contained, the Port Authority and the City hereby covenant and mutually agree as follows:

FIRST: Leased Premises

Lessor does hereby lease to the Lessee the real property including any buildings and improvements thereon, located in the City of Hoboken, County of Hudson, State of New Jersey, and described in the metes and bounds description attached hereto as Exhibit "A" forming a part hereof (hereinafter referred to as the "leased premises" or the "premises"), in its as is condition as of the date of this Lease Agreement, to have and to hold the leased premises, together with the tenements, hereditaments, appurtenances and easements thereunto belonging, at the rental and upon the terms and conditions herein stated. The Lessor hereby reserves all rights in and to the air space above the leased premises and nothing contained in this Lease Agreement shall be deemed to grant to the Lessee any rights whatsoever in and to such air space.

SECOND: Term

The term of the letting under this Lease Agreement shall commence on the execution of this Lease Agreement. The letting of all or any portion of the leased premises shall automatically expire on the date that the Lessor notifies the Lessee that it has entered into any agreement with respect to all or a portion of the leased premises pursuant to its right of independent action exercised pursuant to Section 12 of the Municipal Development Agreement entered between the parties, a duplicate original of which is attached hereto as Exhibit "B" (hereinafter referred to as the "Municipal Development Agreement"). The term of the letting of any portion of the leased premises with respect to which a Developer Sublease as defined in the Municipal Development Agreement has been executed by the Lessee, the Lessor and a Developer shall be governed by the terms of such Sublease. The Lessor may, with respect to any portion of the leased premises with respect to which the Port Authority has not provided notification to the City pursuant to Section 12 of the Municipal Development Agreement and, further, with respect to which there has been no Developer Sublease executed by February 28, 2002, terminate the letting of such portion of the premises without cause at any time after February 28, 2002 and the Lessee may terminate the letting of any such portion of the leased premises without cause at any time after December 31, 2025, any such termination to be given at least three months prior to the effective date of termination stated in such notice.

THIRD: Rent

Lessee does hereby agree to pay to Lessor, as the rent for the leased premises, the sum of One Dollar ($1.00) per calendar year.

FOURTH: Utilities

Lessee shall promptly pay when due all gas, electricity, and water rates or charges, and any and all other utility services consumed on the leased premises.

FIFTH: Indemnity

Lessee shall indemnify and save Lessor harmless from any and all liability, damages (including Environmental Damages as hereinafter defined), expenses, causes of action, suits, claims, or judgments arising out of or relating in any way to injury to person or property on the leased premises, or upon the adjoining streets and sidewalks. As used herein:

Environmental Damages shall mean all claims, judgments, damages (including punitive damages) losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, any of which are incurred at any time as a result of (i) an Environmental Condition (hereinafter defined) (ii) the existence of Contaminants (hereinafter defined) on, about or beneath the leased premises or migrating from the leased premises, (iii) the Release (hereinafter defined) or Threatened Release (hereinafter defined) of Contaminants into the Environment (hereinafter defined) or (iv) the violation or threatened violation of any Environmental Law (hereinafter defined) pertaining to the leased premises, and, subject to the proviso contained in the definition of Environmental Condition, regardless of whether the existence of such Environmental Condition, Contaminants or the violation or threatened violation of an Environmental Law arose prior to, on or after the commencement date of the letting of the leased premises, and including:

(i) damages for personal injury, disease or death or injury to property or natural resources occurring on or off the leased premises including lost profits, consequential damages, the cost of demolition and rebuilding of any improvements;

(ii) diminution in the value of the leased premises, and damages for the loss of or restriction on the use of the leased premises;

(iii) fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with investigation, cleanup or remediation, including the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration or monitoring work; and

(iv) liability to any person or entity to indemnify such person or entity for any of the above items referenced.

Environmental Condition shall mean any condition with respect to the Environment on the leased premises, whether or not yet discovered, which could or does result in any Environmental Damage, provided, however, that Environmental Condition shall not include any such condition which can conclusively be shown to have actually commenced during Lessor's letting of the leased premises pursuant to the agreement of lease between the Lessee and Lessor (in which Lessor was the Lessee and Lessee was the Lessor) dated September 24, 1952 unless such condition is worsened by any negligent action or negligent omission of Lessee.

Environment shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strats and ambient air.

Environmental Laws shall mean (i) all present and future laws (federal, state or local), and (ii) all governmental, judicial or administrative rules, orders, ordinances, regulations, requirements, permits, consents, certificates, approvals, codes and executive orders ((i) and (ii) above being hereinafter collectively called the "Requirements") relating to the protection of human health or the Environment, including, without limitation:

(a) all Requirements relating to reporting, licensing, permitting, investigation or remediation of emissions, discharges, Releases, Threatened Releases or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Contaminants, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §9061, et seq.; the Hazardous Materials Transportation Act, as amended 49 U.S.C. §1801, et seq.; the Resource Conservation and Recovery Act, as amended 42 U.S.C. §6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251, et seq.; analogous state environmental statutes and local ordinances; and any regulations promulgated under any of the foregoing; and

(b) all Requirements pertaining to the protection of the health and safety of employees or the public.

Release shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Contaminant into the Environment.

Threat of Release shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

Contaminants shall mean (a) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant; (b) radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or the equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of federal, state or local safety guidelines, whichever are more stringent; (c) any substance, gas, material or chemical which is defined as or included in the definition of "hazardous substances," "toxic substances," "hazardous materials," "hazardous wastes" or words of similar import under any Environmental Law or Requirements; and (d) any other chemical, material, gas, vapor, energy, radiation or substance, the exposure to or release of which is prohibited, limited or regulated by any governmental authority having jurisdiction over the leased premises or the operations or activity at the Premises, or any chemical, material, gas, vapor, energy, radiation or substance that does pose a hazard to the health or safety of the occupants of the leased premises or the occupants of property adjacent to the leased premises.

SIXTH: <u>No Lessor Responsibilities</u>

Subject to the provisions of the Municipal Development Agreement, Lessee shall have sole responsibility for the leased premises during the lease term. Without limiting the generality of the foregoing, Lessor shall be under no obligation to build, rebuild, replace, maintain or make any repairs to the leased premises, or to any improvements thereon during the lease term or any renewal thereof.

SEVENTH: <u>Use of Leased Premises</u>

Lessee shall use the leased premises solely for interim uses approved by the Lessor pursuant to the Municipal Development Agreement. Use of the leased premises or any portion thereof for which there is a Developer Sublease shall be determined by the provisions of such Sublease.

EIGHTH: <u>Default</u>

In case Lessee shall default in the performance of any covenant or agreement herein contained or contained in the Municipal Development Agreement or in the event that any Developer shall default in the payment of any rent or other monies due under a Developer Sublease or default in the

performance of any other covenant or agreement contained in such Sublease, and such default by Lessee or Developer shall continue for thirty (30) days after receipt by Lessee of written notice thereof given by Lessor, or Lessor's agent or attorney, then Lessor, at the option of Lessor, may declare the term of the letting of the leased premises under this Agreement ended, and may re-enter upon the leased premises either with or without process of law, and remove all persons therefrom, provided, however, that in the case of a default of a Developer under a Developer Sublease, Lessor may only declare the term of the letting ended with respect to the portion of the leased premises sublet under such Developer Sublease. Lessee expressly agrees that the exercise by Lessor of the right of re-entry shall not be a bar to or prejudice in any way any other legal remedies available to Lessor.

NINTH: Insurance

Lessee during the term of this Lease in its own name as insured and including the Port Authority as an additional insured shall maintain and pay the premiums on a policy or policies of comprehensive general liability insurance covering bodily injury, including death, and property damage liability in limits of not less than $4,000,000 Combined Single Limit per occurrence, including but not limited to Premises Operations and (if currently maintained) Products Liability/Completed Operations. A certified copy of such policy or policies or a certificate or certificates evidencing the existence thereof shall be delivered by the Lessee to the Port Authority upon request at any time and from time to time during the term of the letting of the leased premises. Each such policy or certificate shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining express advance permission from the General Counsel of the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal over the person of the Port Authority, the immunity of the Port Authority, its Commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority.

TENTH: Lessor's right of entry

Lessor hereby reserves the right to enter upon the leased premises as provided for in the Municipal Development Agreement.

ELEVENTH: Lessor's remedies

No remedy herein conferred upon or reserved to Lessor is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

TWELFTH: Notices

All notices, demands, requests, designations, consents, approvals or other communication required to be given to or by either party shall be in writing and all such notices shall be deemed sufficiently given or delivered if dispatched by one of the overnight mail services, personally delivered to the duly designated officer of such party during regular business hours or forwarded to such officer by registered or certified mail. Until further notice, the duly designated officers upon whom notices and requests shall be served and their respective addresses are as follows:

For the Lessee:
City Clerk
City Hall
Hoboken, New Jersey 07030

For the Lessor

Executive Director
The Port Authority of New York and
New Jersey
One World Trade Center - 67th Floor
New York, New York 10048

If mailed, the giving of notice shall be deemed complete upon receipt.

THIRTEENTH: General

The failure of either party hereto to enforce any agreement, condition, covenant, or term, by reason of its breach shall not be deemed to void or affect any right to enforce the same or any other provision, condition, covenant or term on the occasion of a subsequent default or breach.

FOURTEENTH: Headings

The headings and titles in this Lease Agreement are inserted only as a matter of convenience and for reference and they in no way define or limit or describe the scope or intent of any provision hereof and shall be disregarded in construing or interpreting any of the provisions hereof.

FIFTEENTH: Successors and Assigns

Neither party shall have the right to assign this Lease Agreement or the letting hereunder without the consent in writing of the other party. Subletting of the leased premises shall be allowed subject to and in accordance with the provisions of the Municipal Development Agreement.

SIXTEENTH: No Third Party Benefits

Nothing herein contained shall be understood or construed to create or grant any third party benefits or rights or property interests unless the person or entity claiming such rights is identified herein and the rights claimed are expressly set forth herein.

SEVENTEENTH: Governing Law

This Agreement shall be construed under and in accordance with the laws of the State of New Jersey.

EIGHTEENTH: Waterfront Development Legislation

It is acknowledged by the parties that their execution of the within Lease agreement is based upon the powers granted to them by the Waterfront Development Legislation. Pursuant to the provisions of said legislation, and as provided for under this Lease agreement and the Municipal Development Agreement, the Lessor shall have all the powers set forth in said legislation and nothing in this agreement or in the Municipal Development Agreement shall be construed as a submission by the Port Authority to the application to itself of any governmental law, rule, order, ordinance, enactment, resolution, regulation, statute, requirement, code, direction, or executive order.

It is also acknowledged by the parties that the City is authorized to consent to the use by the Port Authority of any real property owned by such municipality and necessary, convenient or desirable, in the opinion of the Port Authority, for marine terminal purposes, and, as an incident to such consent, to lease or otherwise transfer to the Port Authority any such marine terminal on terms as may be determined by the Port Authority and such municipality upon the adoption of an appropriate resolution by the governing body of such municipality.

NINETEENTH: Severability

A final judgment of any court having jurisdiction determining that any section, clause or provision of this Lease agreement to be invalid shall not affect the validity of the remaining sections, clauses or provisions of this agreement unless the absence of the affected section, clause or provision would deprive either or both parties of a material portion of the consideration bargained for as reflected in this Lease Agreement.

TWENTIETH: Counterparts

This agreement is executed in four (4) counterparts. All such counterparts shall be deemed to be originals and each shall constitute but one and the same instrument.

TWENTY-FIRST: No Personal Liability

(a) Neither the Commissioners of the Lessor nor any of them, nor any officer, agent or employee thereof, shall be charged personally with any liability, or held personally liable under any term or provision of this agreement, or because of its execution or attempted execution, or because of any breach or attempted or alleged breach thereof.

(b) Neither the members of the Council of the City of Hoboken, the Mayor of the City of Hoboken nor any of them, nor any officer, agent or employee thereof, shall be charged personally with any liability, or held personally liable under any term or provision of this agreement, or because of its execution or attempted execution, or because of any breach thereof.

TWENTY-SECOND: Entire Agreement

This Agreement consists of the following: pages 1 through 10 inclusive, plus Exhibits A and B and Schedules 1 and 2. This agreement and the aforesaid Exhibits constitute the entire agreement of the parties on the subject matter hereof and may not be changed, modified, discharged or extended except by written instrument duly executed by the Lessee and the Lessor. In the event of conflict or inconsistency between the provisions of this Lease agreement and the Municipal Development Agreement, the Municipal Development Agreement shall govern.

TWENTY-THIRD: Recording

The parties hereto agree to execute a Memorandum of Lease in form sufficient for recordation in the office of the Hudson County Register's Office in lieu of recording this Lease agreement.

IN WITNESS WHEREOF, the parties hereto have executed these presents as of the day and year first above written.

ATTEST:

JAMES J. FARINA
(Seal)

THE CITY OF HOBOKEN

By: Anthony Russo
ANTHONY RUSSO Mayor
(Seal)

ATTEST:

CRUZ C. RUSSELL
(Seal)

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: A. PAUL BLANCO
(Seal)

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

On this 16th day of August, 1995, before me the subscriber, personally appeared A. Paul Blanco, the Director, Regional Development Department of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, who I am satisfied is the person who has signed the within instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal, and delivered the same as such officer aforesaid, and that the within instrument is the voluntary act and deed of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY made by virtue of the authority of its Board of Commissioners.

LILA SPECINER
Notary Public, State of New York
No. 52-4823668
Qualified in Suffolk County
Commission Expires Oct. 31, 1996

Lila Speciner
(notarial seal and stamp)

STATE OF NEW JERSEY)
:
COUNTY OF HUDSON)

On this 16th day of August, 1995, before me the subscriber, personally appeared Anthony Russo, the Mayor of THE CITY OF HOBOKEN, who I am satisfied is the person who has signed the within instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal, and delivered the same as such officer aforesaid, and that the within instrument is the voluntary act and deed of THE CITY OF HOBOKEN made by virtue of the authority of its Council.

(notarial seal and stamp)
ROBERT K. DRASHOFF, NOTARY
MY COMMISSION EXPIRES FEB 26, 1997

SCHEDULE 1

Hoboken, New Jersey
The South Waterfront

Redevelopment Plan: Amended

Adopted by the City Council as "The Waterfront at Hoboken",
on November 17, 1989

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30 January 1995

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Chapter One: Overview

The Redevelopment Area is generally bounded on the south by the New Jersey Transit train terminal and tracks as well as the old ferry terminal, on the east by the Hudson River west of the pierhead line, on the north by the Stevens Institute of Technology property at Sixth Street if extended to the Hudson River and on the west by the center lines of Fifth Street extended to the center line of River Street, Newark Street east of River Street, the easterly ends of the Hoboken Land and Improvement Co. building and Baker Waterfront Plaza building, and the easterly end of Lot 1, Block 229, owned by New Jersey Transit. The area is comprised of approximately 72.26 acres of which approximately 30.69 acres is land and pier area and approximately 41.57 acres is under water. The area also consists of Block 139, Lot 3; Block 231, Lots 1, 2, 3 and 4; Block 233, Lot 1; and Block 258; Lot 2 on the tax assessment map of the City of Hoboken. See Exhibit 1, Redevelopment Area Boundary Map.

The Redevelopment Project will include ~~nine~~ twelve development parcels on three blocks ~~and two piers~~ along the Hudson River waterfront. ~~With the exception of one of the piers, the blocks and the other pier are subdivided into two building parcels each~~. These blocks are subdivided into four building parcels each, with a service alley running north-south within them. In addition, the waterfront area between the piers is proposed to be developed for marina facilities. The Redevelopment Project will also include certain open space improvements on properties adjacent to the development parcels. See Exhibit 2, Parcels.

This Redevelopment Plan sets forth an approach for flexible development controls, including land use, density, street layouts and orientation, pedestrian and vehicular circulation, waterfront amenities, and special design opportunities. The plan also addresses necessary support facilities including ~~public transporation~~, public utilities, recreational and community facilities and other public improvements. Demolition of existing structures, if appropriate, may be undertaken to effectuate the Redevelopment Plan. The overall objective of the Plan is to establish a balance between unified planning and individual creativity.

The Redevelopment Plan for the development of ~~"The Waterfront at Hoboken"~~ "The South Waterfront" is based on several planning and design principles. These more clearly link the city of Hoboken to the water's edge by extending its east-west streets to the waterfront, ~~Hoboken's traditional urban grid street system has not, up to now, extended to the waterfront. It is the goal of these documents to make the waterfront accessible by providing esplanades along the perimeter of the piers, and along the edge of the river. Heretofore, all of Hoboken's interesting streets have been oriented north-south, but the east-west streets have tied the city together. The proposed development for The Waterfront at Hoboken adds a north-south street to the city's circulation system: a riverfront one.~~ by setting design standards that assure compatibility with the existing building fabric of the city, and by creating a new riverfront road and park.

~~The Proposed development is designed to respond to the city's existing configuration with the project's more dense commercial component being placed closer to mass transit and the less dense residential component placed to the north~~. The proposed pattern of development suggests that uses which require proximity to public transportation (e.g. hotel, offices) be located in the southern parcels, while other uses such as residential be located at the north end. Street level retail and restaurant uses are recommended both as an extension of the Washington Street core and as a new riverfront activity.

Chapter Two: Redevelopment Plan Goals

1. ~~Creating~~ Create a world class development that would enhance rather than alter the essential character of the City of Hoboken.

2. Reconnect the waterfront to a vibrant urban center.

3. Restore the beauty of the riverfront to the people of the city.

4. ~~Extend the existing land use clusters: commercial at the south, residential in the center, park land to the north~~. Encourage commercial development at the southern end, near the transit center and other existing office buildings; encourage residential uses near the existing residential developments at the north.

5. ~~Concentrate highest~~ Higher density and bulk is permitted at the southern end of the site, adjacent to the existing ~~high density area and transit~~ mass transit facilities.

6. Design the project so that it complements Hoboken's low scale and rich urban texture.

7. Commercial development should take advantage of Hoboken's unique public transit access and be compatible with the City's other commercial buildings.

8. ~~Coordinating~~ Coordinate retail development so that it strengthens rather than weakens the existing retail cluster on Washington Street.

9. ~~Promoting~~ Promote residential development which is compatible with the scale and texture characteristic of Hoboken.

10. ~~Creating~~ Create a high-quality mixed-use development which will eventually provide a substantial increase in the City's ratable base.

11. ~~Developing~~ Develop extensive infrastructure, including but not limited to roadways, utilities, drainage and sewage, to enable the redevelopment of the Waterfront.

12. ~~Developing~~ Develop recreational and community facilities which will be compatible with the proposed development's waterfront location.

13. ~~Providing~~ Provide economic development benefits to the City of Hoboken, including employment and revenue benefits.

14. Ensure that the project does not turn its back on the existing neighborhood by requiring lobbies, retail, and professional office space along the River St. frontage.

The Plan Concept in General

The proposed development extends the city to the water's edge by creating an urban neighborhood which echoes Hoboken's historic architectural character. This character is comprised of intimate residential streets, low-scale buildings and masonry materials. The proposed development will enhance these textures by juxtaposing them with the Hudson River waterfront and its spectacular views.

The Plan addresses proposed allocation of land use, development densities and other ~~traditional zoning concepts~~.urban design issues. Development on the parcels included within the Redevelopment Area must follow this Redevelopment Plan, and the Zoning contained in Appendix B. In addition, when the City contracts for the effectuation of this Redevelopment Plan, it will reflect the Building ~~Design~~ and Open Space ~~Guidelines~~ Design Standards to ensure the realization of the redevelopment goals. The Building ~~Design~~ and Open Space ~~Guidelines~~ Design Standards contain detailed guidelines and objectives that are distinct from zoning regulations and are attached as Appendix A.

The major physical features of the Redevelopment Plan are as follows; note that details of these features are described in the Design Standards:

- ~~Two~~ Street Types: east-west and north-south streets parallel to the water echoing the scale of the surrounding city.~~, and one major north-south street of urban scale and importance, parallel to the water.~~

- Uses: ~~dense~~ commercial, ~~and less dense~~ residential, and retail.

- ~~Bulk: concentrated in designated locations so that towers cast the least shadow on public open space. The towers should be located so as not to obstruct each other's view of the harbor.~~

- Heights: building heights on the individual parcels are to be limited ~~according to the location of those parcels~~. to those designated in the Design Standards; the primary maximum height limit is that of the top of Castle Point, or 125' above sidewalk level.

- Density: overall, density shall be compatible with the existing pattern in the City in the nearby higher-density areas.

- Permitted Uses: the Plan suggests the location of each basic land use. In addition, ground floor building entrances, retail space, professional offices, and/or restaurants along both River St. and Sinatra Drive are mandated, to ensure activity and security along those avenues.

- ~~Mix of Uses: the Plan proposes the ratio of square footage allocated to each land use.~~

- Emphasis on Open Spaces: The ~~Waterfront Esplanade~~ Hudson River Waterfront ~~Walkway~~, the ~~Great Lawn~~ Linear Park, Ferry Terminal Plaza, Soccer Field and Pier ~~Plaza and Gardens~~ Open Spaces.
- Streetwall buildings, constructed up to the front property line without plazas, create the most urban environment. ~~On the sidestreets of the project, the streetwalls are kept low to continue Hoboken's small scale. These~~ ,and the sidestreets create view corridors to the river.

- Access to parking and service areas for the new development will be provided from ~~River Street, the project's major vehicular artery. Access to parking and servicing for Pier A will be provided along First Street. For Pier C, parking and servicing will be provided on Fourth Street~~ east-west streets.

- Water Use: utilization of the water area for a potential marina and other passenger / excursion vessel uses.

~~Private developers will be required to construct the sidewalks and landscaped areas along each parcel's street frontage. Developer's must maintain the established design pattern for spacing of street trees and lights, and coordinate building entrances and utility hook ups with that pattern. These issues are further discussed in the Open Space Guidelines for the Waterfront at Hoboken.~~

Land Use Plan

The ~~southeastern~~ uses at the southern portion of the site (Blocks A and B) ~~is programmed for~~ should be commercial ~~uses~~, which may include a hotel, retail and office components. These ~~denser~~ commercial components are ~~placed in~~ proposed for this location because of their proximity to the mass transit facilities provided by PATH, New Jersey Transit, local bus lines, and the ferry service to Manhattan. See Exhibit 3, Transportation ~~Node at South Edge.~~

The remainder of the project site (Blocks B and C) ~~is devoted~~ should ~~to~~ include residential ~~use~~ uses of varying ~~density and in conformance with traditional housing patterns existing in the City. All residential development should include accessory parking. See Exhibit 4, Illustrative Land Use Plan.~~ densities, as well as a mix of commercial uses, including street-level retail. See Exhibit 4A, Land Use Locations, for all three development blocks. On-site parking for all uses shall be limited to a range, defined by a required minimum as well as a proscribed maximum number of spaces, These limitations are described below, and in the Design Standards, since this land has been judged to be too valuable to be used extensively for parking. Reductions in the provision of all parking should be considered because of the availability of mass transit; in addition, methods for providing parking off-site should also be evaluated, and must be provided for any project which exceeds 125' in height.

The development design emphasizes public spaces, which define the character of the overall plan and create an urban environment. Given the water-oriented nature of the site, the key to the open space design is the creation of a variety of visual relationships to the water. The plan provides for both passive and active uses of the water. The south side of the project contains Ferry Terminal Plaza and the paved areas surrounding the hotel and office building At the center of the project, flanked by Piers A and C, is ~~the~~ a marina, which will be ~~the focus of water activities~~ for

recreational boating only. ~~To the north, the Great Lawn will offer expansive views of the water and the Manhattan skyline while providing a sloping area for quiet recreation~~. Piers A and C will be maintained as recreational open spaces; details and their uses and design are suggested in Appendix A as Open Space Design Standards. The Waterfront Walkway and its adjoining Linear Park, and the Soccer Field to the north of Pier C, are also described in detail in those Design Standards.

See Exhibit 4A, Land Use Locations, for recommendations concerning all land use types; see Exhibit 4B, Site Dimensions, which indicates the sizes of both private development areas and public improvement areas.

Interim Land Use

Interim uses shall be permitted within the Redevelopment Area, pending the full implementation of the Redevelopment Plan. Interim uses shall include those uses permitted by the Zoning Ordinance. However, preference should be given to those uses which are of a temporary nature, including temporary parking facilities, commercial passenger excursion operations, concessions, and special events.~~, and temporary waste water treatment facilities.~~

Prohibited Maritime Uses

Due to the proposed change in the character of the Redevelopment Area from maritime / industrial use to a mix of commercial and residential uses, those uses associated with cargo maritime use will be prohibited. These include buildings, structures, facilities and improvements necessary to accommodate cargo vessels or railroad freight. However, prohibited uses do not include recreational marina facilities, fishing piers or ~~other water-oriented light commercial,~~ recreational ~~or~~ and passenger uses.

Vehicular Circulation Plan

Hoboken's existing street system has been extended to connect the city's historic core with the waterfront. Vehicular and pedestrian access to the development occurs via Newark, First, Second, Third, and Fourth and River Streets, and via ~~Marina Drive.~~ a new waterfront drive which could be considered an extension of Sinatra Drive. ~~First and Fourth Streets are continued to the water's edge on Piers A and C, respectively~~. See Exhibit 5, Vehicular Circulation.

A key principle is the enhancement of the pedestrian environment while providing vehicular access to all of the blocks, but through traffic on the new 'Sinatra Drive' will be discouraged. ~~due to the dead-end nature of the project streets. On Pier A, there will be vehicular access through the extension of First Street. On Pier C, vehicular access will occur on the north side of the pier with limited access to the marina area. These configurations will permit pedestrians to walk along the river's edge without vehicular traffic~~.

Service and garage entry points will be located in the least prominent places, and concentrated in curb cut zones to ensure adequate safety standards. The number of curb cuts ~~should~~ will be minimized, as ~~should~~ will the number of potential conflicts with building entrances. These curb cuts may only be located on the east-west streets. North-south service alleys shall be required at the centers of these blocks, to avoid the presence of large open truck docks facing the streets; furthermore, all trucks must move in and out of any parcel in forward gear only. The locations and design are shown in more detail in the Design Standards, and are indicated in See Exhibit 6, ~~Illustrative Parking and Service Zones~~ Service and Parking Access.
~~To emphasize the small-scale residential and pedestrian nature of the sidestreets (First, Second, Third and Fourth), and to prevent truck traffic from detracting from the views of the water, no curb cuts will be permitted on these streets.~~

Pedestrian Circulation

Pedestrian circulation is ~~the~~ key to the design of The ~~Waterfront at Hoboken~~ South Waterfront. It is concentrated along the major open spaces, and along the active and accessible waterfront edges. Locating building front doors along the ~~Esplanade~~ new 'Sinatra Drive' further encourages use and activity in the open spaces, while lobbies and retail uses on River St.increase activity and security on that street as well.

At-grade pedestrian crossings across ~~Marina Drive~~ 'Sinatra Drive' are provided at First, Second, Third and Fourth Streets. Pedestrian access to the waterfront will occur along the ~~Esplanade~~ Waterfront Walkway and on ~~the north, south and east sides of~~ Piers A and C. ~~Direct pedestrian access to the Great Lawn via Marina Drive will also be provided.~~ See Exhibit 7, Pedestrian Circulation.

Parking Plan

It is the intention of this Plan to limit the amount of parking in the area, as a part of an overall goal to create a pleasant pedestrian environment and to take advantage of the nearby public transportation systems. The off-street parking spaces will therefore be ~~provided at~~ limited to a maximum ratio of .7 per 1,000 square feet of gross commercial space and 1 space for every residential dwelling unit. The Plan also recognizes the need to accept some parking here, however, to prevent its intrusion on other parts of the City; therefore a minimum of 0.35 parking spaces per 1,000 square feet of gross commercial space, and 0.5 spaces per residential dwelling unit must be provided. The result of these criteria is that some parking is encouraged to be located elsewhere. Each proposal for development in this area must therefore include a description of the total plan for the provision of both the on-site and off-site spaces. ~~All but three hundred of the parking spaces must be provided on the site in garages. The three hundred spaces which may be provided off-site shall be located in municipal or private garages in the vicinity of the Redevelopment Area.~~

The location of the curb cuts for entry into all garages is shown in Exhibit 6. In addition, on-street metered parking will be allowed on the ~~west~~ east side of ~~Marina Drive from the midpoint between First and Second Streets, extending to Fourth Street. Thus, there will be no on-street~~

~~parking opposite Parcel 2. There will be no parking on First Street, as this will be a two-way street. Metered parking will also be provided on one side of Second and Third Streets.~~ 'Sinatra Drive', on one side of First, Second, Third, and Fourth Streets, and on both sides of River Street. Note that this on-street parking may not count toward any project's parking requirements.

~~There will be approximately 80 feet of parallel parking reserved for move-ins and deliveries on the east side of River Street. These allocated areas will be intermittently placed for most of its length between First and Fourth Streets. Opposite the areas where parking is prohibited on the east side of River Street, there will be metered parking spaces on the west side of the street.~~

~~Access to parking for the existing residential building located on the blockfront bounded by River, Second, Hudson and Third Streets will be provided from River Street.~~

As an off-site improvement, parking on the south side of Hudson Place will be eliminated, and parking will be provided on the north side instead.

Open Space, Recreation and Community Facilities Plan

~~The varied public open spaces will comprise approximately 18% of the project footprint. These~~ All open spaces should be designed to complement the waterfront, which is the project's major amenity. The combination of parks and streets should create diversity while forming a single unified system. The buildings should give shape and character to the open spaces, but should also serve as a backdrop, rather than being the focal point.

Unity among the open spaces will be achieved by the use of certain uniform elements, such as lighting, paving materials, street furniture and the continuity of the open space itself.

The three major open spaces are discussed below; their recommended details are described in the Open Space Design Guidelines:

Hudson River Waterfront Walkway and Linear Park

Because of its location at the water's edge, its public nature and its role as a connection between the other project components, the ~~Esplanade~~ Walkway and Park will be the most important and intensively used element of the open space system. It is planned to accommodate as many trees, shrubs and ground plantings as practicable. The trees will provide both a visual amenity and protection from the sun. The Walkway itself will be a wide paved area in keeping with the proposed future Hudson River Waterfront Walkway throughout the City.

The ~~Esplanade~~ Walkway will be closed to all but emergency, police and maintenance vehicles, and must be designed according to the regulations of NJ DEPE, as required in the Hoboken Zoning Ordinance.

~~*Great Lawn*~~

~~The semi-circular Great Lawn will be surrounded by a bosque of trees as it slopes gently down toward the Hudson River. This 1 acre park may offer picnic tables under the trees and will provide a superb panorama of the water and Manhattan skyline. The Redevelopment Plan permits but does not require that a barge may offer theatre, dance, music or other performances, and the Great Lawn may constitute an outdoor amphitheater.~~

Ferry Terminal Plaza

An existing forecourt to the major transportation node at the Ferry Terminal, the role of Ferry Terminal Plaza will be emphasized by its proximity to The Waterfront ~~at Hoboken's office building on Pier A~~. It will serve as the southern starting point of ~~the Esplanade~~ Waterfront Walkway, and has the potential to serve as the primary site of community festivals and fairs.

~~*Pier Places and Gardens*~~ *Open Spaces on Piers A and C*

~~Located at the eastern ends of Piers A and C, these special areas will be landscaped. On Pier A, a modest fence enclosed garden will be integrated with the building on Parcel 1 and with the Esplanade. This would include vegetation indigenous to river peninsulas. The eastern end of Pier C will provide access to the Marina as well as short term parking for enjoying the view. A small plaza located at this end would be landscaped with windblown riverfront planting~~. The program of uses for the Open Spaces to be located on Piers A and C must permit continuous public access to each entire pier. They must also include open areas for casual, unplanned activities, as well as areas for specific recreational events, such as softball, swimming, and basketball. They should accommodate festivals and other city events, and may include a few smaller buildings for both public and commercial uses. The commercial (and other non-public) buildings must be accessible to the public, and must be limited to a maximum total floor area of 20,000 sf, in order to preserve the required openness and public accessibility. The commercial / non-public uses may include, for example, restaurants, retail pavilions, marina facilities, maritime-related museums, etc.. Note that the structures for public open spaces uses (e.g., picnic shelters, swimming pool structures, open air amphitheater facilities, etc..) can be in addition to the area limitation on the non-public buildings.

Soccer Field

A grass soccer field, with stands and other related structures, will be developed on the land north of Pier C. This open space must be coordinated with improvements to Sinatra Drive, and to the Waterfront Walkway and Linear Park which are planned to extend continuously north to the Weehawken border.

Utilities Plan

The project will require that utility systems be installed underground and where appropriate in the public streets. The individual building developer will be responsible for connecting to the main utility lines provided in the streets and sidewalks. The individual building developers will be required to locate utility connections so as to minimize conflicts with preferred tree and street light locations. The private utilities will be maintained by the private utility companies, and the public utilities, once conveyed to the City of Hoboken, will be maintained by the City.

Water System

Hoboken water will be available to all blocks within the project area for both potable and fire-fighting uses. The locations of existing and proposed water mains are illustrated in Exhibit 8, Infrastructure: Water. Hydrants will be placed along all streets and landscaped areas as required.

Sanitary Sewers

Sanitary sewage from all developments within the project will be connected to the sewer lines of Hoboken. The locations of existing sanitary sewer lines are indicated in Exhibit 9, Infrastructure: Sanitary Sewer.

Storm Water Drainage

Storm water from all sites, streets and areas within the project will be collected via a system of catch basins and pipes and released into the Hudson River through outfalls placed in First, Second, Third and Fourth Streets.

Electricity

All blocks within the project will be serviced by underground electrical lines running in the rights of way (R.O.W.). The locations of the proposed lines are illustrated in Exhibit 10, Infrastructure: Electricity. It will be the responsibility of each developer to arrange with Public Service Electric and Gas (PS&G) to bring service to each building.

Electric service will consist of multiple high and low feeders to be installed by PSE&G. The developer will be required to apply to PSE&G and meet its normal requirements. Developers will be required to coordinate the location of the transformer vaults with PSE&G so that they do not disrupt the established locations of the street lights and trees on the streets.

Telephone and Fire Communication

All blocks within the project will be serviced by underground telephone lines lying in the R.O.W. The proposed locations for these lines are illustrated in Exhibit 11, Infrastructure: Telephone and Fire Communication. It will be the responsibility of each developer to

arrange with New Jersey Bell to bring service to each building. Each developer will provide a conduit raceway system to the building from the telephone company manholes located in the R.O.W. Cabling will be provided by New Jersey Bell.

Gas

All blocks within the project will be serviced by a gas main running in the R.O.W. The proposed locations for these lines are illustrated in Exhibit 12, Infrastructure: Gas. It will be the responsibility of each developer to arrange with Public Service Electric and Gas to bring service to each building. The developer will provide the extension and service entrances to the development in accordance with the requirements of PSE&G.

Density / Bulk Controls

Urban complexity should be created through a variety of building heights, forms and styles. Streetwalls should be used extensively, on Marina Drive, First, Second, Third, and Fourth Streets. ~~and on Piers A and C to maintain a familiar and human scale~~. The bulk controls regulate the ~~density~~ height of development and the configuration of the buildings on the parcels. ~~Fifty percent of the gross building area should be commercial (office, hotel and retail) space, and approximately 50% should be residential, but a variation of up to 15% in either category is permitted.~~ These controls are described in more detail in the Building Design Standards.

The maximum height of ~~residential~~ buildings in the project will be no more than ~~200~~ 125 feet, ~~and for commercial buildings no more than 220 feet, except that the office building on Pier A will rise no more than 330 feet. The exact height of the building will be contingent upon the approval of the New Jersey Department of Environmental Protection. The other buildings on the waterfront will be lower scale, ranging from approximately three to ten stories, as will the smaller buildings along Marina Drive~~. which is the height of the trees and lower buildings on Castle Point. This fixed height is compatible with the existing mid-rise residential buildings on Hudson Street, and with the (Baker) office building facing the Terminal Plaza. It also permits substantial new development, which will help realize the goal of adding significantly to the City's tax base.

It is permissible to exceed the 125' height limit however, but only under certain circumstances. Within a (reasonable walking) distance of 1500' from the Terminal Building entrance, buildings may be 175' high, in order to better accommodate the need for uses that require proximity to public transportation. If buildings exceed the 125' height limit, they must meet the additional regulations set forth in the Building Design Standards.

The project ~~will~~ could contain under these controls approximately 1,820,000 ~~a maximum of 2,230,000~~ gross square feet of floor area if the buildings adhere to the 125' height limit. It is estimated that, of the total floor area, ~~1,600,000~~ 407,000 gross square feet ~~will~~ could be devoted to residential development (or about 380 dwelling units) and ~~1,630,000~~ 1,413,000 gross square feet will be devoted to commercial development. Of this total commercial development, 1,050,000 s.f. could be offices, 238,000 s.f. could be a 300 room hotel, and 125,000 s.f.

could be ground floor retail.(including professional offices and restaurants). It is also estimated that approximately ~~11.67~~ 6.60 acres of the project area will be devoted to residential and commercial usage. ~~Residential development will be limited to a maximum of 171 units per acre as applied to total residential and commercial acreage, excluding roadways and open space, and a maximum of 2,000 dwelling units. Commercial development will be limited by floor area ratio of 9.7 as applied to commercial acreage.~~ If, on the other hand, the buildings exceed the 125' height limit, and reach the 175' height, the project could contain 2,315,000 gross square feet of floor area, with 407,000 s.f. as residential and 1,908,000 s.f. as commercial. Of this total commercial development, 1,545,000 s.f. could be offices, 238,000 s.f. could be a 300 room hotel, and 125,000 s.f. could be ground floor retail (including professional offices and restaurants).

Bulk controls and regulations regarding streetwalls and ~~tower~~ building locations define each building's placement and its coordination and compatibility with adjacent developments, streets and parks. These controls are the most important tools for preventing any one building from dominating the ensemble, and are described here:

Streetwalls, Height and Setbacks

A streetwall may be defined as the enclosure to the street, defining the relationship of the facade to the public environment. It creates a pedestrian area of consistent width parallel to the roadway. Streetwalls provide visual continuity, yet they should have some individualized architectural details to provide expression and distinction to each building. ~~On those blockfronts where streetwalls are required, 70% of the frontage should have a mandatory streetwall. Where there are no streetwalls, development is encouraged to follow the property line. Over thirty (30) feet above grade, a maximum of 50% of the frontage may be wall.~~ Therefore, on all streets in this area, building facades must be located within 5' of the property / sidewalk line. Furthermore, retail spaces and building lobbies must be located in certain areas in the base of the buildings; all the details of the streetwall (facade) design, the location and types of ground floor uses are outlined in the Building Design Standards. In addition, parking structures may not be visible at the ground floor of a streetwall, and where they occupy upper floors their facades must be compatible with those at the base and the other upper floors of the building; for instance, openings for the parking floors should have decorative grill work that is similar to window patterns elsewhere on the building.

~~On the residential buildings, where applicable, there must be a setback above the fifth story, which approximates the height of existing residential buildings in Hoboken. This setback is to be a minimum of five (5) feet deep, and should occur at an elevation of +50'-+65', depending on the elevation of the underlying street.~~

~~All of the above elevations are from planned grades and are approximate.~~

~~On the commercial buildings, there should be a setback at either the fifth story level (el. +60'-+65') or at the eleventh story level (el. +190'-195'), or at both. At the alternative level, if a second setback is not used, there should be an expression line.~~

~~All setbacks above the fifth story should be a minimum of ten (10) feet deep. Setbacks also occur above the fifteenth story in the case of the high rise buildings.~~

~~The residential towers in excess of ten stories should be aligned with the narrowest side facing the Hudson River to maintain views.~~

~~With the exception of development along River Street, structured parking will be concealed behind residential development and / or commercial development. Parking garage structures as part of the project will be visually screened from River Street.~~

~~The heights of residential buildings should not be uniform, but should vary for architectural diversity. The heights of buildings on Pier C (Parcel 9) should be limited to eight (8) stories.~~

Chapter Four: Acquisition Plan

Most of the property within the Redevelopment Plan Area is already under the City's control. However, certain property located within the Redevelopment Plan area will be needed for the Project. In addition, if any private property interests, such as reversionary interests, easements, etc. are determined to exist within the Redevelopment Area, they may also need to be acquired to effectuate the Redevelopment Plan implementation. To the extent that the property or property interests cannot be acquired voluntarily, the City will use its powers to eminent domain to acquire those properties or property interests, where necessary, for the implementation of the Redevelopment Plan. This Redevelopment Plan authorizes acquisition of all properties or property interests not already under the City's control, with the exception of the buildings located in Block 231, Lots 1 and 2.

~~Only one parcel located within the Redevelopment Area is privately held and occupied by private tenants~~. All ~~other~~ parcels are owned by quasi-public or public entities. Furthermore, the majority of the Redevelopment Area is comprised of vacant or unoccupied land and structures.

~~It is not anticipated that there will be a need to relocate any of the occupants of the privately held property located within the Redevelopment Area~~. Therefore, it is not anticipated that relocation assistance will be necessary as a result of the implementation of the Redevelopment Plan. However, in the unlikely event that any of the occupants of private property should be relocated, the City of Hoboken will provide all displaced tenants and land owners with the appropriate relocation assistance, pursuant to applicable State and Federal law. Such assistance will be provided through an appropriately designated office, which will be staffed by qualified personnel, who will actively assist in the relocation of any persons, entities, or businesses.

Chapter Six: Conformance with Master Plan

The Redevelopment Plan conforms to the general plan of the City of Hoboken as embodied in its Master Plan, which acknowledges the future redevelopment of the waterfront area. Furthermore, The Zoning Ordinance of the City of Hoboken delineates a waterfront zoning district and provides for a flexible zoning scheme which authorizes a mixed-use, commercial / residential development, as proposed herein. This Redevelopment Plan incorporates the Hoboken Zoning Ordinance, except where specific provisions of the Hoboken Zoning Ordinance are inconsistent with the terms of this Redevelopment Plan.

Schedule A: Building and Open Space Design Standards

1. General Purposes:

   1) The design of new buildings should be consistent with the appearance and character of the existing fabric of the City, where there is pedestrian activity on all the sidewalks, where the buildings are located at or near the sidewalk property lines, where the dominant building types are three and five stories high, and where there is a richness of building details on the street facades.

   2) New building development should be permitted and encouraged that adds significantly to the City's tax revenues.

   3) New streets should be located and designed so that they appear as extensions of the City's street system: orderly, tree-lined, and compact.

   4) New public open spaces should be integrated into the fabric of the City, and should be designed as part of an overall waterfront open space system that serves all of the City's neighborhoods.

2. Standards:

   1) The Hoboken Block

      In keeping with the rest of the City, where the typical "Hoboken Block" consists of a continuous row of buildings that surrounds the entire 200' x 400' block, these guidelines must apply:

      - Buildings must be located within 5' of the street property lines.

      - Retail, offices, residences, and / or building lobbies must be located along the entire lengths of the River Street and Sinatra Drive blocks.

      - Retail, offices, residences, and / or building lobbies must be located along at least two-thirds of the length of the east-west streets. Truck docks and parking entrances are permitted only in the remaining one-third. Because of this requirement, a service alley running north-south may be useful; in addition, building developments along the east-west streets must permit service access via north-south easements to developments located at the center of the blocks.

      - More specifically, retail uses must be provided at the corners (for at least 50' in each direction) of the east-west streets and Sinatra Drive. These areas are especially suitable for restaurants, with outdoor dining on the sidewalk, and

would be consistent with the corner stores and outdoor eating facilities that are so common throughout the rest of the City.

2) Hoboken Character:

Because the design of new buildings in this area should be consistent with the appearance and detail characteristics of the older buildings of the City, these guidelines must apply:

- No building may be less than 40' high (or about four stories) at the sidewalk.

- The openings in all the facades (windows, doors, storefronts, etc.) must be of the "punched" type, and not in continuous vertical or horizontal strips; one result is that no all-glass facades are permitted either. This design characteristic is consistent with the rowhouse facades of the City, and applies no matter how large (e.g. storefronts) or small (e.g. apartment windows) the opening.

- All facades along the sidewalks (except in those areas where service openings are permitted) must be designed to appear as storefronts, whether or not retail uses are located there. The storefront must include large clear-glass, with sills no higher than 30" and with opportunities for entrances at least every 60' (or about two normal older building widths). The basic intention is to have no blank walls along sidewalks, and to make the walk as interesting as possible. Washington Street's stores are the ideal precedent for this intention.

- Openings in the base for service (trucks, parking, etc.) should be designed as "gateways", much as the portals in older buildings which led to stables at the centers of the blocks.

- The base of each building must be designed to have a character that feels as if it is similar to the older rowhouses and apartment buildings of the city - no matter the total height of the new building. This character is dominated by a rhythm of vertical elements, which typically are 25' to 30' apart (e.g. bay windows, columns and piers), a height to a horizontal element (e.g., a cornice) that is 30' to 50' above the sidewalk, and many entrances located at the sidewalk. In addition to these design features, buildings should also rise straight up from the sidewalk with no setbacks greater than 5' in the street facade unless the building exceeds the 125' height; and no setbacks of any kind are permitted below the 40' height. All the older houses, even though not so tall, are designed in this way.

3) Continuity and Variety:

The existing buildings of Hoboken have a remarkable design variety, in spite of the continuous repetition of facade dimensions (heights, widths, doors, windows). This balance of continuity and variety must occur in the new buildings on the Waterfront, also:

- The dominant material of all facades must be of masonry; brick is especially desirable for its visual and durability characteristics, but other masonry types are acceptable if they have similar color characteristics to the bricks.

- The facades of all buildings must appear as essentially vertical, from the sidewalk to the roof; they must not look like large horizontal blocks. If a building has a wide dimension along any street, the facade must be divided into large elements that create this sense of verticality. A precedent for this arrangement is Central Park West, where taller vertical-appearing buildings stand side-by-side as a "wall" on the park.

4) The River Skyline:

The buildings on the Waterfront will be seen from afar, as well as from the adjacent sidewalks. The heights and forms of these buildings, while bigger than the typical rowhouse and older apartments (which are three to five stories), must nevertheless be compatible with the rest of the City:

- Buildings on the Waterfront should not be so tall as to dominate the rest of the skyline of the City. In an effort to establish a memorable and fixed maximum height that is compatible with the City yet also permits sufficient tax paying development, the elevation of Castle Point, plus the height of the lower buildings and trees should be the limit. This height is 125', which is also the approximate height of the Baker Building and the apartment building at Third and Hudson Streets.

- In addition to this height limit of 125', which is the measure to the parapet at the top of a building's facades, decorative roof forms that hide elevator penthouses and roof-top mechanical equipment are permitted to exceed that limit. The result should be a sequence of buildings that appear to be part of a larger design that includes the great Lackawanna Terminal.

- Buildings may exceed this 125' height limit, but only after satisfying all of the following conditions:

  a) Buildings which exceed the recommended 125' height limit must step back at that elevation a minimum of 10', on all sides which adjoin a street.

b) Buildings which exceed the 125' height limit must be designed in a way that they not appear as long, monolithic, slabs, but more as a series of taller and narrower buildings. As a result, in addition to the general guidelines for verticality (see No. 3, above), a major interruption to the walls facing Sinatra Drive must occur at least every 100'. This interruption is best accomplished by a large (say 20' x 20') recess, but other possibilities can be acceptable also.

c) Buildings which exceed the 125' height limit must also be developed initially for one user and/or tenant only (and not as a speculative multi-tenanted building).

d) Buildings which require the entire city block for very large floor plates must include multiple elevator / toilet / stair cores, so that multiple entrances can permit future rental to more than one large tenant.

e) The developer must make an additional cash contribution to the City, sufficient to construct off-site parking spaces at the ratio of 0.7 spaces per 1,000 square feet of the additional floor area above the 125' height limit(the exact cost to be determined by the Hoboken Parking Authority). The specifics of such a contribution must be agreed upon at the time of approval by the City and could be, for example, in one of two forms: one as a direct financial payment to the City (for use in creating public improvements in the area or for the development of the necessary off- site parking facilities), and the other as the actual construction by the developer of (City-designed) open spaces or off-site parking facilities.

f) Buildings taller than 125' are permitted to be located only within 1500' of the Lackawanna Terminal (a reasonable maximum walking distance); this limit falls at the midpoint of Block B, between Second and Third Streets, and applies to Parcels 1 through 6.

- Because buildings must appear as vertical (as described in "Continuity and Variety" above), any two new building forms in one city block must be at least 50' apart (or each building must be setback at least 25' from a common property line), except at the base described above. Not only does this reinforce verticality, but it can offer some views to Manhattan from the city neighborhood to the east.

5) Open Spaces, Streets, and Sidewalks

Within the underlying goals of creating more public space in a city that dramatically lacks such facilities, and of creating a waterfront edge that is continuously accessible to the public, the guidelines described here should apply. Note that they are organized into five categories: Hudson River Waterfront

Walkway, Linear Park, Piers A and C, the Soccer Field, and the Streets and Sidewalks:

Hudson River Waterfront Walkway:

- This portion of the walkway should be planned as part of a continuous walkway throughout the length of the City's waterfront; it must be designed to meet the regulations of NJ DEPE, as required by the Hoboken Zoning Ordinance.

- It must be 35' wide, in keeping with expectations for its design elsewhere (see Exhibit 4B).

- It should be paved in hand-set hexagonal handset tiles and have continuous ornamental metal railing at the (water's) edge.

- Light fixtures, benches, and trash receptacles should be of a style that is appropriate to the character of Hoboken.

Linear Park

- This park is an extension of the Waterfront Walkway, and therefore should be a green, tree-shaded complement to the adjacent open paved walking surface.

- Like the walkway, it should be planned as part of a continuous green park that may vary in width, but which extends from the Plaza at the Lackawanna Terminal to the Weehawken border.

- All on-street parallel parking on Sinatra Drive should be located within the area of this park; these parking spaces should be paved in unit pavers that make them seem as part of the park, more than as extensions of Sinatra Drive.

- In the South Waterfront area, it should be approximately 36' (28' park, plus 8' parking area) wide (see Exhibit 4B), to accommodate a variety of uses, a canopy of trees, and the on-street parking.

- Trees in this park should, on the whole, be large, deciduous shade trees which permit expansive views to the water and skyline under their lowest branches.

- Ground cover should be grass and other low-lying plants, to retain views, assure safety, and minimize maintenance.

- Benches and lights should be included, which are similar to those on the Walkway.

- The only paving areas which are permitted are to be for bikeways and cross-walks.

Piers A and C:

- Both piers should be used for publicly-accessible purposes, generally for open spaces; they must also be designed for access by security patrols.

- Permitted open space uses include recreation fields (e.g. softball, basketball), swimming, jogging and walking paths, picnicking, sitting, and all the circumstantial uses of open parks (walking the dog, reading, lying in the sun, and so on).

- Permitted building uses include restaurants, marina offices, water-related museums, retail pavilions, outdoor amphitheaters,and sitting gazebos and shelters. As stated in Chapter Three, the total maximum area of all non-public buildings is 20,000 sf, while the area of public buildings may be in addition to that amount.

- The pier edges must include railings, walkways, lights, benches, etc. that are similar to the walkway, to give complete and safe access to the water edge.

Marina:

- The new Marina, located between Piers A and C, must be for recreational boating only; ferry access to the waterfront should be adjacent to the Ferry Terminal Plaza, south of Pier A.

- The individual floating docks of the Marina must not in anyway prevent public access to the entire pier and bulkhead waterfront edge.

- If a Marina management office is required, its design, size, and location must not prevent public access to the water edge, and it must be designed to minimize obstruction of the views to Manhattan beyond.

Soccer Field:

- The City has obtained funding for, and has begun work on the construction of, a new soccer field on the land area which is north of Pier C.

- This field should be seen as part of the overall waterfront open space system, and should be coordinated with the Riverfront Walkway and the Linear Park.

Streets and Sidewalks:

Each block must be bounded by streets that follow these guidelines:

- New east-west streets must be extensions of the existing streets, in their locations, sidewalk widths, and curb-to-curb dimensions; they must be paved in asphalt.

- New east-west streets must include deciduous shade trees planted at the curb edge of each sidewalk, and be located 25' to 30' on center.

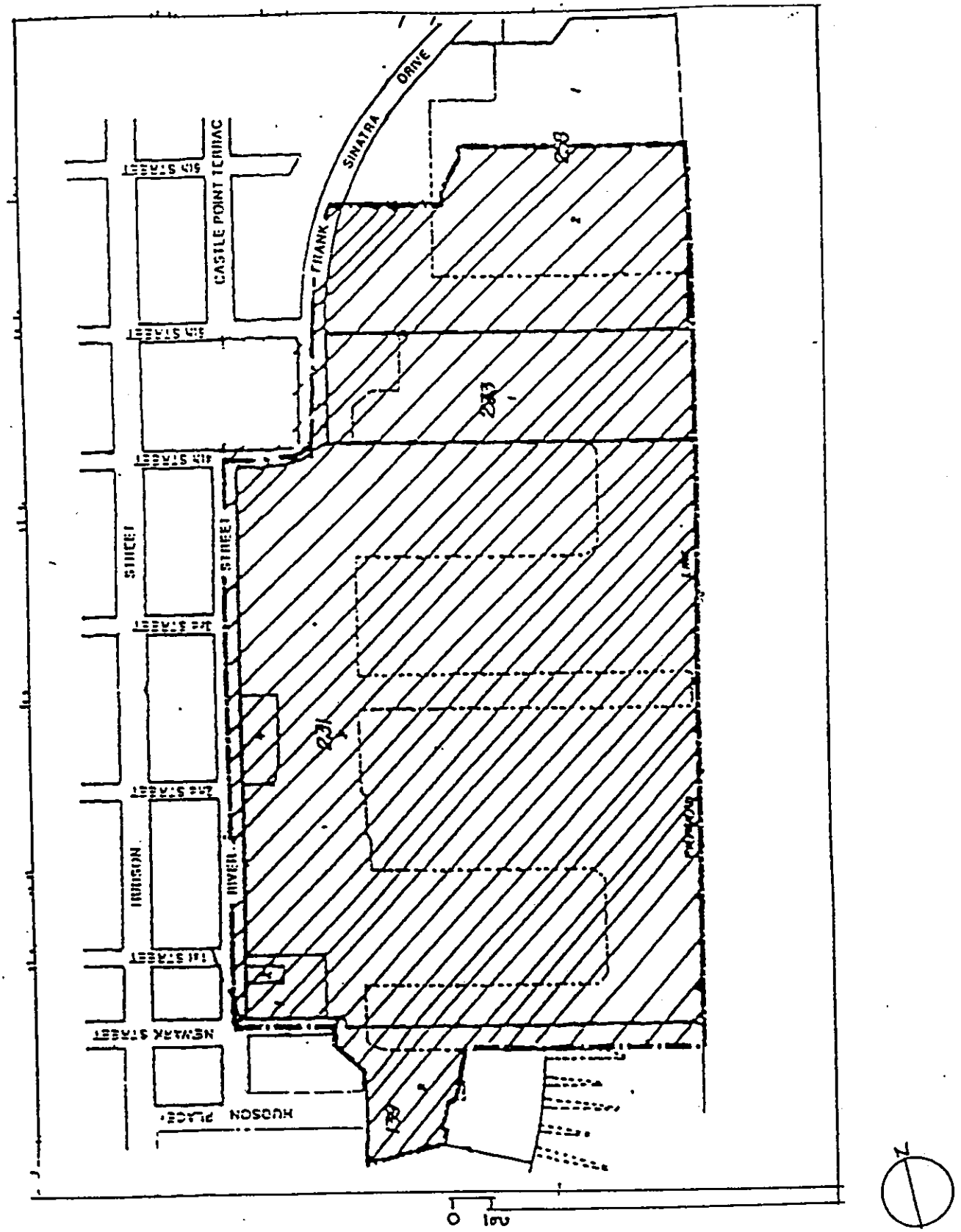
- New east-west sidewalks must be paved in concrete, with a finish and scoring pattern that is consistent with the existing sidewalks.

- The new sidewalks on River Street must have the same characteristics as the east-west streets.

- The sidewalks adjacent to the building facades on the new Sinatra Drive must be 20' wide, to accommodate outdoor dining and other public activities (see Exhibit 4B). They too must be lined with large shade trees at the curb edge. The paving, lighting, and furniture must be of a character and scale that is appropriate to its riverfront setting, and be compatible with those on the Waterfront Walkway.

- The new extensions of Sinatra Drive in this area must have a cartway that is capable of carrying two lanes of traffic only (one in each direction), or a width of 24'; note that the parallel parking described for the Linear Park is accessible from Sinatra Drive, but is an addition to the Drive's 24' width. The drive must be paved with unit pavers that are compatible equally with automobiles and pedestrians. The intention is to have slow-moving traffic that permits other activities to take place along and across it. Indeed, the entire paved area of 20' sidewalk and 24' street must feel as an extension of the green linear park and Hudson River Waterfront Walkway which are adjacent.

  Note: The importance of the design of the sidewalk and Sinatra Drive cannot be emphasized enough; they must be of the highest quality in terms of appearance and durability, and must be part of a single overall design that includes the Linear Park and Walkway.



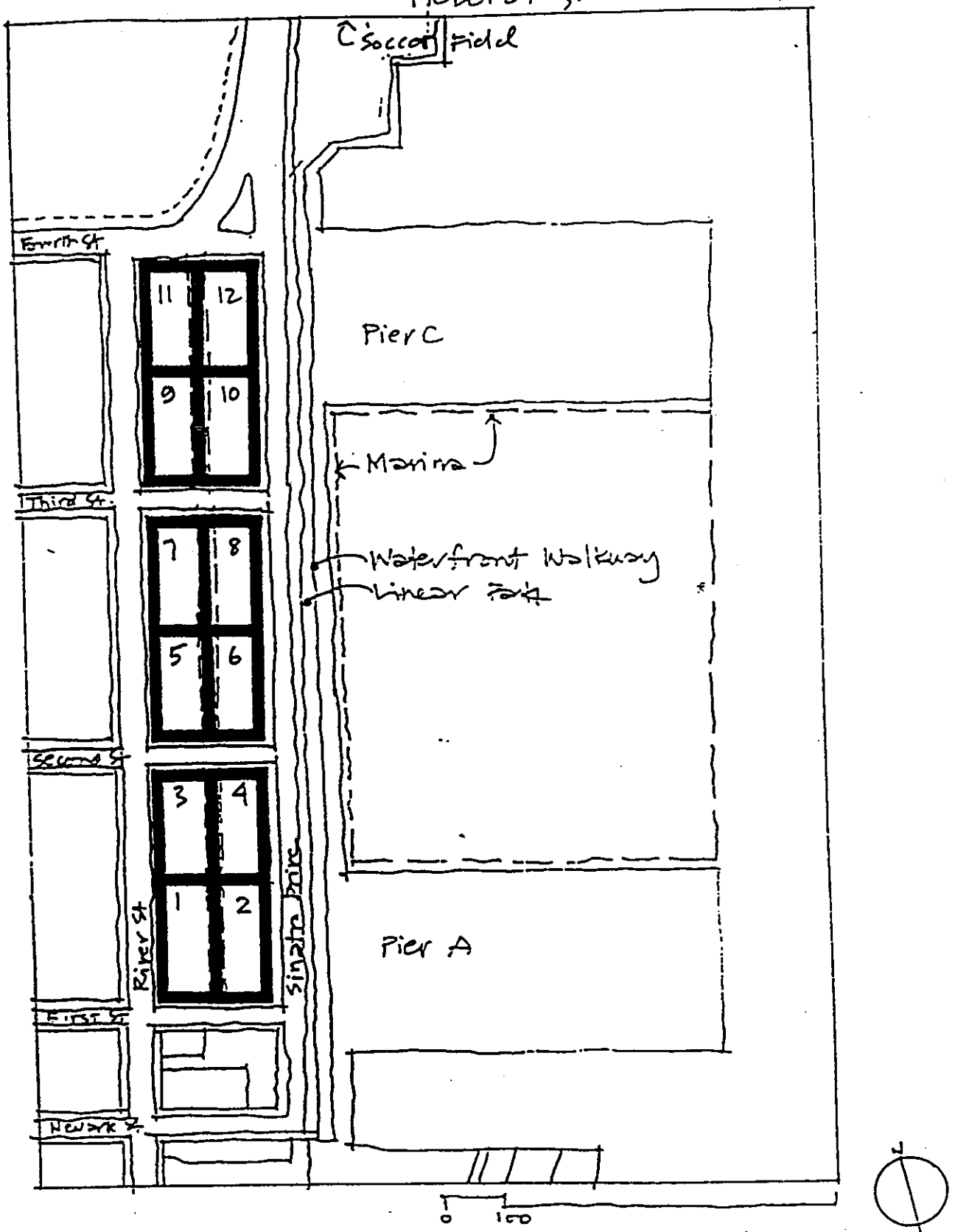
THE SOUTH WATERFRONT; REDEVELOPMENT PLAN

Redevelopment Area Boundary

Brown & Keener
Urban Partners
November 1994 (Amended)

Exhibit 1

HOBOKEN, NJ IN 08030

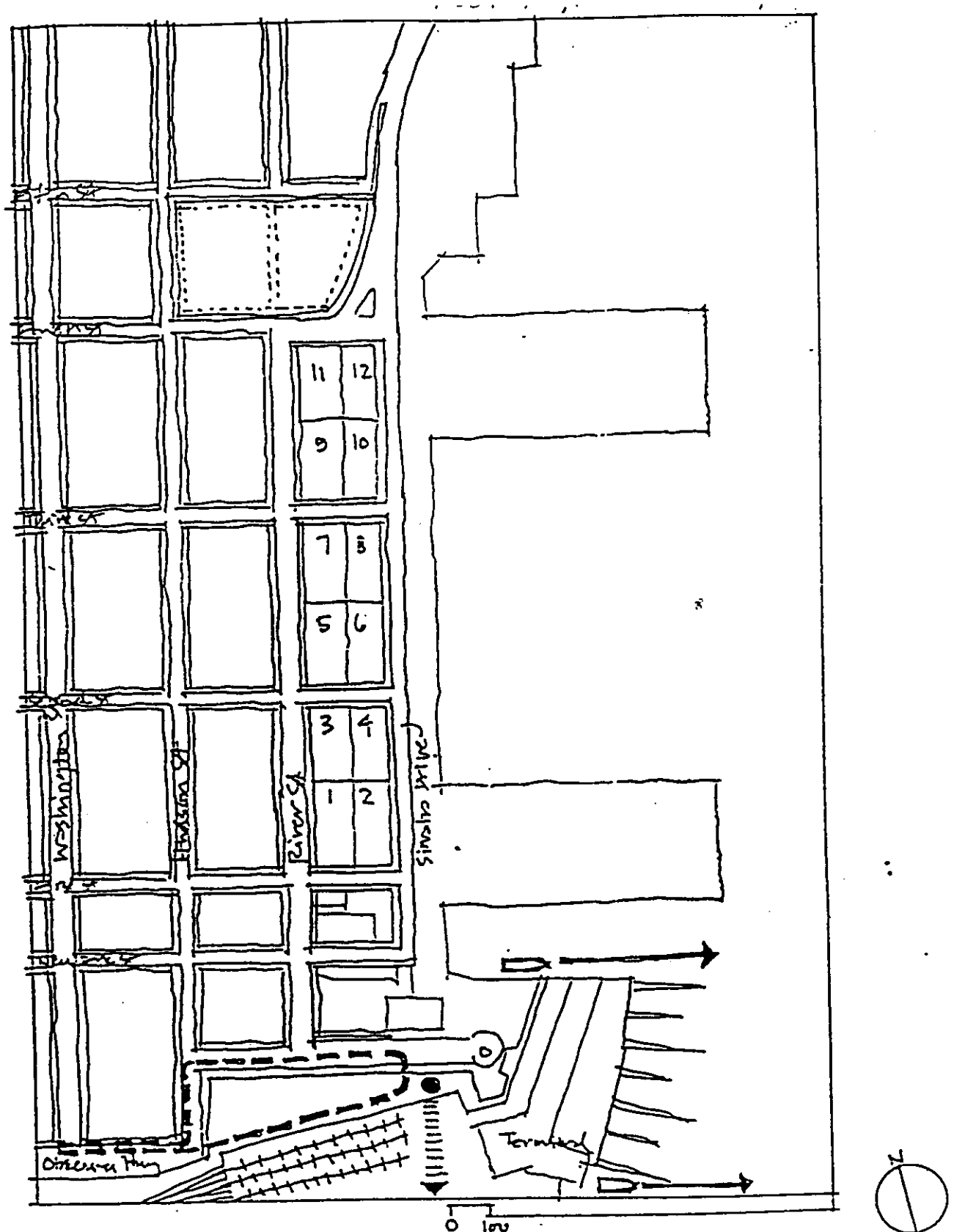


THE SOUTH WATERFRONT:
REDEVELOPMENT PLAN

Parcels Plan

Brown & Keenan
Urban Partners
November 1994 (Amended)

Exhibit 2 (Revised)



Bus

PATH

Train

Ferry (options)

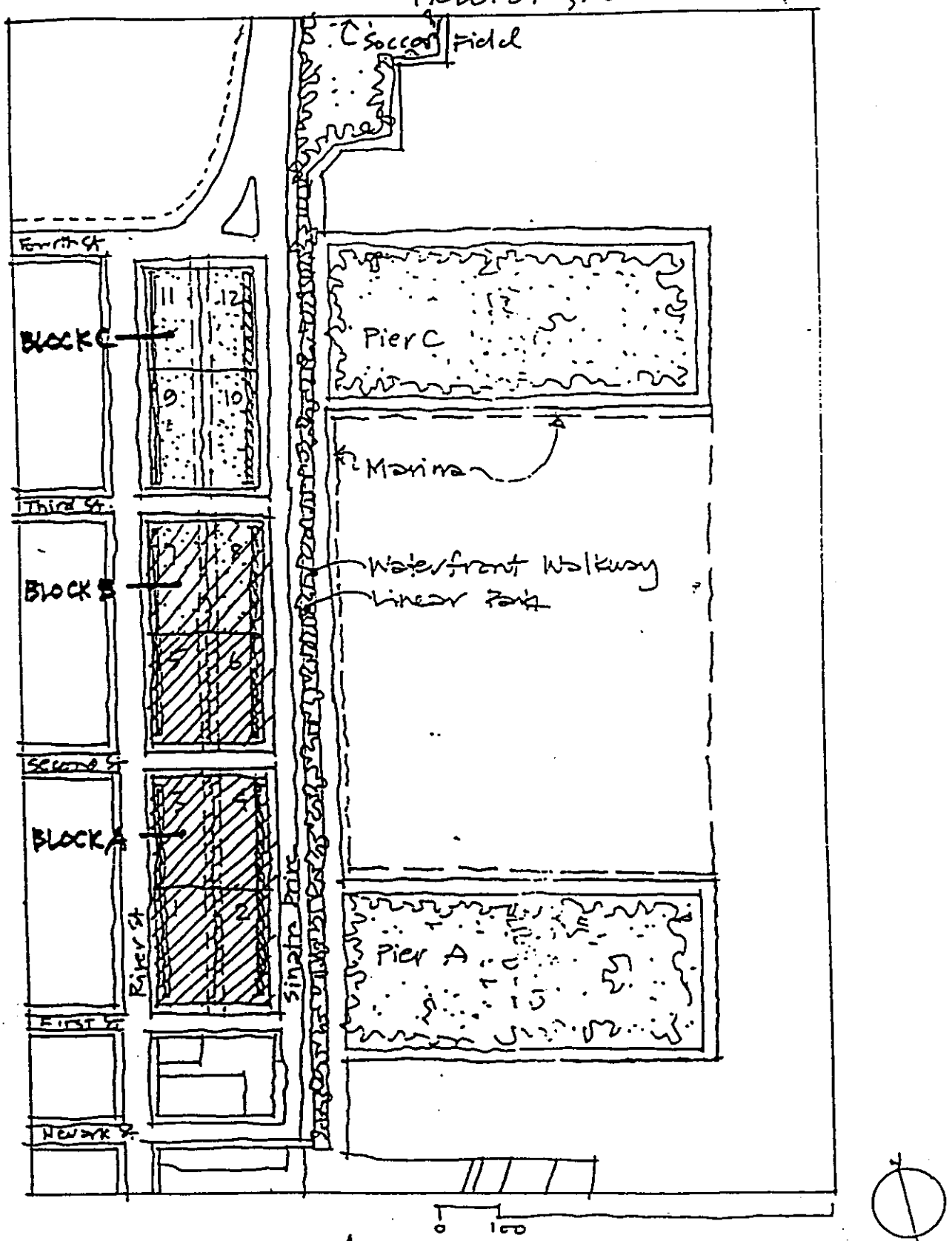
THE SOUTH WATERFRONT; REDEVELOPMENT PLAN

Transportation Node at South

Brown & Keen
Urban Partners
November 1994 (Amended)

Exhibit 3

HOBOKEN, NEW JERSEY



REQUIRED location of Commercial (Offices, Hotel)

REQUIRED location of Residential

REQUIRED location of Retail

Preferred location of Retail

Open Spaces/Parks

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

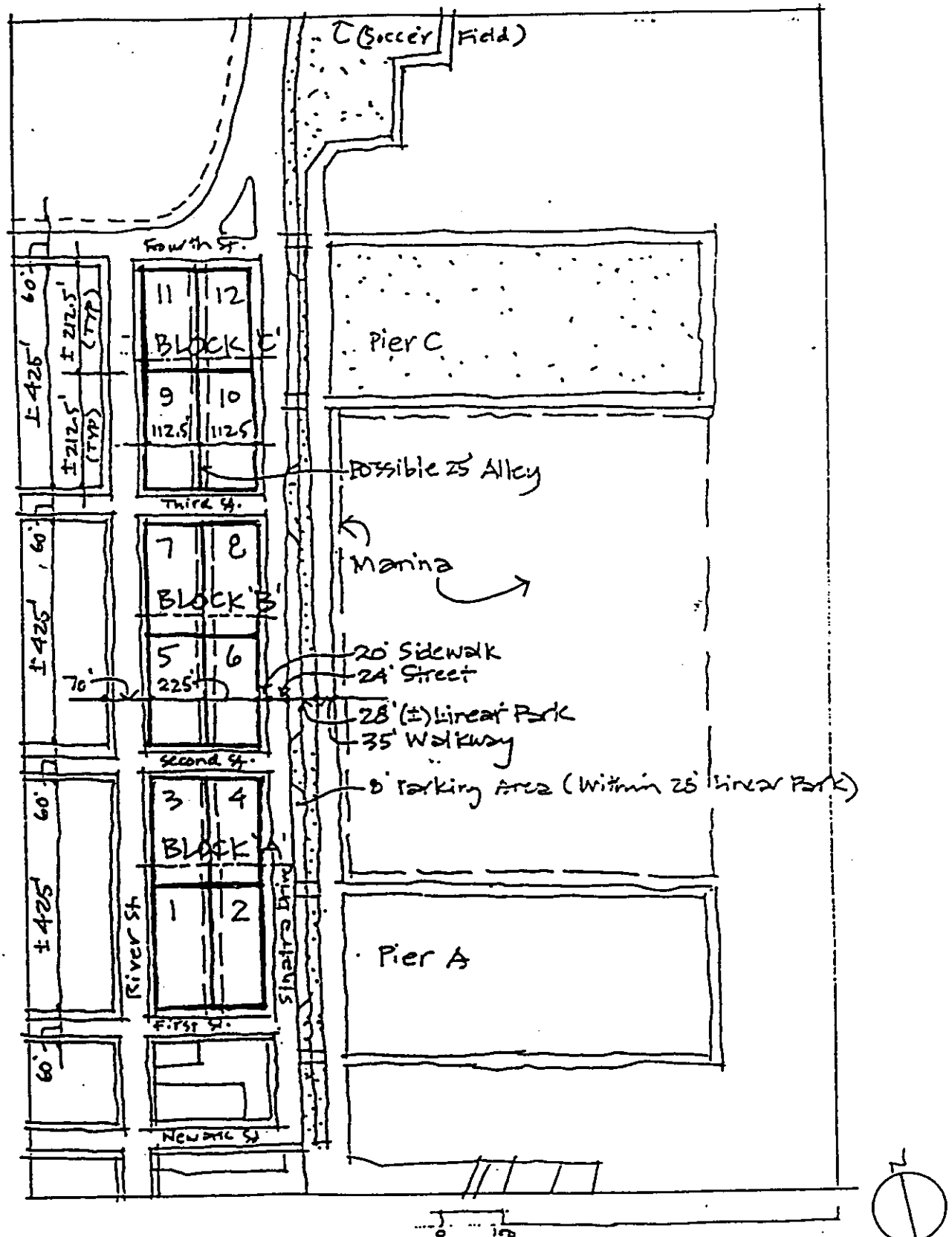
Required Land Use locations

Brown & Keener

Urban Partners

November 1994 (Amended)

Exhibit 4A (Revised)



3 Individual Development Parcels

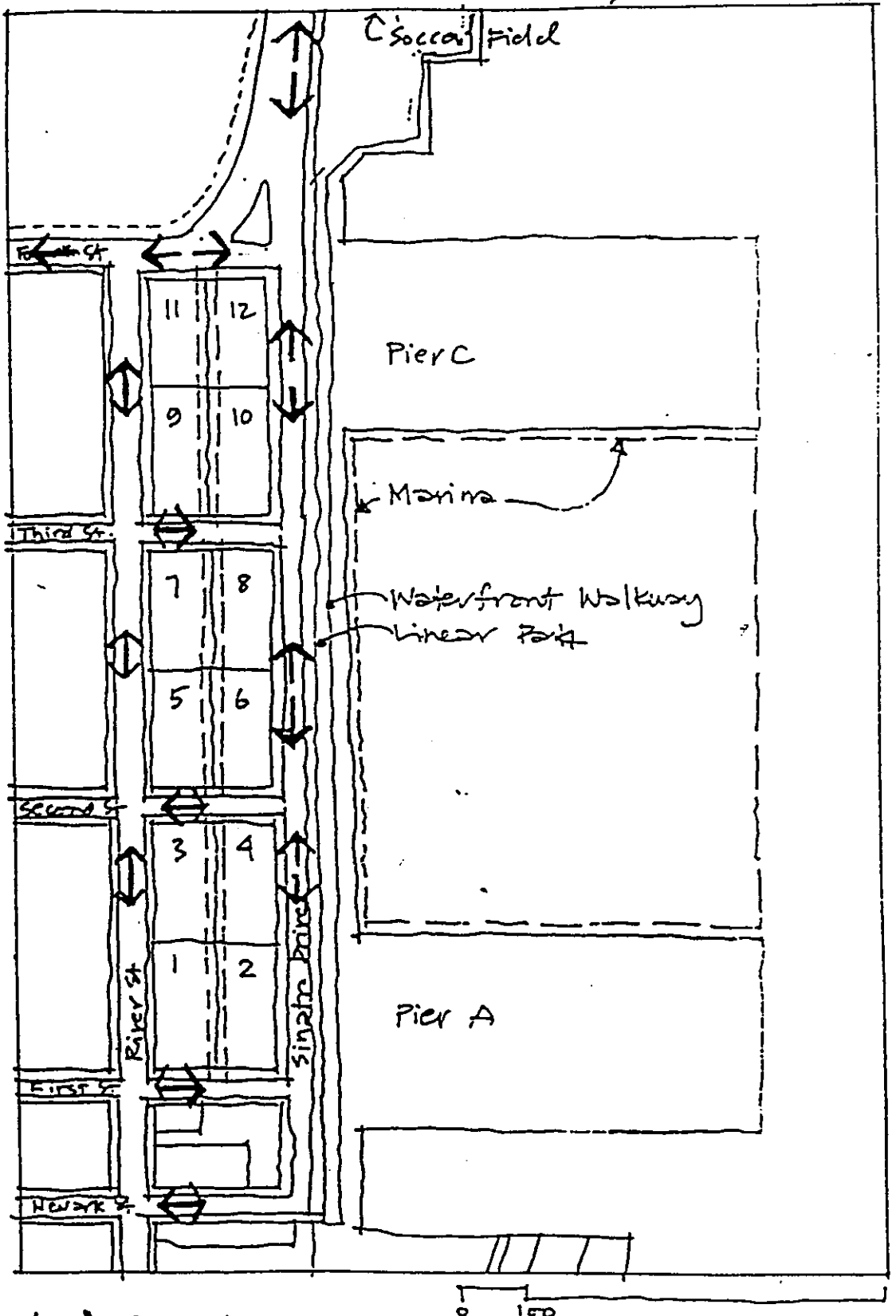
THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Site Dimensions

Brown & Keenan
Urban Partners
November 1994 (Amended)

Exhibit 4-B (New)

HOBOKEN, NEW JERSEY



← → Traffic Direction

=== Suggested Service Alley

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Vehicular Circulation

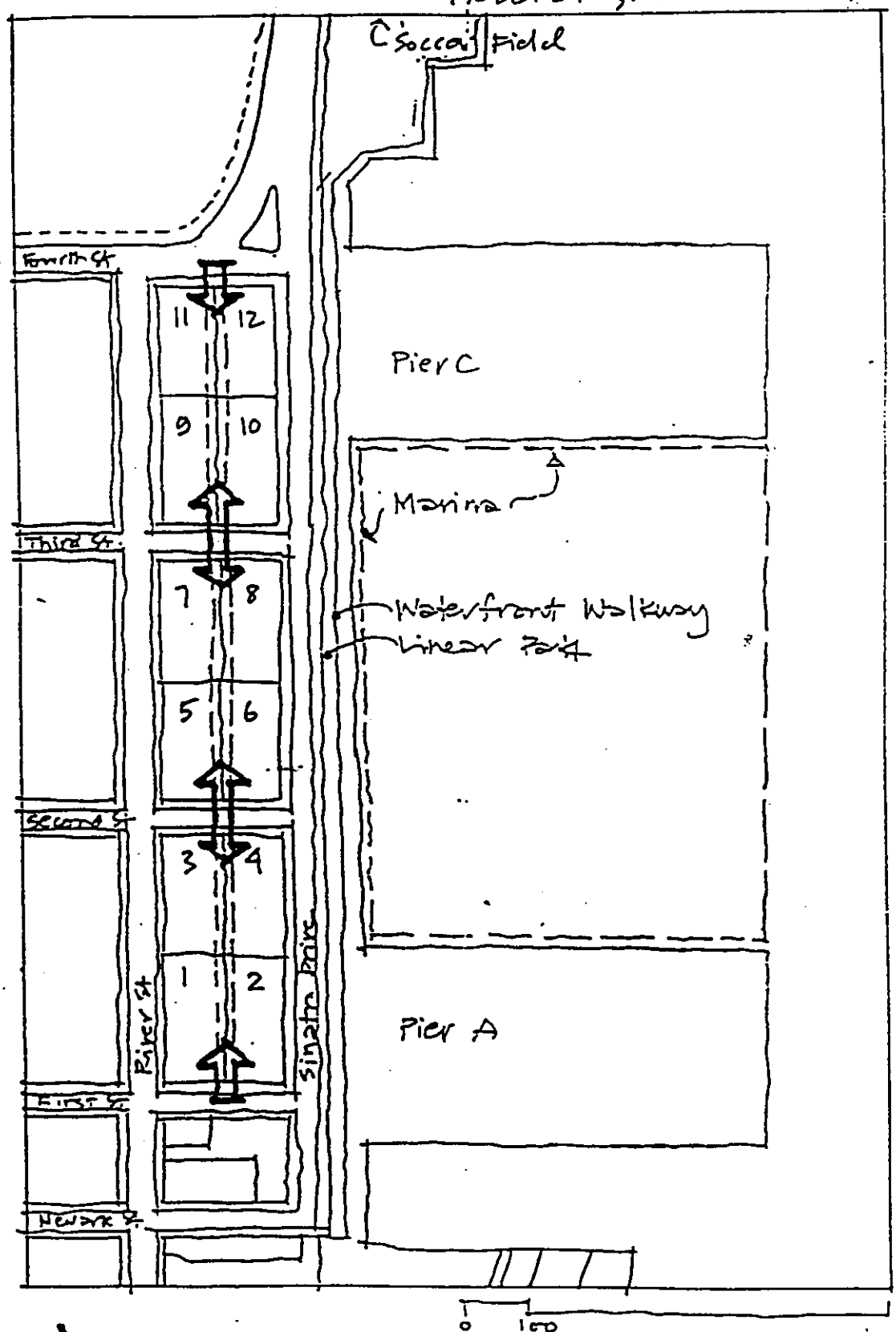
Brown & Keener

Urban Partners

November 1994 (Amended)

Exhibit 5 (Revised)

HOBOKEN, NEW JERSEY



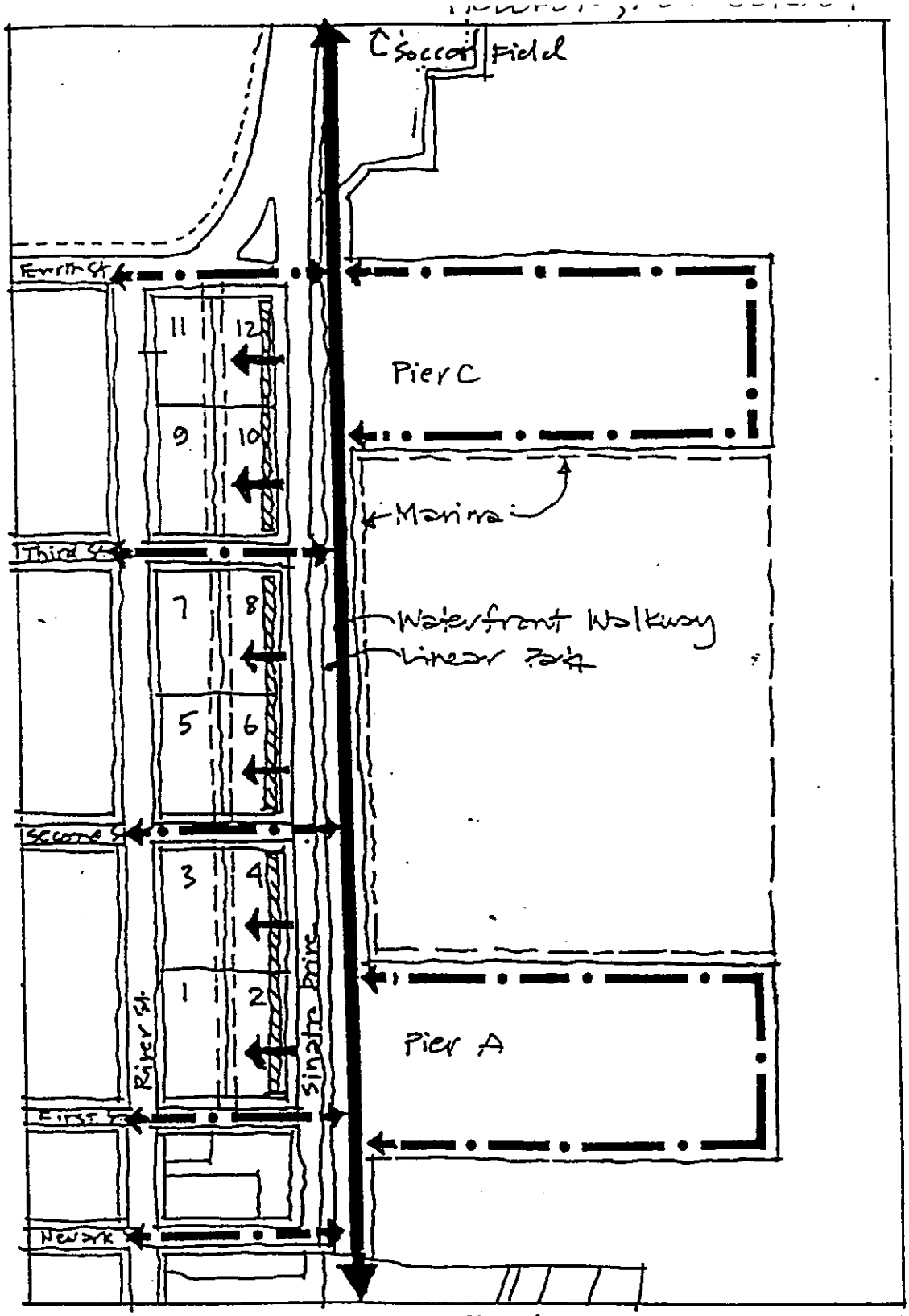
Permitted Locations of Entrances to Parking & Service

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Service and Parking Access

GBQC Architects
Urban Partners
November 1994 (Amended)

Exhibit 6 (Revised)



Primary Public Circulation

Secondary Public Circulation

Preferred Loading Locations

Recommended Entrances

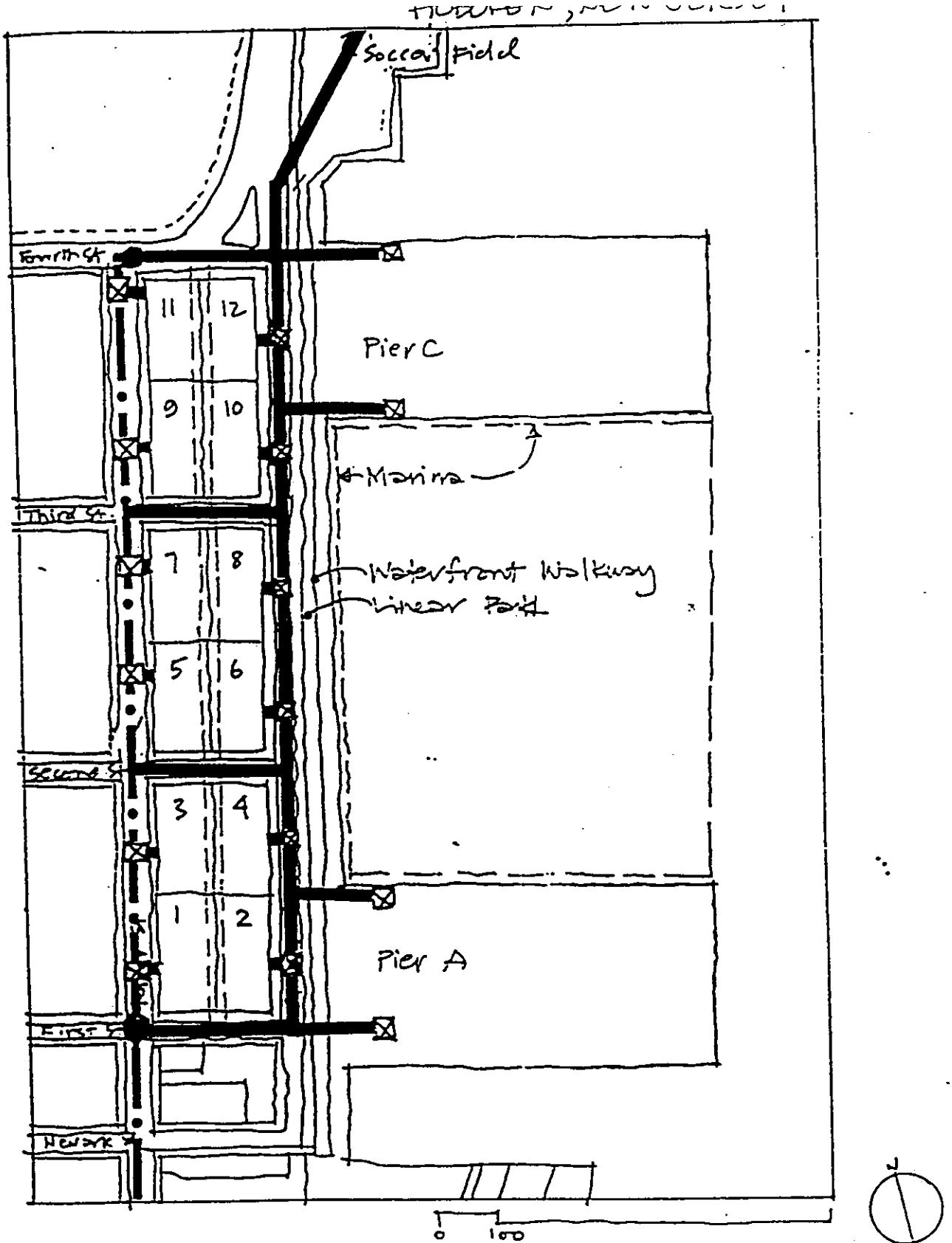
0 100

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Pedestrian Circulation

Brown & Keener Urban Partners November 1994 (Amended)

Exhibit J (Revised)



Proposed Water Main

Proposed Water Valve

Proposed Manhole

Existing Water Main

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Infrastructure: Water

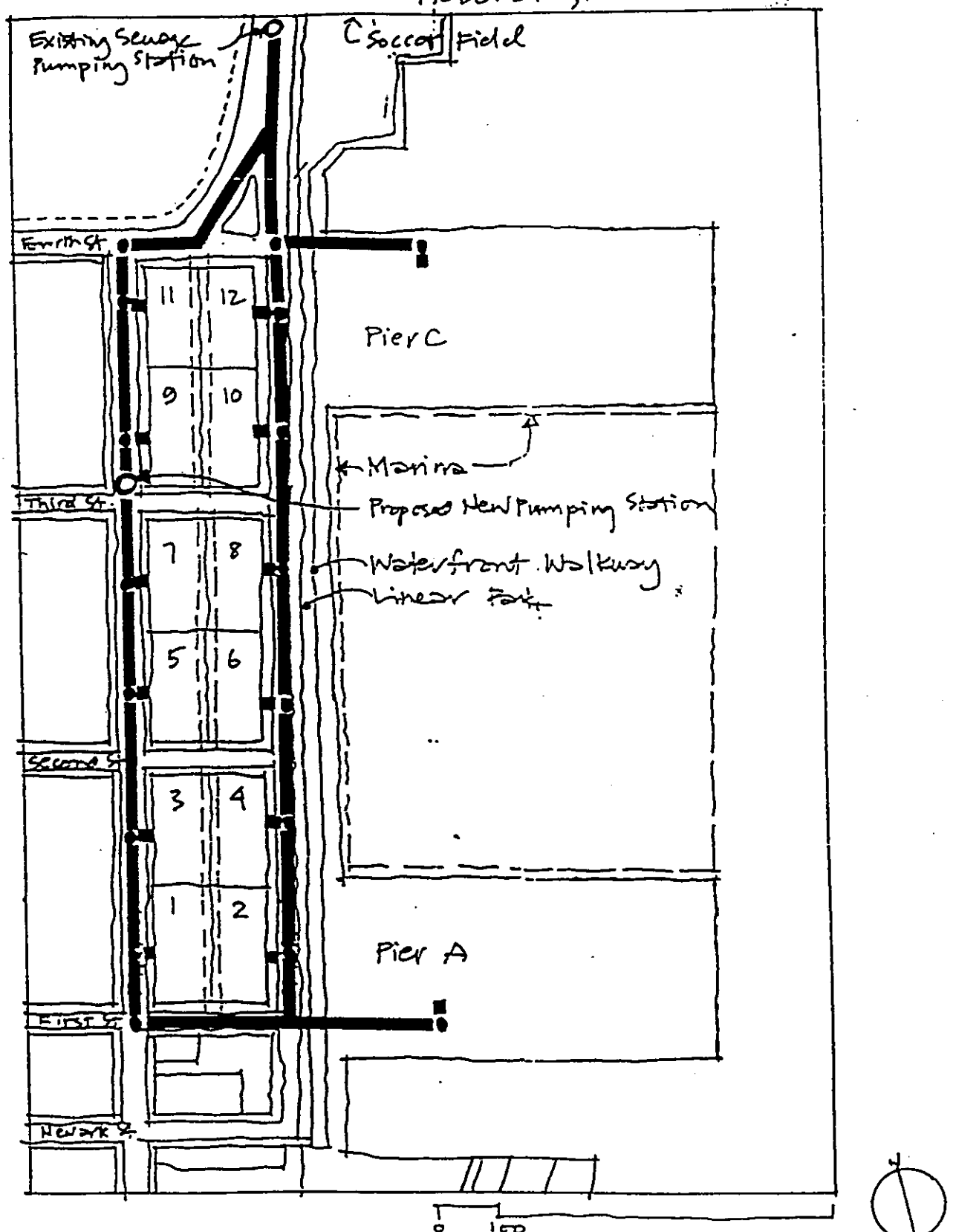
Brown & Keene

Urban Partners

November 1994 (Amended)

Exhibit 8 (Revised)

HOBOKEN, NEW JERSEY



Proposed Sewer

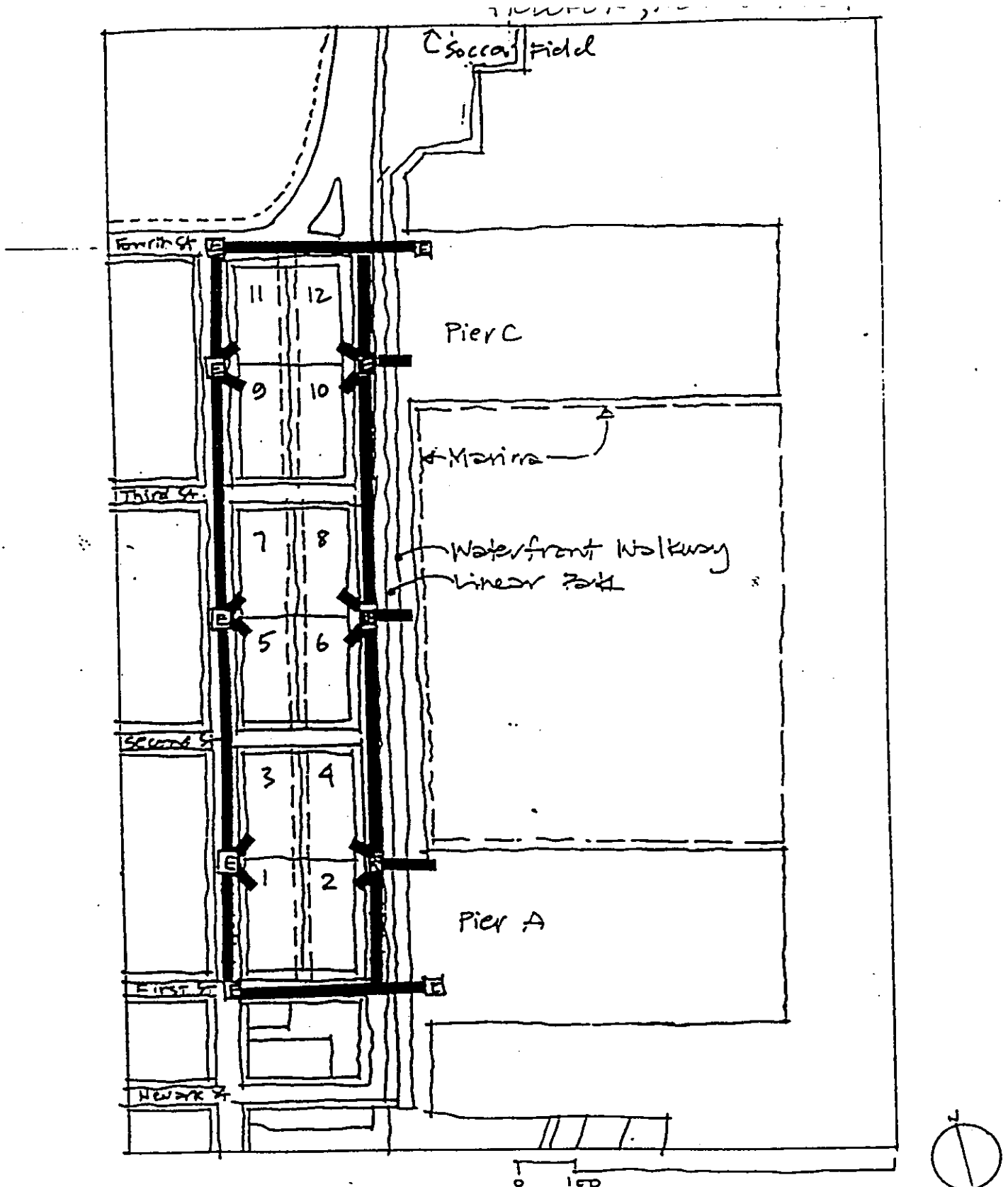
Proposed Manhole

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Infrastructure: Sanitary Sewer

Brown & Keener
Urban Partners
November 1994 (Amended)

Exhibit 9 (Revised)



Proposed Electric Duct Bank

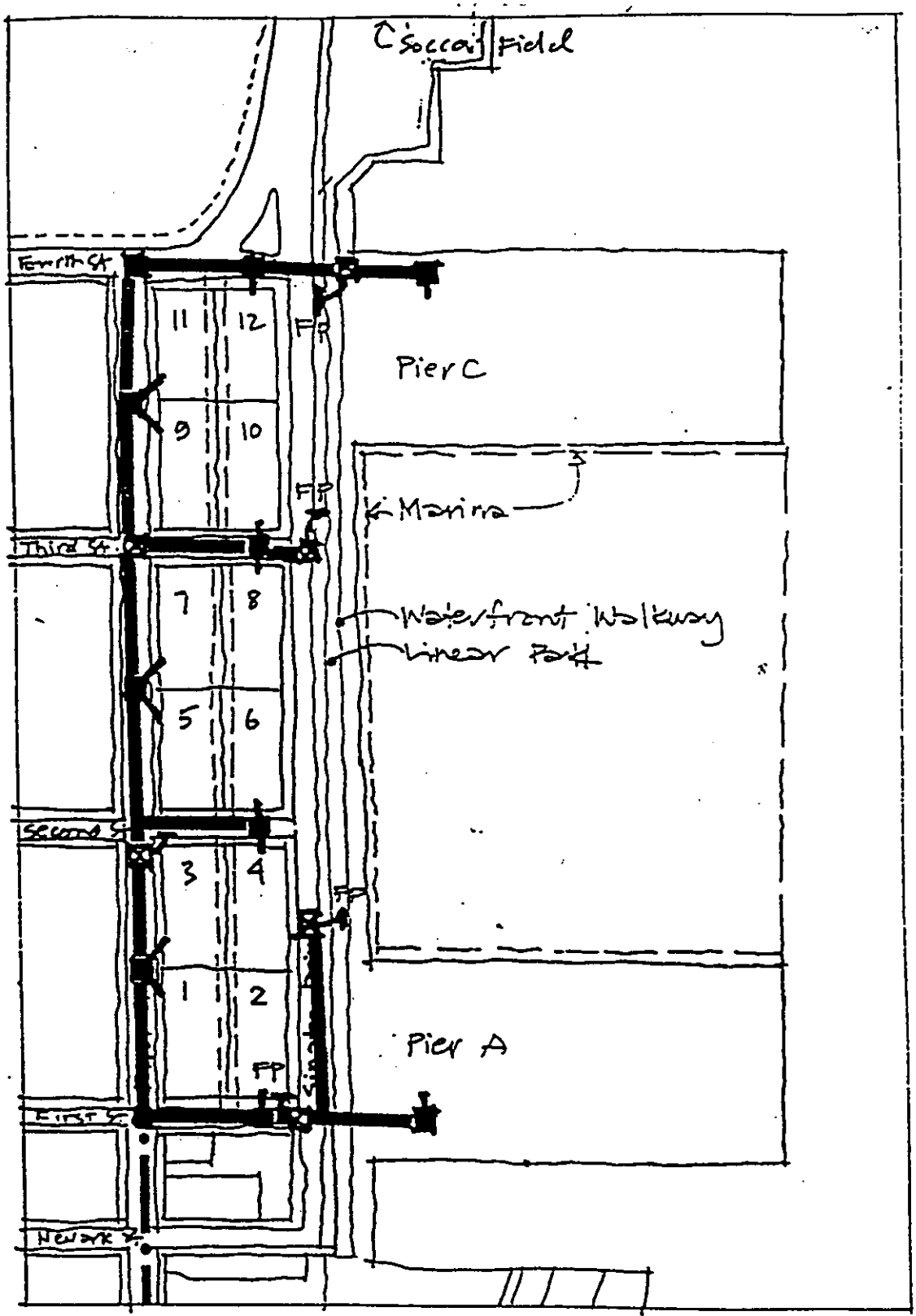
Proposed Electric Manhole

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Infrastructure: Electricity

Brown & Keener
Urban Partners
November 1994 (Amended)

Exhibit 10 (revised)



Proposed Telephone & Fire Comm. Line

Proposed Telephone Manhole

FP Proposed Fire Alarm, Police Call, & Fire Dep't. Manhole

Existing ECS Duct Bank

0 100

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

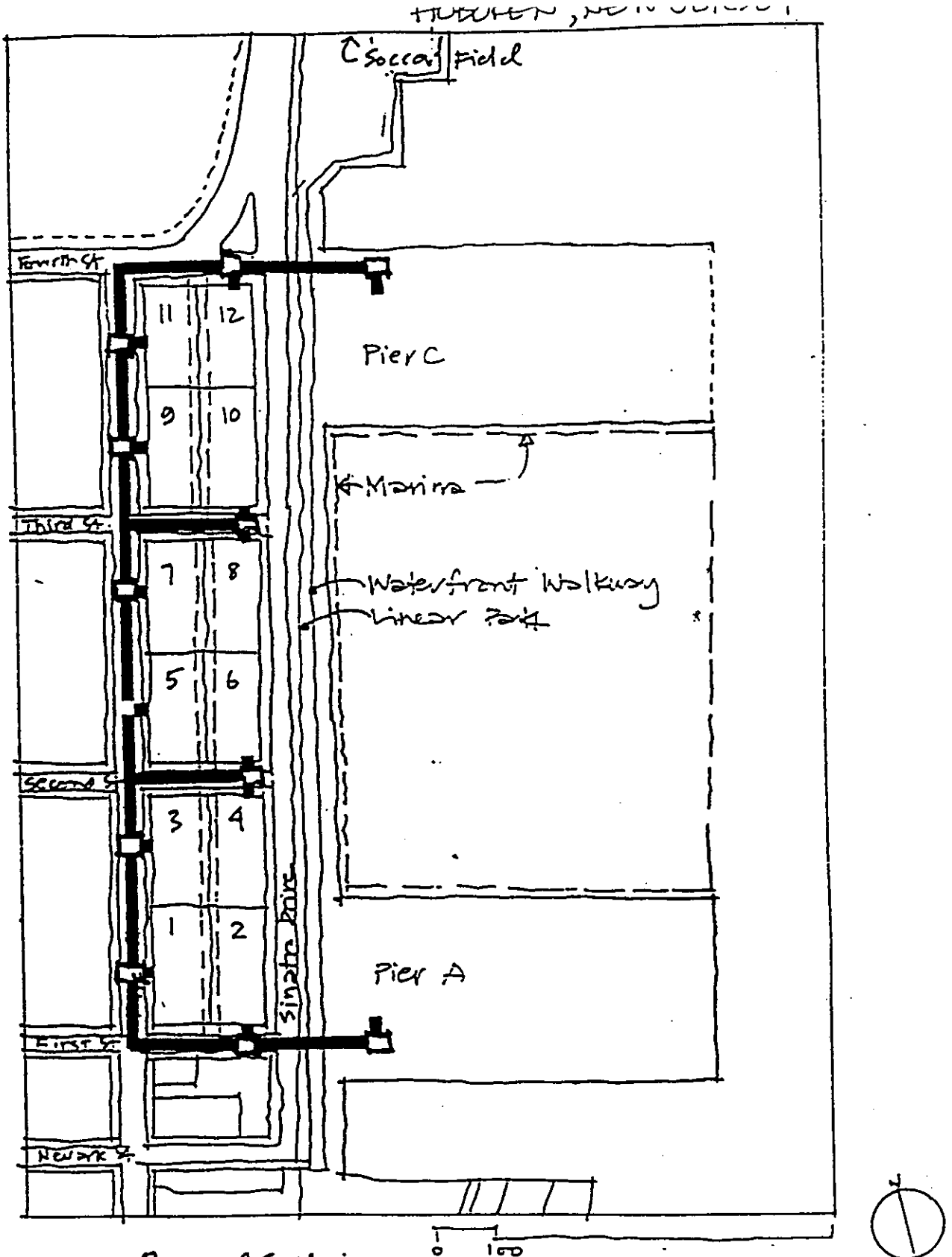
Infrastructure: Tele & Fire Comm.

Brown & Keen

Urban Partners

November 1994 (Amended)

Exhibit 11 (Revised)



Proposed Gas Main

Proposed Gas Valve

THE SOUTH WATERFRONT: REDEVELOPMENT PLAN

Infrastructure: GAS

Brown & Keene
Urban Partners
November 1994 (Amended)

Exhibit 12 (Revised)

SCHEDULE Z

Proposed amendments to current zoning to accommodate amended "Waterfront at Hoboken South Redevelopment Plan", adopted 3/15/95
Words to be deleted are ~~stricken out~~
Words to added are shown **[in brackets]**

---

§196-7 Designation of districts and historic sites.

A. Zoning districts established...as follows:

W**[RDV]**	Waterfront **[Redevelopment Sub-]** District (Special Review)
W(H)	Historic Subdistrict (Waterfront)
W(N)	~~Waterfront North Overlay Subdistrict~~ **[Castle Point Subdistrict]**

§196-8 Zoning Map **[Amended ___/95 by Ord.No.___]**

§196-20. W Waterfront District

A. Purpose. The purpose of this district is to promote comprehensive ~~planned~~ development which includes a mix of commercial office, retail and residential uses at varying densities, with visual and physical access to the Hudson River waterfront and linking other commercial and residential areas of the City to the waterfront.

B. The Waterfront District shall include the **[W(RDV)]**, W(H) and W(N) ~~Overlay~~ Subdistricts. Development in the **[W(RDV) Subdistrict is subject to the special use, bulk and parking regulations of the Waterfront at Hoboken Redevelopment Plan as amended __/95; the]** W(H) Historic **[Sub]**district is subject to review procedures of the Historic Commission and development in the W(N) Waterfront North ~~Overlay~~ Subdistrict is subject to height limitations as specified herein.

C. Principal permitted uses shall be as follows:

[W(H) & W(N) Subdistricts:]

(1) ~~Planned unit development subject to §196-27.1, Urban design review for planned development.~~

(2) Educational uses.

(3) Public recreational uses.

(4) Marina facilities, fishing piers and water-oriented light commercial, recreational or passenger uses ~~associated with a planned unit development~~.

(5) Interim land uses pending the completion of a ~~planned unit~~ development, limited to temporary

uses such as parking facilities, concessions, commercial passenger excursion operations, [and] special events ~~and temporary wastewater treatment facilities.~~

(6) Accessory uses customarily incidental to a principal use.

D. Conditional uses shall be as follows:

[W(N) only]

(1) Maritime industrial uses, including marine shipping terminals and repair facilities, see §196-38T.

[W(H) & W(N)]

(2) Transportation terminal facilities, see §196-38U.

E. Area, yard and building requirements.

~~(1) For planned unit development~~.

~~(a) Minimum tract area: ten (10) acres~~.

~~(b) Maximum residential density...space)~~.

~~(c) Maximum FAR...(9.7)~~.

~~(d) Minimum open space...(15%)~~.

~~(e) Permissable range...commercial...maximum~~.

~~(f) Permissable range...residential...maximum~~.

~~(g) Maximum height, commercial...§196-27G~~.

~~(h) Maximum height, residential...§196-27G~~.

(2) For all permitted uses [in the W(H) and W(N) subdistricts], ~~other than planned unit developments,~~ and for all conditional uses:

(a) Minimum lot area: n.c.

(b) Minimum lot width: n.c.

(c) Minimum lot depth: n.c.

(d) Maximum lot coverage: n.c.

(e) Building height, maximum: n.c.

F. Off-street parking and loading shall be as follows: See generally Article XI, ~~except see §196-27.1B(2)(a) for special standards applicable to planned unit development in the W District~~

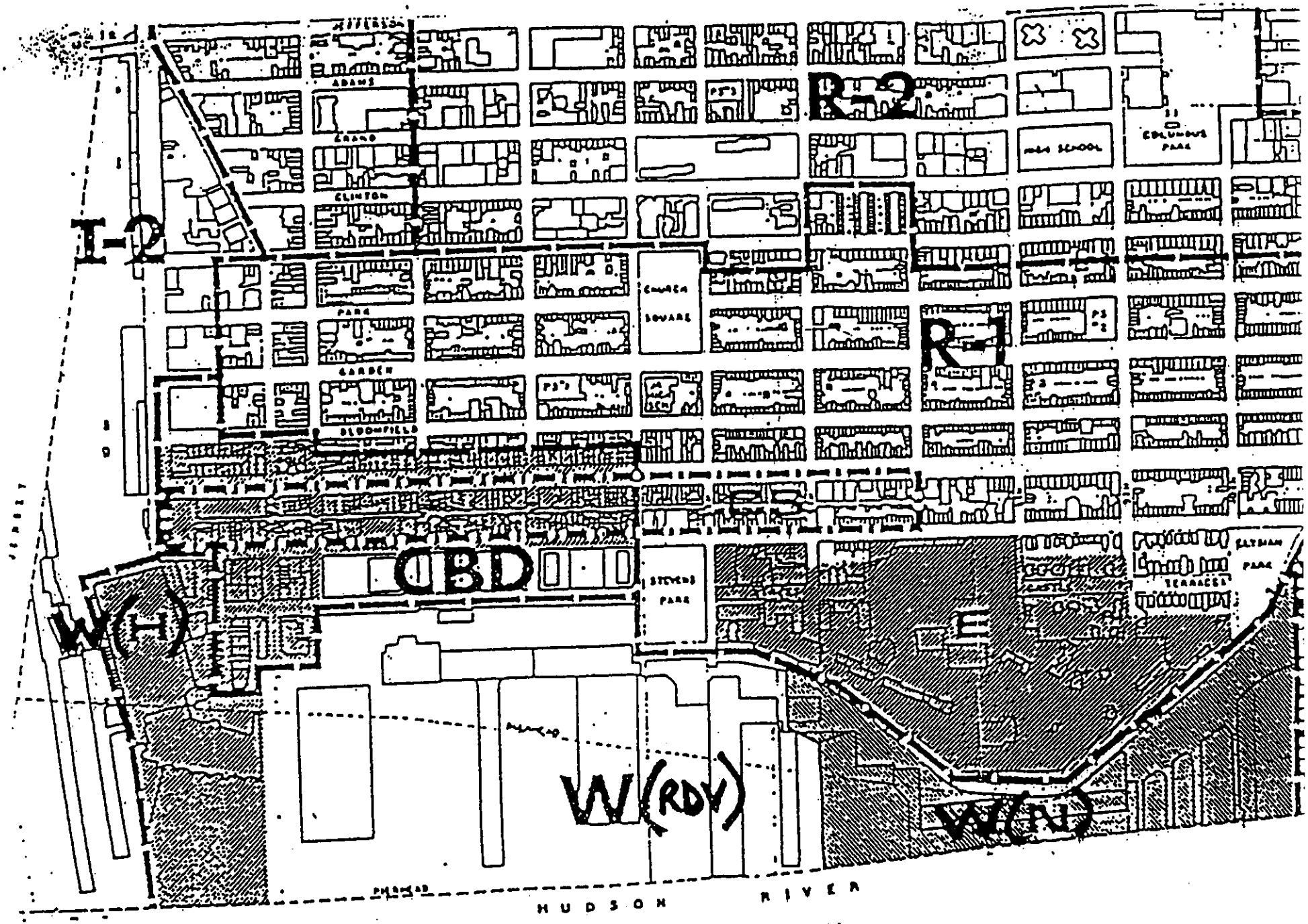
§196-27. Overlay Districts
The R-1(E), R-1(CS), CBD(H), CBD(H)(CS), W(RDV), W(H), W(N) and I-1(W)...

F. [W(RDV). The Waterfront Redevelopment Subdistrict represents the plan area within which the "Waterfront at Hoboken, South Redevelopment Plan applies."]

§196-27.1 Urban Design review for planned developments

A. Urban design review is intended to be applied to planned developments in the ~~I-2~~, I-1(W) ~~and W~~ districts ...amended.

B. Action by the Planning Board
(1) That the...in the ~~W District and~~ I-1(W)...
(2) n.c.
(3) That the...~~except that the following bulk controls shall not apply to planned unit development in the W District [Planned unit development in the W District shall be subject only to bulk controls set forth at §196-20E(1) and Subsection B(4) hereinbelow]:~~
~~(4) That general design requirements for planned development located in the W District has been applied as follows:~~
~~(a) Residential...deep.~~
~~(b) Commercial...deep.~~
~~(c) Except on..way.~~


ADAMS
GRAND
CLINTON
PARK
GARDEN
BLOOMFIELD
CHURCH SQUARE
STEVENS PARK
HIGH SCHOOL
COLUMBUS PARK
ELTMAN PARK
TERRACES
I-2
R-2
R-1
CBD
E
W(H)
W(RDV)
W(RD)
HUDSON RIVER

Proposed design guidelines to express building and bulk standards of the "Waterfront at Hoboken South Redevelopment Plan" as adopted 4/15/95

Private Development Zones

- Block A (Parcels 1,2,3 &4)
- Block B (Parcels 5 & 6)

  - Principal Permitted Uses: commercial offices, hotel
    - Ground floor/Sinatra Drive: building lobbies, retail business & services, professional offices and restaurant uses required along 100% of the frontage of Sinatra Drive, restaurant and retail uses required at the corners and for 50 linear ft. in both directions from the corner

    - Ground floor/River Street: lobby space required at least once every 200 ft. (i.e. at least one lobby per parcel); same ground floor uses permitted as for Sinatra Dr. along 50% of the frontage of River St.

  - Accessory Uses (as found in the Hoboken Zoning Ordinance)
    - Off-street parking & loading
    - Signs
    - Uses customarily incidental to a principal use

  - Conditional Uses (interim land uses pending initiation or completion of construction)
    - temporary parking facilities
    - commercial passenger excursion operations
    - concessions
    - special events

  - Area, yard and building requirements
    - Development area, minimum: 1 parcel (as defined in parcelization plan)

    - Parcel coverage, maximum
      - -- For base building (including ground floor service area and upper floor parking up to a maximum of 50 ft.): 100%
      - -- For balance of building, see setback requirements under "Yards/Setbacks"

    - Building Height
      - -- Commercial offices & hotels, located on Parcels 1 through 6:
        - .. As-of-right: 125 ft. above sidewalk elevation
        - .. Public bonus provision: up to a maximum of 175 ft. pursuant to the alternate provisions specified in the plan:

... Developer pays to city an amount equal to 1% of total construction cost; or

... Developer pays to city an amount equal to cost of providing off-site parking for the additional floor area above 125 ft. at ratio of 0.7 pkg. space per 1000 sq.ft. of additional floor area

- Yards/Setbacks
  - -- Ground level: no building base may be set back at ground level greater than 5 ft. from the parcel boundary
  - -- Base building must rise at least 40 ft. before setting back; setback of 5 ft. required at the 40 ft. elevation from parcel boundaries along First, Second, and Third Sts.
  - -- No setback required along River St. & Sinatra Dr.; "expression line" must be provided
  - -- Buildings built higher than 125 ft. must set back 10 ft. at the 125 ft. elevation on all sides of the building adjoining a street
  - -- Any two new building forms in one block must be a minimum of 50 ft. apart or, each building must be setback a minimum of 25ft. from a common property line above the building base

- Off-street Parking and Loading
  - Access
    - -- Service alley: an alley is to be created running north-south through every block in such a fashion as to provide a 25 ft. wide passageway straddling the north-south mid-line of each block and providing access to both the required on-site parking and loading areas of each parcel
    - -- Entry will be from the east-west streets and will not occupy more than a total of one-third of the east-west street frontage.
    - -- Entry point shall be designed as a "gateway"
    - -- Trucks must enter and leave the site in forward gear

- Parking
  - -- Minimum required parking spaces on-site:
    - •• Commercial: 0.35 spaces/1000 sq.ft. of office floor area
    - •• *Hotel: 1 space per room for the first 15% of a hotel's rooms and 0.3 spaces/1000 sq.ft.of all other non-room hotel space*
    - •• Ground floor uses: none required

  - -- Maximum permitted parking spaces on-site:
    - •• Commercial: 0.7 spaces/1000 sq.ft.of floor area; hotel maximum same as minimum; ground floor use maximum, zero.

  - -- Design & layout
    - •• No parking area shall be visible above the street level; parking floors above street level shall be clad in a manner identical to that of the rest of the building above; openings for ventilation shall have decorative iron grill work over the openings

- Loading
  - -- *Dimensions: minimum of forty (40) ft. long, twelve (12) ft. wide and fourteen (14) ft. high; sufficient turning spaces and access in accordance with industry standards*

  - -- *Calculation of minimum loading berths*
    - •• *Office & hotel (1 berth for first 10,000 sq.ft. of floor area, additional berth for each additional 90,000 sq.ft.)*
    - •• Ground floor uses (no separate requirement; floor area shall be added to that of predominant building use as part of calculation for entire parcel)

- **Block B (Parcels 7 & 8)**
  - Principal Permitted Uses: commercial offices, hotel, residential
    - Ground floor uses & location (same as Block A above)

  - Accessory Uses (same as Block A above)
    - *Home occupations*

  - Conditional Uses (same as Block A above)

- Off-street Parking & Loading
  - Parking
    - -- Minimum parking spaces on-site:
      - .. Commercial & hotel (same as Block A)
      - .. Residential: 0.5 spaces/ dwelling unit; no parking required for ground floor uses
    - -- Maximum on-site:
      - .. Commercial & hotel (same as Block A)
      - .. Residential: 1.0 spaces/ dwelling unit; no parking required for ground floor uses
  - Loading
    - -- Location, access & dimensions same as Block A above
    - -- *Calculation of minimum loading berths*
      - .. *Commercial & hotel (same as Block A above)*
      - .. *Residential use (1 berth for the first 25,000 sq.ft. of floor area, additional berth for each additional 75,000 sq.ft.)*
      - .. *Ground floor uses (same as Block A above)*

- **Block C (Parcels 9,10,11 & 12)**
  - Principal Permitted Uses: residential
    - Ground floor use & location (same as Blocks A & B above)
  - Accessory Uses (same as Block B, Parcels 7&8 above)
    - *Home occupations*
  - Conditional Uses (same as Block B, Parcels 7&8 above)
  - Area, yard and building requirements
    - Development area, minimum: 1 parcel (as defined in parcelization plan)
    - Parcel coverage, maximum
      - -- For base building (including ground floor service area and upper floor parking up to a maximum of 50 ft.): 100%
      - -- For balance of building, see setback requirements under "Yards/Setbacks"

- Building Height
  - -- Residential buildings: 125 ft. maximum above sidewalk elevation

- Yards/Setbacks
  - -- Ground level: no building base may be set back at ground level greater than 5 ft. from the parcel boundary
  - -- Base building must rise at least 40 ft. before setting back; setback of 5 ft. required at the 40 ft. elevation from parcel boundaries along Third and Fourth Streets.
  - -- No setback required along River St. & Sinatra Dr.; "expression line" must be provided
  - -- Any two new building forms in one block must be a minimum of 50 ft. apart or, each building must be setback a minimum of 25ft. from a common property line above the building base

- Off-street Parking & Loading (same as shown for residential use Block B, Parcels 7&8 above)

<u>Public Development/Open Space Zones</u>
(maximum of 20,000 sq.ft. permitted on both piers for restaurants, other retail, museum & marina-related buildings)

- Pier A (to be designed entirely as a unity)
  - Principal Permitted Uses: publicly-accessible open space/recreational
    - recreation fields (e.g., softball, basketball)
    - jogging and walking paths
    - fishing areas; shelters
    - picnic and sitting areas; gazebos
    - public swimming pool
    - museum (water-related) - one only for total area of piers
    - restaurants and other retail

  - Accessory Uses: uses customarily incidental to a principal use but in no event shall there be any parking

  - Conditional Uses (same as Block A above)

- Pier C (to be designed entirely as a unity)
  - Principal Permitted Uses: publicly-accessible open space/recreational; public recreational marina
    - fishing areas
    - picnic and sitting areas; gazebos
    - public swimming pool

- museum (water-related) - one only for total area of piers
- restaurants and other retail
- public recreational marina (including related management office, toilet/shower facility, gas dock)

- Accessory Uses: uses customarily incidental to a principal use but in no event shall there be any parking

- Conditional Uses (same as Block A above)

- **Soccer Field**
  - Principal Permitted Uses: soccer field; fishing areas

  - Accessory Uses: uses customarily incidental to a principal use but in no event shall there be any parking

  - Conditional Uses (same as Block A above)

- **Infrastructure/Linear Park Zone**
  - Principal Permitted Uses: infrastructure; parks
    - streets (extensions of First, Second, Third and Fourth Streets; extension of Sinatra Drive)
    - waterfront walkway
    - linear park

  - Accessory Uses (none)

  - Conditional Uses (same as Block A above)

EXHIBIT A

LEASE PREMISES

PARCEL 1

BEGINNING at a point in a line 70.00 feet east of and parallel with the westerly line of River Street where the same is intersected by the northerly line of First Street (50' wide) projected easterly and running:

(1) N-13°-04'-29"-E along said line 70.00 feet east of westerly line of River Street, a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street a distance of 212.50 feet to a point in the northerly line of First Street projected easterly, thence

(4) N-76°-55'-31"-W along said northerly line of First Street, a distance of 112.50 feet to the point and place of beginning.

PARCEL 2

BEGINNING at a point in the northerly line of First Street (50' wide) projected easterly, distant 182.50 feet easterly as measured along the northerly line of First Street projected easterly from a point formed by the intersection of the northerly line of First Street with the westerly line of River Street and running:

(1) N-13°-04'-29"-E, parallel with the westerly line of River Street a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E and parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street, a distance 212.50 feet to a point in the northerly line of First Street projected easterly, thence

(4) N-76°-55'-31"-W and along the northerly line of First Street projected easterly, a distance of 112.50 feet to a point said place of beginning.

PARCEL 3

BEGINNING at a point distant 70.00 feet easterly measured at right angles to the westerly line of River Street and 212.50 feet northerly measured at right angles to the northerly line of First Street (50' wide) projected easterly and running:

(1) N-13°-04'-29"-E, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(4) N-76°-55'-31"-W, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 4

BEGINNING at a point distant 182.50 feet easterly measured at right angles to the westerly line of River Street and 212.50 feet northerly measured at right angles to the northerly line of First Street (50' wide) projected easterly and running:

(1) N-13°-04'-29"-E, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(2) S-76°-55'-31"-E, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

(3) S-13°-04'-29"-W, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

(4) N-76°-55'-31"-W, parallel with the northerly line of First Street projected easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 6

BEGINNING at a point in the northerly line of Second Street (50' wide) projected easterly distant 93.00 feet easterly from the intersection formed by the easterly line of River Street (70' wide) with the northerly line of Second Street projected easterly and running thence:

(1) S-76°-55'-31"-E and along the northerly line of Second Street projected easterly a distance of 132.00 feet to a point; thence

(2) N-13°-04'-29"-E and parallel to Second Street a distance of 240.20 feet to a point; thence

(3) N-76°-55'-31"-W and parallel to the northerly line of Second Street prolonged easterly a distance of 117.00 feet to a point; thence

(4) S-13°-04'-29"-W and parallel to River Street a distance of 154.62 feet to a point of curvature; thence

(5) Southerly on a curve to the right having a radius of 256 feet an arc distance of 87.26 feet to a point in the northerly line of Second Street prolonged easterly, said point being the point or place of beginning.

PARCEL 8

BEGINNING at a point distant 425.00 feet northerly measured at right angles to the northerly line of Second Street projected easterly and 112.50 feet easterly measured at right angles to the easterly line of River Street and running:

(1) S-13°-04'-29"-W parallel to River Street a distance of 184.80 feet to a point; thence

(2) S-76°-55'-31"-E and parallel to the northerly line of Second Street projected easterly a distance of 112.50 feet to a point, thence

(3) N-13°-04'-29"-E and parallel to River Street a distance of 184.80 feet to a point; thence

(4) N-76°-55'-31"-W and parallel to the northerly line of Second Street projected easterly a distance of 112.50 feet to a point said point being the point or place of beginning.

EXHIBIT B

MUNICIPAL DEVELOPMENT AGREEMENT

between

THE CITY OF HOBOKEN

and

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

respecting

THE SOUTH WATERFRONT DEVELOPMENT

(bound separately)

Prepared by:

John M. Carbone, Esq.

TERMINATION OF LEASE

BE IT KNOWN that the City of Hoboken, a municipal corporation of the State of New Jersey, with offices at 94 Washington Street, in the City of Hoboken, County of Hudson and State of New Jersey, acting by and through the Mayor and the City Council (hereinafter referred to as the "Landlord"), and The Port Authority of New York and New Jersey, with offices at One World Trade Center, New York, New York, a body corporate and politic created by Compact between the States of New York and New Jersey with the consent of the Congress of the United States of America (hereinafter referred to as the "Tenant"),

HEREBY DECLARE that the leases between the City of Hoboken and the Port Authority of New York and New Jersey (the "Port Authority") set forth and filed in Deed Liber 2521 at page 478, et seq. and Deed Liber 4258 at page 159, et seq., in the Office of the Hudson County Register of Deeds, are terminated and declared to be of no force and effect, having been fully performed and/or satisfied.

IN WITNESSETH, WHEREFORE, the "Landlord" and "Tenant" have set their hands and seals this 16th day of August, 1995.

Witness:

John M. Carbone
An Attorney at Law of New Jersey

Witness:

Walter Frank
An Attorney at Law of New York

CITY OF HOBOKEN

Anthony Russo, Mayor

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

A. Paul Blanco, Director

STATE OF NEW JERSEY)
:
COUNTY OF HUDSON)

On this 16th day of August, 1995, before me the subscriber, personally appeared Anthony Russo, the Mayor of THE CITY OF HOBOKEN, who I am satisfied is the person who has signed the within instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal, and delivered the same as such officer aforesaid, and that the within instrument is the voluntary act and deed of THE CITY OF HOBOKEN made by virtue of the authority of its Council.

John M. Carbone
An Attorney at Law of New Jersey

STATE OF NEW YORK)
:
COUNTY OF NEW YORK)

On this 16th day of August, 1995, before me the subscriber, personally appeared A. Paul Blanco, the Director, Regional Development Department of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, who I am satisfied is the person who has signed the within instrument, and I having first made known to him the contents thereof, he did acknowledge that he signed, sealed with the corporate seal, and delivered the same as such officer aforesaid, and that the within instrument is the voluntary act and deed of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY made by virtue of the authority of its Board of Commissioners.

Walter Frank
An Attorney at Law of New York

THE PORT AUTHORITY OF NY & NJ

One World Trade Center, 36N
New York, N.Y. 10048

Regional Development Department
A. Paul Blanco, Director
(212) 435-7873
(201) 961-6600 x7873

August 16, 1995

Mr. Robert K. Drasheff, Director
Department of Human Services
City of Hoboken
City Hall
94 Washington Street
Hoboken, New Jersey 07030

Dear Mr. Drasheff:

As requested, this will confirm that in partial consideration for the acquisition of the Initial Development Property as described in the Municipal Agreement (the "Agreement") being entered into by the Port Authority of New York and New Jersey and the City of Hoboken (the "City") this date, the Port Authority hereby releases the City from the obligation to repay to the Port Authority the debt of $7 million described in paragraph (a) of Section 9 of the Agreement dated as of April 12, 1993 (the "April Agreement") between the City and the Port Authority and, as well, the Port Authority hereby releases the City from the obligation to pay the agreed to interest on such amount described in paragraph 9 (b) of the Agreement not heretofore paid by the City to the Port Authority. All other provisions of the April Agreement, except to the extent provided in any other agreements between the City and the Port Authority, shall remain in full force and effect. To the end of effectuating this step, I enclose a form of Release.

Sincerely,

A. Paul Blanco
Director
Regional Development Department

THE PORT AUTHORITY OF NY & NJ

RELEASE OF PROPERTY FROM LIEN

To the Register of Hudson County:

WHEREAS a lien for the indebted sums of $7.0 million and $1,221,220 in interest was entered against property owned by the City of Hoboken and in favor of The Port Authority of New York and New Jersey as it appears by the record thereof in Deed Book 4590, on pages 119-150;

NOW THEREFORE this is your warrant and authority to enter on the aforesaid record, this release of the lien of such judgment from the property whose legal description appears on the attached schedule A.

Dated: August 16, 1995

A. Paul Blanco
Director
Regional Development Department
The Port Authority of New York
and New Jersey

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

Date: August 16, 1995

A. Paul Blanco
Director
Regional Development Department
The Port Authority of New York
and New Jersey

81052

S C H E D U L E A

Demised Premises

ALL these certain pieces, parcels and tracts of lands and premises and lands under water lying and being in the City of Hoboken, County of Hudson and State of New Jersey, more particularly described as follows:

PARCEL I

Beginning at a point in the northerly line of Newark Street 100 feet easterly from the northeasterly corner of Newark and River Streets, and running thence--

Northerly and parallel with River Street 150 feet; thence--

Westerly and parallel with Newark Street 100 feet to the easterly line of River Street; thence--

Northerly along the easterly line or side of River Street 475 feet to a jog in said easterly line; thence--

Westerly and at right angles 5 feet to the easterly line or side of River Street continued; thence--

Northerly and along the said easterly line or side of River Street 100 feet to the southerly line of property formerly of the North German Lloyd; thence--

Easterly parallel with Newark Street as the same would be if extended and along the southerly line of property formerly of the North German Lloyd 522.92 feet more or less to the exterior line for solid filling established by the Commissioners appointed under the authority of an Act of the Legislature of the State of New Jersey, entitled "An Act to ascertain the rights of the State and of the riparian owners in the lands lying under the waters of the Bay of New York and elsewhere in this state" approved April 11, A. D. 1864 and the supplements thereto; thence--

Northeasterly along said exterior line for solid filling about 25.40 feet to a line distant 75.40 feet northerly at right angles from the northerly line of Second Street as the same would be if extended and to the southerly line of property conveyed to the North German Lloyd by deed bearing date the 28th day of September 1900 and recorded in the office of the Register of Hudson County; thence--

Southwesterly along said exterior line for solid filling about 779.55 feet more or less to a line parallel with and distant at right angles 25 feet southerly from the northerly line of Newark Street extended; thence--

Westerly and parallel with Newark Street extended about 168.38 feet more or less to a point 343.20 feet easterly at right angles from the westerly line of River Street; thence

Northerly and parallel with River Street 25 feet to the northerly line or side of Newark Street and thence--

Westerly along the northerly line or side of Newark Street 173.20 feet more or less to the point or place of beginning.

With the right, liberty, privilege and franchise to exclude the tidewater from so much of the lands above described as lies under tidewater, by filling in or otherwise improving the same and to appropriate the lands above described to exclusive use.

EXHIBIT A

Also all the lands under water lying between the present exterior line for solid filling aforesaid and the exterior line for piers established by the authority of the State of New Jersey and bounded on the south by the southerly line of the above described tract extended easterly to said exterior line for piers and on the north by a line 75.40 feet or thereabouts northerly of and parallel with the northerly line of Second Street extended easterly to said exterior line of piers, which northerly line is also the southerly line of lands conveyed to the North German Lloyd by deed dated September 28, 1900, recorded in the Register's office in the County of Hudson.

With the right, liberty, privilege and franchise of building piers only on so much of the land above described as lies between the exterior line for solid filling and the exterior line for piers as established by the authority of the State of New Jersey.

And if and when said exterior lines shall be fixed, or if said exterior lines have been heretofore fixed at any other points or places further out into the Hudson River, also any and all lands under water lying between the present exterior line or lines above described and the new exterior line or lines that may be hereafter fixed, or that have been heretofore fixed, the same to be used for solid filling and for piers respectively agreeably to the terms of such extension.

PARCEL II

Beginning at a point in the Easterly line of River Street distant 50 feet northerly from the northerly line of Second Street extended, which point is the northwesterly corner of the property formerly belonging to the Hamburg-Amerikanische Packetfahrt Actien Gesellschaft, and running thence--

Northerly along the easterly line of River Street 850.44 feet to the southerly line of Fourth Street; thence--

Easterly along the southerly line of Fourth Street 136 feet to a point; thence running--

Northerly at right angles to Fourth Street extended about 6 feet to the face of a stone retaining wall; thence--

Easterly and northeasterly along the face of said stone retaining wall about 130 feet to a point in the northerly line of Fourth Street extended about 230.75 feet easterly from the easterly line of River Street; thence--

Easterly along the northerly line of Fourth Street if the same were extended to the exterior line for piers established February 17, 1913, by the Commissioners or Board thereunto authorized by the State of New Jersey; thence--

Southerly along said exterior line for piers 876.54 feet and more to a line parallel to and distant 75.40 feet northerly from the northerly line of Second Street if the same were extended; thence--

Westerly and parallel to Second Street if the same were extended to the exterior line for solid filling established by the commissioners appointed under the authority of an act of the legislature of the State of New Jersey, approved April 11, 1864, and the several supplements thereto and amendments thereof; thence--

Southwesterly along said exterior line for solid filling, about 25.40 feet to a point distant 50 feet northerly at right angles from the northerly line of Second Street extended; thence--

Westerly and parallel to the northerly line of Second Street extended 522.92 feet, more or less, to the point or place of beginning.

With the right, liberty, privilege, and franchise to exclude the tidewater from so much of the lands above described as lies under tidewater, by filling in, or otherwise improving the same, and to appropriate the land above described to exclusive use except as hereinafter stated, and

With the right, liberty, privilege and franchise of building piers only on so much of the land above described as lies between the exterior line for solid filling and the exterior line for piers as established by the authority of the State of New Jersey.

And if and when said exterior lines shall be fixed, or if said exterior lines have been heretofore fixed, at any other points or places further out into the Hudson River, also any and all lands under water lying between the present exterior lines above described and the new exterior line or lines that may hereafter be fixed, or that have been heretofore fixed, the same to be used for solid filling and for piers respectively agreeably to the terms of such extension.

PARCEL III

All the rights, title, claims, privileges and interest formerly of North German Lloyd Dock Company and North German Lloyd and now of the United States in and to a parcel of land under waters of Hudson River, in the City of Hoboken, County of Hudson, and State of New Jersey, particularly described as follows:

Beginning at a point in the northerly line of Fourth Street if the same were extended 259.55 feet easterly from the easterly line of River Street and running thence--

Northerly and parallel to River Street extended 100 feet; thence--

Easterly and parallel to Fourth Street extended 989.37 feet, more or less, to the exterior line for piers established by the Riparian Commissioners of New Jersey on October 23, 1897; thence--

Southerly along said exterior line for piers 100.17 feet to the northerly line of Fourth Street if the same were extended; thence--

Westerly along the northerly line of Fourth Street if the same were extended 982.55 feet, more or less, to the place of beginning:

With the rights and privileges and subject to the limitations and restrictions which are now in effect incident to and affecting the said premises, as conveyed, transferred and assigned to said North German Lloyd Dock Company by deed dated March 1, 1901, recorded April 22, 1901, in Book 775, page 404, Conveyance Records of Hudson County, New Jersey; and

Also the rights, title, privileges, franchises, claims and interest in and to the premises as above described, as conveyed to North German Lloyd Dock Company by deed and agreement of the Mayor and City Council of Hoboken, dated May 23, 1901, recorded June 11, 1901, in Liber 784, page 156, Conveyance Records of Hudson County, New Jersey.

PARCEL IV

All the rights, title, claims, privileges and interest formerly of the North German Lloyd Dock Company and now of the United States in and to the parcel of land and land under waters of Hudson River, in the City of Hoboken, County of Hudson, and State of New Jersey, particularly described as follows:

Beginning at a point in the original high water line of the westerly shore of the Hudson River as said high water line existed according to the Loss Map in 1804, where the same is intersected by a line 100 feet to the north at right angles from the northerly line of Fourth Street, and from thence running--

Easterly parallel with the northerly line of Fourth Street if the same were extended and distant 100 feet northerly at right angles therefrom, 1141.25 feet, more or less, to the exterior line for piers adopted October 28, 1897, by the commissioners appointed under an act of New Jersey approved April 11, 1864, and supplements thereto; thence--

Northerly along said exterior line for piers as adopted 50 feet, more or less, to a point 150 feet northerly at right angles to the northerly line of Fourth Street if the same were extended; thence--

Westerly parallel with northerly line of Fourth Street if the same were extended and distant 150 feet northerly at right angles therefrom 1125.66 feet, more or less, to the high water line of the westerly shore of the Hudson River as the same existed according to the Loss Map in 1804; thence--

Southerly along said high water line to the place of beginning:

With the rights and privileges and subject to the limitations and restrictions which are now in effect incident to and affecting the said premises, as conveyed, transferred and assigned to said North German Lloyd Dock Company by deed dated November 11, 1908, recorded November 12, 1908, in Liber 1022, page 243, Conveyance Records of Hudson County, New Jersey; and

Rights, title, privileges, franchises, claims and interest in and to a portion of the premises as conveyed to North German Lloyd Dock Company by deed dated February 1, 1909, recorded February 3, 1909, Liber 1030, page 174, Conveyance Records of Hudson County, New Jersey.

BEING the same property and the right, title and interests therein, which were acquired by the United States of America pursuant to the Proclamation by the President of the United States dated June 25, 1918

EXCEPTING THEREFROM

(1) ALL that certain piece, parcel and tract of land being in the City of Hoboken, County of Hudson and State of New Jersey, more particularly described as follows:

BEGINNING at a point in the northerly line of Newark Street 100 feet easterly from the northeasterly corner of Newark and River Streets, and running thence northerly and parallel with River Street 150 feet; thence westerly and parallel with Newark Street 100 feet to the easterly line of River Street; thence northerly along the easterly line or side of River Street 25 feet; thence easterly and parallel with Newark Street 225 feet; thence southerly and parallel with River Street 175 feet to a point in the northerly side of Newark Street; thence westerly along the northerly side of Newark Street 125 feet to the point of BEGINNING.

(2) ALL that certain piece, parcel and tract of land and premises, together with the buildings and improvements thereon located in the City of Hoboken, County of Hudson and State of New Jersey, and bounded and described as follows:

BEGINNING at a point in the easterly line of River Street distant 40 feet more or less from the northerly line of Second Street if extended and running thence - northerly along the easterly line of River Street 150 feet; thence - easterly and at right angles to the easterly line of River Street 60 feet; thence - southerly paralleling the easterly line of River Street 150 feet; thence - easterly 60 feet to the place of BEGINNING.

TOGETHER WITH the appurtenances thereto belonging, including the right to use the waters adjacent thereto, and together with the buildings, fixtures, improvements, government-owned facilities, installations, railroad tracks, spurs and switches located thereon.

TOGETHER WITH the right of the United States to apply to the State of New Jersey, for a grant or grants of such additional lands lying under water as lie between the exterior lines for solid filling and piers as they were established at the time of conveyances to predecessors in title of the United States, and the said exterior lines now or hereafter fixed and to apply for such other grant or grants within the area aforesaid for which the right to make application may hereafter accrue in accordance with the terms and conditions of the aforesaid conveyances and to make application to the State of New Jersey for such permit or permits as may be required in connection with the construction, reconstruction or operation of the premises.

RESERVING unto the Government:

(1) The right through its properly designated officials and employees in the performance of their official duties to have at all times the right of access to all portions of the demised premises.

(2) All fissionable materials in the lands hereby demised together with the right at any and all times during the term hereof to enter upon said lands, prospect for, mine and remove such materials, provided, however, that the Government shall make just compensation to the Port Authority for any loss or damage occasioned thereby to any of the improvements constructed by the Port Authority.

(3) With respect to the building of the Bureau of Entomology and Plant Quarantine located westerly of the premises, reasonable means of ingress and egress for vehicles serving the easterly side of the building and for vehicles garaged therein, the non-exclusive use of the area shown in stipple on Exhibit A to the extent necessary for loading and unloading such vehicles, and light and air to the extent naturally provided when no buildings or structures above ground up to the height of the first story windows in said building are constructed within 25 feet of the building line of said building.

For convenient reference the demised premises are shown inside a line of crosses on the map attached hereto and marked "Exhibit A".

I, CRUZ C. RUSSELL, Secretary of THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, a body corporate and politic created by the Compact of April 30, 1921, between the States of New York and New Jersey and thereafter consented to by the Congress of the United States, hereby certify:

THAT annexed hereto is a true and correct copy of a "Delegation of Authority," "Hoboken Waterfront Development Project," which has been executed by the Executive Director of the Port Authority, George J. Marlin, and dated August 15, 1995; and

THAT such Delegation of Authority has not been revoked, rescinded or modified in any way and is now is full force and effect.

IN WITNESS WHEREOF, I Have hereunto set my hand as Secretary as aforesaid and affixed the Official Seal of The Port Authority of New York and New Jersey this 16th day of August, 1995.

Secretary
The Port Authority of New York and New Jersey

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

Delegation of Authority

Hoboken Waterfront Development Project (the "Project")

I hereby delegate to A. Paul Blanco, Director, Regional Development Department of The Port Authority of New York and New Jersey, the authority granted to the Executive Director by resolution of the Board of Commissioners adopted at its meeting of July 13, 1995 (appearing at pages 267 through 271 of the Official Minutes of that date) to:

1. execute a Municipal Development Agreement (the Agreement) with the City of Hoboken (the "City") containing the provisions described in said Official Minutes;

2. execute whatever documents are necessary for the Port Authority to acquire by purchase the Initial Development Property as defined in the Agreement and to accept a deed for such property;

3. execute a lease agreement with the City covering the Initial Development Property; and

4. take any other actions and enter into any other agreements necessary or appropriate in connection with the above transactions.

Date: 8/15/95

George J. Marlin
Executive Director

AFFIDAVIT OF TITLE

STATE OF NEW JERSEY, COUNTY OF HUDSON SS.:

Anthony Russo and James Farina say under oath:

1. **Officers.** We are respectively the Mayor and City Clerk of the City of Hoboken, a municipal corporation of the State of New Jersey. The Corporation will be called the "City" and sometimes simply "it" or "its". We are fully familiar with the government of the City. We are citizens of the United States and at least 18 years old.

2. **Representations.** The statements contained in this affidavit are true to the best of our knowledge, information and belief.

3. **Corporate Authority.** The City is the only owner of property located at the Hoboken Southern Waterfront called "this property". This property is to be conveyed by the City to the Port Authority of New York and New Jersey. This action, and the making of this affidavit of title, have been duly authorized by resolutions of the City Council on July 1, 1995 and July 12, 1995 to convey the property. A copy of these resolutions, bearing the seal of the City, are attached and made a part of this affidavit.

4. **Ownership and Possession.** The City has owned this property since January 11, 1984. Since then no one has questioned its right to possession or ownership. The City has sole possession of this property. There are no tenants or other occupants of this property. Except for its agreement with the Buyer it has not signed any contracts to sell this property. It has not given anyone else any rights concerning the purchase or lease of this property. The City is terminating the lease rights of those persons parking on the property.

5. **Improvements.** No additions, alterations or improvements are now in progress or have been made to this property. It has always obtained all necessary permits and certificates of occupancy. All charges for municipal improvements such as sewers, sidewalks, curbs or similar improvements benefiting this property have been paid in full. No building, addition, extension or alteration on this property has been made or worked on within the past four months. The City is not aware that anyone has filed or intends to file a mechanic's lien, building contract, construction lien claim or notice of unpaid balance relating to this property. No one has notified it that money is due and owing for construction or repair work on this property.

6. **Liens or Encumbrances.** It has not allowed any interests (legal rights) to be created which affects its ownership or use of this property. No other persons have legal rights in this property, except the rights of utility companies to use this property along the road or for the purpose of serving this property. The City does not have any pending lawsuits or judgments against it or other legal obligations which may be enforced against this property. No bankruptcy or insolvency proceedings have been started by or against it, nor has it ever been declared bankrupt. No one has any security interest in any person property or fixtures on this property. All liens (legal claims, such as judgments) listed on the attached judgment or lien search are not against the City, but against others with similar names.

7. **Exceptions.** The following is a complete list of exceptions to any of the above statements. This includes all liens or mortgages which are not being paid as a result of this transaction.

Deponent states that its attention has been drawn to a Charles Jones Search dated April 24, 1995, consisting of eleven (11) pages, and that said judgments are against the City of Hoboken and have been paid or satisfied or are being paid or satisfied. The City agrees to indemnify and hold harmless the Port Authority of New York and New Jersey and/or Chicago Title Insurance Company for any and all claims made under these judgments. The City shall within one hundred and twenty (120) days satisfy said judgments, file Warrants of Satisfaction or make other commercially acceptable arrangements with the Port Authority of New York and New Jersey and/or Chicago Title Insurance Company to ensure that these are not claims against this property.

9. **Reliance.** The City makes this affidavit in order to induce the Buyer to accept its deed. It is aware that the Buyer will rely on the statements made in this affidavit and on its truthfulness.

Signed and sworn to before me on
this 16th day of August , 1995.

John M. Carbone
An Attorney at Law of New Jersey

Anthony Russo, Mayor

James Farina, City Clerk

CHARLES JONES, INC.

HEREBY CERTIFIES TO:

489-5000-20

NEW JERSEY SUPERIOR COURT,
UNITED STATES DISTRICT COURT AND
UNITED STATES BANKRUPTCY COURT

RE: 9524-03748

Chicago Title Insurance
Company
Plaza 14
2 University Plz
Hackensack NJ 07601

THAT IT HAS MADE ITS CUSTOMARY UPPER COURT SEARCH AGAINST THE NAMES AND PERIODS HEREIN STATED WITH THE FOLLOWING RESULTS:

	FROM	TO
CITY OF HOBOKEN	04-24-75	04-24-95

***** WITH 15 JUDGMENTS *****

BANKRUPTCY PETITIONS CERTIFIED TO 04/27/95

DATED 04-24-95
TIME 08:45 AM

CHARLES JONES, INC.

FEE: $ 8.30

RT021944 122 125

INITIAL

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-20385-84
DATE ENTERED : 11-02-84
TYPE OF ACTION : CONTRACT
VENUE : HUDSON
CASE NUMBER : L-70159-83
STATUS :
ATTORNEY FOR CREDITOR(S): DEUTSCH & MCELROY

DEBT:$ 18,000.00

CREDITOR(S):
ARTESIAN WELL & EQUIPMENT COMPANY

DEBTOR(S):
CITY OF HOBOKEN

PLUS COSTS

***** END OF JUDGMENT *****

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-09050-85
DATE ENTERED : 05-08-85
TYPE OF ACTION : MISCELLANEOUS
VENUE : BERGEN
CASE NUMBER : C-02461-84
STATUS :
ATTORNEY FOR CREDITOR(S): JOSEPH DIRIENZO

DEBT:$ 10,130.00
COSTS:$ 88.64

CREDITOR(S):
RATTO CONSTRUCTION CO.

DEBTOR(S):
CITY OF HOBOKEN

PLUS INTEREST

***** END OF JUDGMENT *****

INITIAL

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-25964-85
DATE ENTERED : 12-09-85
TYPE OF ACTION : N/S TORT
VENUE : HUDSON
CASE NUMBER : L-04364-83
STATUS :
ATTORNEY FOR CREDITOR(S): MARQUET PERFILIO

DEBT:$ 1,533.50

CREDITOR(S):
JOSEPH RODRIGUEZ, INFANT BY G/A/L AIDA HERNANDEZ &
ADIA HERNANDEZ IND.

DEBTOR(S):
ZENA HECHT
COTWO SALE
FRED KRUGER
CITY OF HOBOKEN

DEBT:$ 1,533.51

CREDITOR(S):
ROBERT RODRIGUEZ, INFANT BY G/A/L AIDA HERNANDEZ &
AIDA HERNANDEZ IND.

DEBTOR(S):
ZENA HECHT
COTWO SALES
FRED KRUGER
CITY OF HOBOKEN

DEBT:$ 51,666.00

CREDITOR(S):
FRANKIE RODRIGUEZ INFANT BY G/A/L AIDA HERNANDEZ &
AIDA HERNANDEZ IND.

DEBTOR(S):
ZENA HECHT
COTWO SALES
FRED KRUGER
CITY OF HOBOKEN

DEBT:$ 101,666.66

CREDITOR(S):
PAUL RODRIGUEZ INFANT BY G/A/L AIDA HERNANDEZ &
AIDA HERNANDEZ IND.

DEBTOR(S):
ZENA HECHT
COTWO SALES
FRED KRUGER
CITY OF HOBOKEN

DEBT:$ 22,666.68

CREDITOR(S):
JACOB HERNANDEZ

DEBTOR(S):
ZENA HECHT
COTWO SALES
FRED KRUGER

12-09-85 TO BE PAID AS FOLLOWS: IN FVR OF JOSEPH RODRIGUEZ INFANT $1,000.00 BY ZENA HECHT, $333.50 BY CO-TWO SALES & FRED KRUGER, $200.00 BY CITY OF HOBOKEN

12-09-85 TO BE PAID AS FOLLOWS: IN FVR OF ROBERT RODRIGUEZ INFANT $1,000.00 BY ZENA HECHT, $333.51 BY CO-TWO SALES & FRED KRUGER, $200.00 BY CITY OF HOBOKEN

12-09-85 TO BE PAID AS FOLLOWS: IN FVR OF FRANKIE RODRIGUEZ INFANT, $49,000.00 BY ZENA HECHT, $1,666.66 BY CO-TWO SALES & FRED KRUGER, $1,000.00 BY CITY OF HOBOKEN

12-09-85 TO BE PAID AS FOLLOWS: IN FVR OF PAUL RODRIGUEZ INFANT, $99,000.00 BY ZENA HECHT, $1,666.66 BY CO-TWO SALES & FRED KRUGER, $1,000.00 BY CITY OF HOBOKEN

12-09-85 TO BE PAID AS FOLLOWS: IN FVR OF JACOB HERNANDEZ, $20,000.00 BY ZENA HECHT, $1,666.68 BY CO-TWO SALES & FRED KRUGER, $1,000.00 BY CITY OF HOBOKEN

01-17-86 WARRANT OF SATISFACTION AS TO DEFTS., FRED KRUGER, IND. AND D/B/A CO-2 SALES AND CO-2 SALES, INC.

***** END OF JUDGMENT *****

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-02991-86
DATE ENTERED : 02-05-86 CASE NUMBER : L-64473-83
TYPE OF ACTION : N/S TORT STATUS :
VENUE : HUDSON
ATTORNEY FOR CREDITOR(S): BLUME, VAZQUEZ, GOLDFADEN, BERKOWTIZ, OLIVERAS & DONNELLY

DEBT:$ 7,500.00

CREDITOR(S):
CHARLES MCNEIL

DEBTOR(S):
CITY OF HOBOKEN

PERSONAL INJURIES WITHOUT INTEREST WITH COSTS

DEBT:$ 57,000.00

CREDITOR(S):
CHARLES MCNEIL

DEBTOR(S):
CITY OF HOBOKEN

WITHOUT INTEREST WITH COSTS

***** END OF JUDGMENT *****

INITIAL

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-03154-86
DATE ENTERED : 02-06-86
TYPE OF ACTION : TORT
VENUE : HUDSON
ATTORNEY FOR CREDITOR(S): KIRSCH & GELBAND

CASE NUMBER : L-62161-81
STATUS :

DEBT:$ 60,000.00

CREDITOR(S):
ROSALINDA BUTLER GALICIA, INF. BY HER G/A/L CARMEN GALICIA

DEBTOR(S):
ZENA HECHT
A/K/A
ZENA MUHAMMAD
FRED KRUGER
CO 2 INC
CITY OF HOBOKEN
HOBOKEN FIRE DEPARTMENT

DEBT:$ 45,333.00

CREDITOR(S):
CARMEN GALICIA, IND.

DEBTOR(S):
ZENA HECHT
A/K/A
ZENA MUHAMMAD
FRED KRUGER
CO 2 INC.
CITY OF HOBOKEN
HOBOKEN FIRE DEPARTMENT

***** END OF JUDGMENT *****

INITIAL

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-06603-86
DATE ENTERED : 03-19-86 CASE NUMBER : L-05028-82
TYPE OF ACTION : N/S TORT STATUS :
VENUE : HUDSON
ATTORNEY FOR CREDITOR(S): BLUME, VAZQUEZ, GOLDFADEN, KUHN, BERKOWITZ & OLIVERAS

DEBT:$ 20,000.00

CREDITOR(S):
ANTONIO OLAVARRIA, INFANT BY G/A/L
GLADYS GARCIA

DEBTOR(S):
ZENA HECHT

SEE BODY JUDG TO DISTRIBUTION OF
FUNDS & INFANTS SHARE

DEBT:$ 10,000.00

CREDITOR(S):
EFFRAIN OLAVARRIA, IND.

DEBTOR(S):
ZENA HECHT

DEBT:$ 1,600.00

CREDITOR(S):
GLADYS GARCIA, IND.

DEBTOR(S):
CO 2 SALES
FRED KRUGER
CITY OF HOBOKEN

03-19-86 TOTAL $1,600.00 TO BE PAID AS FOLLOWS: DEBT $1,000.00 AGST CO 2 SALES , FRED KRUGER, $600.00 BY CITY OF HOBOKEN.

***** END OF JUDGMENT *****

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-08124-88
DATE ENTERED : 01-25-88
TYPE OF ACTION : PREROG. WRIT
VENUE : HUDSON
CASE NUMBER : L 078953-86
STATUS :
ATTORNEY FOR CREDITOR(S): RONALD HINE PRO SE

DEBT:$ 1,694.46

CREDITOR(S):
RONALD HINE

DEBTOR(S):
HOBOKEN CITY OF BOARD OF ADJUSTMENT
WITH POST JUDGT INT FR 10-11-87
NO DIR AS TO COSTS

DEBT:$ 1,694.46

CREDITOR(S):
ROBERT HINE

DEBTOR(S):
ANAWIM INVESTMENT AND DEVELOPMENT CORPORATION
ADDRESS FOR SVC.:
602 PAVONIA AVE., JERSEY CITY, NJ
WITH POST JUDGT INT FR 10-11-87
NO DIR AS TO COSTS

JUDGT NUNC PRO TUNC AS OF 10-11-87 WITH PRE JUDGT INTEREST.

***** END OF JUDGMENT *****

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-81093-88
DATE ENTERED : 11-14-88
TYPE OF ACTION : TORT
VENUE : HUDSON
CASE NUMBER : L-079203-86
STATUS :
ATTORNEY FOR CREDITOR(S): JOSEH HEALY

DEBT:$ 18,164.17

CREDITOR(S):
GEORGE CRIMMINS

DEBTOR(S):
CITY OF HOBOKEN
INCLUDES ATTORNEY'S FEES, COSTS
AND EXPENSES

***** END OF JUDGMENT *****

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-14725-89
DATE ENTERED : 02-23-89
TYPE OF ACTION : TORT NEGL.
VENUE : HUDSON
CASE NUMBER : L-060490-87
STATUS :
ATTORNEY FOR CREDITOR(S): KRWITZKY AND SPRINGER

DEBT:$ 7,500.00

CREDITOR(S):
LA TEKA BOYD INFANT BY G/A/L ALVENIA BOYD AND CHARLES BOYD, IND'S

DEBTOR(S):
HOBOKEN HOUSING AUTHORITY
ADDRESS FOR SVC.:
400 HARRISON ST, HOBOKEN, NJ 07030
CITY OF HOBOKEN
ADDRESS FOR SVC.:
WASHINGTON ST, HOBOKEN, NJ 07030
INCLS ATTORNEY FEES AND COSTS

***** END OF JUDGMENT *****

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-47929-91
DATE ENTERED : 04-29-91
DATE SIGNED : 04-16-91
TYPE OF ACTION : AUTO NEGL.
VENUE : HUDSON
CASE NUMBER : W-024002-89
STATUS :
ATTORNEY FOR CREDITOR(S): LESLIE & RUSSIELLO

DEBT:$ 7,700.00

CREDITOR(S):
EUGENE CARINO, INFANT
BY G/A/L CHARLES J.X. KAHAWATY, ESQ.

DEBTOR(S):
FELICITA CARINO
KIRK A. SOUDER
CITY OF HOBOKEN
INCLUDING ATTYS. FEES & COSTS
ISJ & DISBURSEMENTS

08-07-91 SATISFIED AS TO FELICITA CARINO, ONLY.
01-14-93 SATISIFED AS TO KIRK A. SOUDER, ONLY.

***** END OF JUDGMENT *****

WRITTEN

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-69978-93
DATE ENTERED : 07-20-93
DATE SIGNED : 07-09-93
TYPE OF ACTION : MISCELLANEOUS
VENUE : HUDSON
CASE NUMBER : L-010366-92
STATUS :
ATTORNEY FOR CREDITOR(S): FEINTUCH, PORWICH & FEINTUCH

DEBT:$ 5,740.00

CREDITOR(S):
BENJAMIN AVITABLE

DEBTOR(S):
CITY OF HOBOKEN
NEWARK AND WASGINGTON ST, HOBOKEN, NJ

***** END OF JUDGMENT *****

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-12217-94
DATE ENTERED : 02-03-94
DATE SIGNED : 01-07-94
TYPE OF ACTION : TORT
VENUE : HUDSON
CASE NUMBER : L-005691-92
STATUS :
ATTORNEY FOR CREDITOR(S): KEVIN M. BOSWORTH

DEBT:$ 30,000.00

CREDITOR(S):
MICHELE TORRE

DEBTOR(S):
CITY OF HOBOKEN
94 WASHINGTON ST, HOBOKEN, NJ
PLUS COSTS

***** END OF JUDGMENT *****

RT021944
489-5000-20

SUPERIOR COURT OF NEW JERSEY

JUDGMENT NUMBER: J-21519-95
DATE ENTERED : 01-20-95
DATE SIGNED : 01-11-95
TYPE OF ACTION : TORT
VENUE : HUDSON
ATTORNEY FOR CREDITOR(S): PERFILIO & MARQUET

CASE NUMBER : L-002422-92
STATUS :

DEBT:$ 35,000.00

CREDITOR(S):
MAXIM TRIDENTE, INFANT BY G/A/L
THERESA TRIDENTE

DEBTOR(S):
CITY OF HOBOKEN
THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN
WITHOUT INTEREST OR COSTS ISJ AND
DISBURSEMENTS

***** END OF JUDGMENT *****

UNITED STATES DISTRICT COURT

JUDGMENT NUMBER: CV-03305-86
DATE ENTERED : 10-17-88
TYPE OF ACTION : CIVIL

STATUS :
DAMAGES:$ 14,101.75

CREDITOR(S):
GEORGE CIMMINS

DEBTOR(S):
CITY OF HOBOKEN
ATTORNEY FEES & COSTS

ATTORNEY FOR CREDITOR(S): JOSEPH HEALY
ADDRESS: 290 LAFAYETTE AVE.
HAWTHORNE NJ 07506

***** END OF JUDGMENT *****

MATV/L

RT021944
489-5000-20

UNITED STATES DISTRICT COURT

JUDGMENT NUMBER: CV-03302-89
DATE ENTERED : 01-24-95
TYPE OF ACTION : CIVIL

STATUS :
DAMAGES: $ 17,160.00
COSTS: $ 477.00

CREDITOR(S):
ROGER FUCILLI

DEBTOR(S):
KEVIN HOUGHTON
AND
CITY OF HOBOKEN

AWARD AMOUNT IS FOR ATTORNEY FEES

ATTORNEY FOR CREDITOR(S): JOHN RICHARD SCHWARTZ

***** END OF JUDGMENT *****

CHICAGO TITLE INSURANCE COMPANY
2 University Plaza, Plaza 14, Hackensack, NJ 07601-6202 (201) 489-5000, FAX# (201) 489-5336

INVOICE

DATE: 05/15/1995

TO: RICHARD MAST, PROPERTY ENGINEER
THE PORT AUTHORITY OF NY & NJ
ONE WORLD TRADE CENTER, 66N
NEW YORK, NEW YORK 10048

TITLE NO: 9524-03748

AMOUNT OF INSURANCE
FEE AMT: $18,000,000.00
MORTGAGE AMT:

Account No. 6111908
(212) 435-6790
(212) 435-6797

TRANSACTION: BASIC RATE
412-7012 C&I OWN RESALE
CITY OF HOBOKEN/PORT AUTHORITY
EAST RIVER STREET
HOBOKEN, NJ

PLEASE ORDER RUNDOWN 48 HOURS IN ADVANCE

ITEM		CHARGES	
PREMIUM			
Fee		37,250.00	
Mortgage			
Leasehold			
	SUBTOTAL		37,250.00
[303] Extra Chain		100.00	
[082] Delivery Charges		75.00	
	SUBTOTAL		175.00
NOTICE OF SETTLEMENT		15.00	
ATTENDANCE AT CLOSING		500.00	
	SUBTOTAL		515.00
	TOTAL		$37,940.00

***** THIS INVOICE SUPERSEDES ANY/ALL PRIOR INVOICES *****

NOTE1: THIS BILL IS SUBJECT TO CHANGE. FINAL TOTAL BILL MUST BE VERIFIED AT CLOSING.

NOTE2: THIS BILL IS SUBJECT TO CANCELLATION CHARGES. PLEASE CALL FOR APPROPRIATE CHARGES.

THE INSURANCE COMMISSIONER HAS DIRECTED THAT A STATEMENT DETAILING EACH PASS-THROUGH SEARCH CHARGE MUST BE SUPPLIED TO THE PURCHASER/BORROWER/LESSEE IN EACH INSURED TRANSACTION

CHICAGO TITLE INSURANCE COMPANY

2 University Plaza, Plaza 14, Hackensack, NJ 07601-6202 (201) 489-5000, FAX# (201) 489-5336

August ~~14~~ 16, 1995

RICHARD MAST, PROPERTY ENGINEER
THE PORT AUTHORITY OF NY & NJ
ONE WORLD TRADE CENTER, 66N
NEW YORK, NEW YORK 10048

RE: Title No. 9524-03748
CITY OF HOBOKEN/PORT AUTHORITY
EAST RIVER STREET
HOBOKEN,N.J.

Dear Mr. Mast,

Please be advised that the above mentioned matter has been continued to date with the following changes:

COUNTY SEARCH: No Change

TRENTON SEARCH: New Jersey Superior Court, United States District Court and United States Bankruptcy Court shows clear.

Very truly yours,

Elizabeth Morgen

Elizabeth Morgen
Closing Dept.

em/s

CHICAGO TITLE INSURANCE COMPANY
TICOR TITLE INSURANCE COMPANY

ALTA COMMITMENT

Schedule A

Commitment No. 9524-03748

1. Commitment Date: March 31, 1995

   This commitment expires nine (9) months after the above date.

2. Policy or Policies to be issued:

   (a) [X] ALTA Owner's Policy (10/17/92) Amount $17,000,000.00

   Proposed Insured: PORT AUTHORITY OF NY & NJ

   (b) [ ] ALTA Residential Owner's Policy (1987) Amount

   (c) [ ] ALTA Loan Policy (10/17/92) Amount

   Proposed Insured:

   (d) [X] ALTA Leasehold Policy Amount $17,000,000.00

   Proposed Insured: CITY OF HOBOKEN

3. FEE SIMPLE interest in the land described in this Commitment is owned, at the Commitment Date, by:

   AS TO LOT 3 BLOCK 231

   CITY OF HOBOKEN, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY by deed from UNITED STATES OF AMERICA, ACTING BY AND THROUGH THE ADMINISTRATOR OF GENERAL SERVICES, UNDER AND PURSUANT TO THE POWERS AND AUTHORITY CONTAINED IN THE PROVISIONS OF THE FEDERAL PROPERTY AND ADMINISTRATIVE SERVICES ACT OF 1949 (63 STAT. 377), AS AMENDED, THE REGULATIONS AND ORDER PROMULGATED THEREUNDER, AND IN THE PROVISIONS OF PUBLIC LAW 97-268, dated January 11, 1984, recorded January 18, 1984 in the Hudson County Register's Office in Deed Book 3401, Page 336.

   (COVERS SUBJECT PREMISES AND ADDITIONAL PROPERTY)

   AS TO LOT 4 BLOCK 231

   UNITED STATES OF AMERICA by deed from HAMBURG-AMERICAN LINE TERMINAL AND NAVIGATION COMPANY, A NEW JERSEY CORPORATION, dated April 15, 1919, recorded May 2, 1919 in the Hudson County Register's Office in Deed Book 1306, Page 251. ***(COVERS THE SOUTHERLY 60 FEET OF LOT 4 BLOCK 231 AND MORE)*** and by Proclamation by the President of the United States dated December 3, 1918 pursuant to authority vested by Act of Congress approved March 28, 1918 ***(COVERS THE NORTHERLY 190 FEET OF LOT 4)***

4. The land referred to in this Commitment is described as follows:
   (if the land is not described here, it is described on the attached sheet.)

PARCEL 1

Beginning at a monument set 70.00 feet East and parallel with the Westerly line of River Street where the same is intersected by the Northerly line of First Street (50' wide) projected easterly and running:

1. N-13°-04'-29"E, along said line 70.00 feet East of the Westerly line of River Street, a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, parallel with the Northerly line of First Street projected easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street a distance of 212.50 feet to a point in the northerly line of First Street projected Easterly; thence

4. N-76°-55'-31"W, along said Northerly line of First Street, a distance of 112.50 feet to the point and place of beginning.

PARCEL 2

Beginning at a point in the northerly line of First Street (50' wide) projected Easterly, distant 112.50 feet Easterly as measured along the Northerly line of First Street projected Easterly from a monument. Said monument being in a line 70.00 feet East and parallel with the Westerly line of River Street where the same intersects the Northerly line of First Street and running; thence

1. N-13°-04'-29"E, parallel with the Westerly line of River Street a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, and parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street, a distance 212.50 feet to a point in the northerly line of First Street projected Easterly,; thence

4. N-76°-55'-31"W, and along the Northerly line of First Street projected Easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 3

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following course and distance: N-13°-04'-29"E along said line 70.00 feet east of the westerly line of River Street, a distance of 212.50 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following four courses and distances:

1. N-13°-04'-29"E, parallel with the westerly line of River Street, a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street, a distance of 212.50 feet to a point; thence

4. N-76°-55'-31"W, parallel with the northerly line of First Street projected Easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 4

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following two (2) courses and distances: (1) N-13°-04'-29" E along said line 70.00 feet east of the westerly line of River Street a distance of 212.50 feet to a point, thence (2) S-76°-55'-31"E parallel with the northerly line of First Street, a distance of 112.50 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following four courses and distances:

1. N-13°-04'-29"E, parallel with the Westerly line of River Street, a distance of 212.50 feet to a point; thence

2. S-76°-55'-31"E, parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to a point; thence

3. S-13°-04'-29"W, parallel with the Westerly line of River Street, a distance of 212.50 feet to a point; thence

4. N-76°-55'-31"W, parallel with the Northerly line of First Street projected Easterly, a distance of 112.50 feet to the point and place of beginning.

PARCEL 6

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following two (2) courses and distances, (1) N-13°-04'29"E along said line 70.00 feet east of the westerly line of River Street a distance of 475.00 feet to a point in the northerly line of second street projected easterly; thence (2) S-76°-55'-31"E parallel with the northerly line of First Street,a distance of 93.27 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following five courses and distances:

1. S-76°-55'-31"E, and along the northerly line of Second Street projected Easterly a distance of 131.73 feet to a point; thence

2. N-13°-04'-29"E, and parallel to Second Street a distance of 240.20 feet to a point; thence

3. N-76°-55'-31"W, and parallel to the Northerly line of Second Street prolonged Easterly a distance of 117.00 feet to a point; thence

4. S-13°-04'-29"W, and parallel to River Street a distance of 154.62 feet to a point of curvature; thence

5. Southerly on a curve to the right having a radius of 256 feet an arc distance of 87.25 feet to a point in the Northerly line of Second Street prolonged Easterly, said point being the point or place of beginning.

PARCEL 8

To locate the point of beginning, commence at a monument in the northerly line of First Street (50 feet wide) projected easterly where the same is intersected by a line 70.00 feet east of and parallel with the Westerly line of River Street and running the following two(2) courses and distances: (1) N-13°-04'-29"E along said line 70.00 feet east of the westerly line of River Street a distance of 900.00 feet to a point in the southerly line of Third Street projected easterly; thence (2) S-76°-55'-31" E parallel with the northerly line of First Street, a distance of 112.50 feet to the true point and place of beginning.

Thence, from the true point and place of beginning, the following four courses and distances:

1. S-13°-04'-29"W, parallel to River Street a distance of 184.80 feet to a point; thence

2. S-76°-55'-31"E, and parallel to the Northerly line of Second Street projected Easterly a distance of 112.50 feet to a point; thence

3. N-13°-04'-29"E, and parallel to River Street a distance of 184.80 feet to a point; thence

4. N-76°-55'-31"W, and parallel to the Northerly line of Second Street projected Easterly a distance of 112.50 feet to a point said point being the point or place of beginning.

K

D E S C R I P T I O N

ALL that certain tract, lot and parcel of land lying and being in the City of Hoboken, County of Hudson, and State of New Jersey, being more particularly described as follows:

PARCEL 1: BEGINNING AT A POINT IN A LINE 70.00 FEET EAST OF AND PARALLEL WITH THE WESTERLY LINE OF RIVER STREET WHERE THE SAME IS INTERSECTED BY THE NORTHERLY LINE OF FIRST STREET (50' WIDE) PROJECTED EASTERLY AND RUNNING:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST ALONG SAID LINE 70.00 FEET EAST OF WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT IN THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST ALONG SAID NORTHERLY LINE OF FIRST STREET, A DISTANCE OF 112.50 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 2: BEGINNING AT A POINT IN THE NORTHERLY LINE OF FIRST STREET (50' WIDE) PROJECTED EASTERLY, DISTANT 182.50 FEET EASTERLY AS MEASURED ALONG THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY FROM A POINT FORMED BY THE INTERSECTION OF THE NORTHERLY LINE OF FIRST STREET WITH THE WESTERLY LINE OF RIVER STREET AND RUNNING:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST PARALLEL WITH THE WESTERLY LINE OF RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT IN THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND ALONG THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT, SAID POINT BEING THE POINT AND PLACE OF BEGINNING.

PARCEL 3: BEGINNING AT A POINT DISTANT 70.00 FEET EASTERLY MEASURED AT RIGHT ANGLES TO THE WESTERLY LINE OF RIVER STREET AND 212.50 FEET NORTHERLY MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF FIRST STREET (50' WIDE) PROJECTED EASTERLY AND RUNNING:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

- CONTINUED -

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 4: BEGINNING AT A POINT DISTANT 182.50 FEET EASTERLY MEASURED AT RIGHT ANGLES TO THE WESTERLY LINE OF RIVER STREET AND 212.50 FEET NORTHERLY MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF FIRST STREET (50' WIDE) PROJECTED EASTERLY AND RUNNING:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 5: BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE EASTERLY LINE OF RIVER STREET (70' WIDE) WITH THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY (50' WIDE) AND RUNNING THENCE:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST AND ALONG THE EASTERLY LINE OF RIVER STREET A DISTANCE OF 240.20 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL TO SECOND STREET PROJECTED EASTERLY A DISTANCE OF 108.00 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL TO RIVER STREET A DISTANCE OF 154.62 FEET TO A POINT OF CURVATURE; THENCE

(4) SOUTHERLY, ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 256.00 FEET AN ARC DISTANCE OF 87.26 FEET TO A POINT IN THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY; THENCE

(5) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND ALONG THE NORTHERLY LINE OF SECONDS STREET PROJECTED EASTERLY A DISTANCE OF 93.27 FEET TO A POINT IN THE EASTERLY LINE OF RIVER STREET, SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 6: BEGINNING AT A POINT IN THE NORTHERLY LINE OF SECOND STREET (50' WIDE) PROJECTED EASTERLY DISTANT 93.27 FEET EASTERLY FROM THE INTERSECTION FORMED BY THE EASTERLY LINE OF RIVER STREET (70' WIDE) WITH THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY AND RUNNING THENCE:

(1) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND ALONG THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY A DISTANCE OF 131.73 FEET TO A POINT; THENCE

(2) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST AND PARALLEL TO SECOND STREET A DISTANCE OF 240.20 FEET TO A POINT; THENCE

(3) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND PARALLEL TO THE NORTHERLY LINE OF SECOND STREET PROLONGED EASTERLY A DISTANCE OF 117.00 FEET TO A POINT; THENCE

(4) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST AND PARALLEL TO RIVER STREET A DISTANCE OF 154.62 FEET TO A POINT OF CURVATURE; THENCE

(5) SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 256 FEET AN ARC DISTANCE OF 87.26 FEET TO A POINT IN THE NORTHERLY LINE OF SECOND STREET PROLONGED EASTERLY, SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 7: BEGINNING AT A POINT IN THE EASTERLY LINE OF RIVER STREET DISTANT 425.00 FEET NORTHERLY AS MEASURED ALONG THE EASTERLY LINE OF RIVER STREET FROM A POINT FORMED BY THE INTERSECTION OF THE EASTERLY LINE OF RIVER STREET WITH THE NORTHERLY LINE OF SECOND STREET PROLONGED EASTERLY AND RUNNING:

(1) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST AND ALONG THE EASTERLY LINE OF RIVER STREET A DISTANCE OF 184.80 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL TO THE NORTHERLY LINE OF SECOND STREET PROLONGED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST PARALLEL TO RIVER STREET A DISTANCE OF 184.80 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND PARALLEL WITH THE NORTHERLY LINE OF SECOND STREET PROLONGED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT IN THE EASTERLY LINE OF RIVER STREET, SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 8: BEGINNING AT A POINT DISTANT 425.00 FEET NORTHERLY MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY AND 112.50 FEET EASTERLY MEASURED AT RIGHT ANGLES TO THE EASTERLY LINE OF RIVER STREET AND RUNNING:

(1) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST PARALLEL TO RIVER STREET A DISTANCE OF 184.80 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL TO THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST AND PARALLEL TO RIVER STREET A DISTANCE OF 184.80 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND PARALLEL TO THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 9: BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE EASTERLY LINE OF RIVER STREET (70' WIDE) WITH THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY (50' WIDE) AND RUNNING THENCE:

- CONTINUED -

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST AND ALONG THE EASTERLY LINE OF RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL TO THIRD STREET A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL TO RIVER STREET AND ALONG THE CENTERLINE OF AN EASEMENT A DISTANCE OF 212.50 FEET TO A POINT IN THE NORTHERLY LINE OF THIRD STREET; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND ALONG THE NORTHERLY LINE OF THIRD STREET A DISTANCE OF 112.50 FEET TO A POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 10: BEGINNING AT A POINT IN THE NORTHERLY LINE OF THIRD STREET (50' WIDE) PROJECTED EASTERLY, DISTANT 112.50 FEET EASTERLY FROM THE INTERSECTION FORMED BY THE EASTERLY LINE OF RIVER STREET (70' WIDE) WITH THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY AND RUNNING THENCE:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, PARALLEL TO RIVER STREET AND ALONG THE CENTERLINE OF AN EASEMENT A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL TO THIRD STREET A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL TO RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT IN THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND ALONG THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT, SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 11: BEGINNING AT A POINT IN THE EASTERLY LINE OF RIVER STREET (70' WIDE) DISTANT 212.50 FEET NORTHERLY FROM THE INTERSECTION FORMED BY THE NORTHERLY LINE OF THIRD STREET (50' WIDE) PROJECTED EASTERLY WITH THE EASTERLY LINE OF RIVER STREET AND RUNNING THENCE:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST AND ALONG THE EASTERLY LINE OF RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 MINUTES EAST AND PARALLEL TO THIRD STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL TO RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT IN THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND ALONG THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT IN THE EASTERLY LINE OF RIVER STREET, SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 12: BEGINNING AT A POINT DISTANT 212.50 FEET NORTHERLY MEASURED AT RIGHT ANGLES TO THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY AND 112.50 FEET EASTERLY MEASURED AT RIGHT ANGLES TO THE EASTERLY LINE OF RIVER STREET AND RUNNING:

- *CONTINUED* -

DESCRIPTION (CONTINUED)
TITLE NO. 9524-03748

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, PARALLEL TO RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL TO THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL TO RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST, AND ALONG THE NORTHERLY LINE OF THIRD STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT, SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

FOR INFORMATION ONLY - BEING ALSO KNOWN AS PART OF LOT 3 AND ALL OF LOT 4, BLOCK 231 ON THE CURRENT TAX ASSESSMENT MAP OF THE CITY OF HOBOKEN.

S C H E D U L E B - S E C T I O N 1

The following are the requirements to be complied with:

1. Instrument(s) necessary to create the estate or interest to be insured must be properly executed, delivered and duly filed for record, to wit:

   Deed from **CITY OF HOBOKEN, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY** to **PORT AUTHORITY OF NY & NJ**

   Lease from **PORT AUTHORITY OF NY & NJ** to **CITY OF HOBOKEN, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY**

2. Payment of the full consideration to, or for the account of the grantor(s) or mortgagor(s).

3. If the present transaction is an assignment of a mortgage or lease, an estoppel certificate executed by the owner of the fee must be obtained.

4. If the present transaction consists in whole or in part of a conveyance, mortgage or lease by a corporation, a certified copy of the Resolution of the Board of Directors authorizing the transaction together with a certificate that the corporation is solvent and the By-Laws have been complied with must be obtained.

5. An affidavit of title executed by the seller(s) and/or mortgagor(s) must be obtained and the facts set forth therein must be considered.

6. *The Company requires that a NOTICE OF SETTLEMENT in connection with this transaction be filed, pursuant to N.J.S.A. 46:16A-1 et seq., as nearly as possible to (but not more than) forty-five (45) days prior to the anticipated closing date. If the closing is postponed to a date which is more than forty-five (45) days after the filing of the NOTICE OF SETTLEMENT, another NOTICE OF SETTLEMENT must be filed in a timely fashion.*

7. **NEW JERSEY SUPERIOR COURT AND UNITED STATES DISTRICT COURT RETURNS DATED APRIL 24, 1995, DISCLOSES JUDGMENTS WHICH REQUIRE SATISFACTORY DISPOSITION. IF THESE JUDGMENTS ARE NOT AGAINST THE PARTY OR PARTIES IN THE CHAIN OF TITLE, A SPECIFIC DISCLAIMING AFFIDAVIT MUST BE OBTAINED FROM THEM. IF THE JUDGMENTS ARE AGAINST THE PARTY OR PARTIES IN THE CHAIN OF TITLE, THEY MUST BE SATISFIED OF RECORD PRIOR TO CLOSING.**

8. **SUBJECT TO RECEIPT AND RECORDATION OF TERMINATIONS OF LEASE FOR LEASES IN DEED BOOK 2521 PAGE 478 AND DEED BOOK 4248 PAGE 159.**

9. **SUBJECT TO PRODUCTION AND RECORDATION OF GRANT OF PERMANENT EASEMENT FROM UNITES STATES POSTAL SERVICE TO THE CITY OF HOBOKEN FOR PUBLIC ACCESS AND RIGHT OF WAY.**
   NOTE: THIS EASEMENT WILL NOT APPEAR ON THE FEE POLICY INSURING THE PORT AUTHORITY OF NY & NJ BUT WILL APPEAR IN SCHEDULE A OF THE LEASEHOLD POLICY TO THE CITY OF HOBOKEN AS A "TOGETHER WITH" PROVISION OF THE INSURED DESCRIPTION.

10. **SUBJECT TO PRODUCTION AND RECORDATION OF INSTRUMENT FROM THE UNITED STATES OF AMERICA TO THE CITY OF HOBOKEN FOR LOT 4 BLOCK 231.**

11. **SUBJECT TO PRODUCTION AND RECORDATION OF ROAD VACATION FOR THE EASTERLY FIVE FEET OF RIVER STREET BETWEEN FIRST AND SECOND STREET.**

S C H E D U L E B - S E C T I O N 2

Schedule B of the policy or policies to be issued will contain exceptions to the following matters unless the same are disposed of to the satisfaction of the Company.

1. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires for value of record the estate or interest or mortgage thereof covered by this Commitment.

2. Rights or claims of parties in possession not shown by the public records.

3. Easements, or claims of easements, not shown by the public records.

4. Encroachments, overlaps, boundary line disputes and other matters which would be disclosed by an accurate survey and inspection of the premises. (For an additional charge and upon submission of an acceptable survey, this exception will be deleted by the endorsement and the policy will set forth the matters, if any, affecting title). **Survey to be advised**

OMIT JB

5. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

6. Taxes, charges and assessments as set forth in the schedule(s) annexed.

7. The - 0 - mortgage(s) and assignment(s) thereof as described in the schedule(s) annexed.

OMIT FOR THIS CLOSING JB

8. **RESTRICTIONS AS CONTAINED IN DEED FROM HOBOKEN LAND AND IMPROVEMENT COMPANY TO FRANCIS HOFFMAN AND WILLIAM V. WULTKE, DATED JUNE 15, 1865 AND RECORDED JULY 14, 1865 IN DEED BOOK 122 PAGE 210.** *(AFFECTS A 50 BY 100 FOOT PARCEL ALONG RIVER STREET 10 FEET SOUTHERLY FROM THIRD STREET EXTENDED) (AFFECTS PARCEL 7)*

OMIT FOR THIS CLOSING JB

9. **COVENANTS AND AGREEMENTS CONTAINED IN CONTRACT DATED AUGUST 27, 1889 AND NOT RECORDED BETWEEN THE HOBOKEN LAND AND IMPROVEMENT COMPANY AND THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN, RELATIVE TO CONSTRUCTION OF A STREET ON THE RIVER FRONT, ETC. AND FURTHER AGREEMENT WITH REFERENCE THERETO, RECORDED IN DEED BOOK 784 PAGE 152.**

10. **TERMS AND CONDITIONS OF DEED, HOBOKEN LAND & IMPROVEMENT COMPANY TO THE NORTH GERMAN LLOYD DOCK COMPANY, DATED MARCH 1, 1901 AND RECORDED APRIL 22, 1901 IN DEED BOOK 775 PAGE 404. NOTE: THIS POLICY AFFIRMATIVELY INSURES AGAINST ENFORCEMENT OF SAID TERMS AND CONDITIONS.**

EXCEPT JB

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For Information Only:

If instrument to be insured is a purchase money mortgage covering a 1 to 4 family dwelling and owner's insurance is not desired, written notice declining right to purchase same is required from mortgagor pursuant to statutory requirement. (Notice and Waiver form enclosed.)

OMIT FOR [illegible]

11. **RIGHT OF VIEW ACCESS AS SET FORTH IN DEED AND AGREEMENT BETWEEN THE MAYOR AND COUNCIL OF HOBOKEN TO THE NORTH GERMAN LLOYD DOCK COMPANY, DATED MAY 23, 1901 AND RECORDED JUNE 11, 1901 IN DEED BOOK 784 PAGE 156 AND DEED DATED FEBRUARY 1, 1909, RECORDED FEBRUARY 3, 1909 IN DEED BOOK 1030 PAGE 174.**

EXCEPT

12. **RIGHTS OF THE DIVISION OF PLANNING AND DEVELOPMENT IN THE DEPARTMENT OF CONSERVATION AND ECONOMIC DEVELOPMENT TO SUPERVISE PLANS FOR ANY BUILDING OR OTHER IMPROVEMENTS, OR DEVELOPMENT TO BE ERECTED OR MADE ON THE WATERFRONT AND TO ABATE AS A PUBLIC NUISANCE ANY IMPROVEMENT THEREOF COMMENCED OR MADE SINCE APRIL 8, 1914, WITHOUT THE APPROVAL OF THE NEW JERSEY HARBOR COMMISSION OR SAID DIVISION UNDER AUTHORITY OF N.J.S.A. 12:5-1 ET SEQ.**

EXCEPT

13. **SUBJECT TO TERMS, CONDITIONS AND EASEMENTS AS REFERRED TO IN AGREEMENT IN DEED BOOK 4590 PAGE 119.** *(SAID TERMS, CONDITIONS AND EASEMENTS ARE LIMITED TO THOSE SET FORTH IN #2 ON PAGE 120, #2 ON PAGE 127 AND #3 ON PAGE 128)*

EXCEPT

14. **TERMS AND CONDITIONS, OTHER THAN THE PROVISIONS THAT THE GRANTEE MUST BE THE OWNER OF THE UPLAND, AS CONTAINED IN RIPARIAN GRANTS FROM THE STATE OF NEW JERSEY TO THE HOBOKEN LAND AND IMPROVEMENT COMPANY AND THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN IN DEED BOOK 249 PAGE 448, DEED BOOK 405 PAGE 344, DEED BOOK 721 PAGE 551, DEED BOOK 245 PAGE 40, DEED BOOK 201 PAGE 396 RE-RECORDED IN DEED BOOK 241 PAGE 400, DEED BOOK 488 PAGE 70 AND GRANT BY ACT OF LEGISLATURE TO UNITED DELAWARE AND RARITAN CANAL COMPANY APPROVED MARCH 31, 1869.**
NOTE: THE AUTOMATIC EXTENSION CLAUSES WHICH WOULD EXTEND THE GRANTS UPON THE ESTABLISHMENT OF NEW PIERHEAD AND BULKHEAD LINES ARE NOT INSURED.

NOTE: THIS POLICY AFFIRMATIVELY INSURES AGAINST LOSS BY REASON OF ANY UNCOMPENSATED TAKING OF THE INSURED PREMISES.

EXCEPT

15. **SUBJECT TO TERMS AND CONDITIONS OF LEASE BETWEEN THE PORT AUTHORITY OF NY & NJ AND THE CITY OF HOBOKEN, DATED _____, RECORDED _____ IN DEED BOOK _____ PAGE ____.**

EXCEPT

16. **THE FOLLOWING ITEMS DISCLOSED BY A SURVEY MADE BY J.F. CAULFIELD ASSOCIATES, DATED JULY ~~26, 1995 REVISED TO AUGUST 14, 1995~~, ARE HEREBY ADDED AS EXCEPTIONS IN SCHEDULE B:** AUGUST 8, 1995
(A)* EXISTING 2 STORY BRICK (PARTIALLY DEMOLISHED) BUILDING SITUATE ON PARCELS 4, 6 & 8.
(B) GOLDHOUSES SITUATE ON PARCELS 1 & 3.
(C) RAMP SITUATE ON PARCEL 6.
(D) [illegible] EXTENDED INTO RIVER STREET.

EXCEPT

17 SUBJECT TO TERMS AND CONDITIONS OF MUNICIPAL DEVELOPMENT AGREEMENT DATED AUGUST 16, 1995 AS CONTAINED IN DEED FROM THE CITY OF HOBOKEN TO THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, DATED AUGUST 16, 1995, RECORDED AUGUST 16, 1995 IN DEED BOOK _____ PAGE _____ .

Chicago Title Insurance Company

9524-03748

TAXES AND OTHER MUNICIPAL LIENS
AND
CERTIFICATE AS TO LIABILITY FOR ASSESSMENTS FOR MUNICIPAL IMPROVEMENTS

BLOCK 231 **PART OF LOT 3 & ALL OF LOT 4**

EAST RIVER STREET
HOBOKEN, NJ

==========

R E T U R N S

==========

(Some of the items returned hereon may have been paid but payment not officially posted. Receipts for such items should be produced on closing.)

5H IT

(a) Liability for additional assessment for taxes in connection with new construction pursuant to N.J.S.A. 54:4-63.1 et seq.

(b) TAX SEARCH (ATTACHED) TAX EXEMPT THRU DATE OF CLOSING

4H IT

(c) UNCONFIRMED ASSESSMENT SEARCH, REPORTED FOR INFORMATION ONLY. (ATTACHED)

OPEN WATER & SEWER CHARGES, IF ANY

(d) MUNICIPAL UTILITIES AUTHORITY SEARCH.
FINAL METER READING IS REQUIRED TO BE PERFORMED PRIOR TO CLOSING.
(ON ORDER)

Our policy does not insure against taxes, water rates, assessments, and other matters relating to taxes which have not become a lien up to the date of the policy or installments due after the date of the policy. Neither our tax search nor our policy covers any part of the streets on which the premises to be insured abut.

==========

Taxes become a lien on lands on January 1st of each year and are payable in quarterly installments on February 1st, May 1st, August 1st and November 1st.

AMERICAN LAND TITLE ASSOCIATION
LEASEHOLD OWNER'S POLICY
(10-17-92)

CHICAGO TITLE INSURANCE COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

In Witness Whereof, CHICAGO TITLE INSURANCE COMPANY has caused this policy to be signed and sealed as of Date of Policy shown in Schedule A, the policy to become valid when countersigned by an authorized signatory.

CHICAGO TITLE INSURANCE COMPANY
By:

Richard L Polla.

President

By:

Thomas J Adams

Secretary

Issued by:
CHICAGO TITLE INSURANCE COMPANY
Two University Plaza, Plaza 14
Hackensack, New Jersey 07601
(201) 489-5000

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. **(a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.**

   (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. **Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.**

3. **Defects, liens, encumbrances, adverse claims or other matters:**

   (a) created, suffered, assumed or agreed to by the insured claimant;

   (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

   (c) resulting in no loss or damage to the insured claimant;

   (d) attaching or created subsequent to Date of Policy; or

   (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. **Any claim, which arises out of the transaction vesting in the Insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:**

   (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

   (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:

   (a) to timely record the instrument of transfer; or

   (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate or fiduciary successors.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice which may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto which by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" shall also include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "unmarketability of the title": an alleged or apparent matter affecting the title to the land, not excluded or excepted from coverage, which would entitle a purchaser of the estate or interest described in Schedule A to be released from the obligation to purchase by virtue of a contractual condition requiring the delivery of marketable title.

(h) "leasehold estate": the right of possession for the term or terms described in Schedule A hereof subject to any provisions contained in the Lease which limit the right of possession.

2. CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if title to the estate or interest, as insured, is rejected as unmarketable. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

4. DEFENSE AND PROSECUTION OF ACTIONS; DUTY OF INSURED CLAIMANT TO COOPERATE

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action which allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act which in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not

OWNER'S FORM

SCHEDULE A

1	2	3	4
Office File Number 9524-03748	Policy Number 31904 106 03748	Date of Policy August 16, 1995	Amount of Insurance $18,000,000.00

1. Name of Insured:

   CITY OF HOBOKEN, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY

2. The estate or interest in the land described herein and which is covered by this policy is: Leasehold

   The leasehold estate, as leasehold estate is defined in Paragraph 1 (g) of the Conditions and Stipulations of this policy, created by the instrument herein referred to as the Lease, executed by:

   Lease made by PORT AUTHORITY OF NEW YORK AND NEW JERSEY to CITY OF HOBOKEN, DATED AUGUST 16, 1995 AND RECORDED AUGUST 16, 1995 IN THE HUDSON COUNTY REGISTER'S OFFICE AS INSTRUMENT #006228.

3. The estate or interest referred to herein is at Date of Policy vested in the insured.

   CITY OF HOBOKEN, BY LEASE FROM PORT AUTHORITY OF NEW YORK AND NEW JERSEY, DATED AUGUST 16, 1995 AND RECORDED AUGUST 16, 1995 IN THE HUDSON COUNTY REGISTER'S OFFICE AS INSTRUMENT # 006227.

4. The estate or interest described in Paragraph 2 above is encumbered by the following mortgage or trust deed, and assignments: NONE

5. The land referred to in this policy is described as follows:

SEE DESCRIPTION SHEET ATTACHED

This policy valid only if Schedule B is attached.

D E S C R I P T I O N

ALL that certain tract, lot and parcel of land lying and being in the City of Hoboken, County of Hudson, and State of New Jersey, being more particularly described as follows:

PARCEL 1: BEGINNING AT A MONUMENT SET 70.00 FEET EAST OF AND PARALLEL WITH THE WESTERLY LINE OF RIVER STREET WHERE THE SAME IS INTERSECTED BY THE NORTHERLY LINE OF FIRST STREET (50' WIDE) PROJECTED EASTERLY AND RUNNING:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST ALONG SAID LINE 70.00 FEET EAST OF THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT IN THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST ALONG SAID NORTHERLY LINE OF FIRST STREET, A DISTANCE OF 112.50 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 2: BEGINNING AT A POINT IN THE NORTHERLY LINE OF FIRST STREET (50' WIDE) PROJECTED EASTERLY, DISTANT 112.50 FEET EASTERLY AS MEASURED ALONG THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY FROM A MONUMENT. SAID MONUMENT BEING IN A LINE 70.00 FEET EAST AND PARALLEL WITH THE WESTERLY LINE OF RIVER STREET WHERE THE SAME INTERSECTS THE NORTHERLY LINE OF FIRST STREET AND RUNNING; THENCE

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST PARALLEL WITH THE WESTERLY LINE OF RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST AND PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT IN THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST AND ALONG THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 3: TO LOCATE THE POINT OF BEGINNING, COMMENCE AT A MONUMENT IN THE NORTHERLY LINE OF FIRST STREET (50 FEET WIDE) PROJECTED EASTERLY WHERE THE SAME IS INTERSECTED BY A LINE 70.00 FEET EAST OF AND PARALLEL WITH THE WESTERLY LINE OF RIVER STREET AND RUNNING THE FOLLOWING COURSE AND DISTANCE: NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST ALONG SAID LINE 70.00 FEET EAST OF THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO THE TRUE POINT AND PLACE OF BEGINNING.

THENCE, FROM THE TRUE POINT AND PLACE OF BEGINNING, THE FOLLOWING FOUR COURSES AND DISTANCES:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(CONTINUED)

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 4: TO LOCATE THE POINT OF BEGINNING, COMMENCE AT A MONUMENT IN THE NORTHERLY LINE OF FIRST STREET (50 FEET WIDE) PROJECTED EASTERLY WHERE THE SAME IS INTERSECTED BY A LINE 70.00 FEET EAST OF AND PARALLEL WITH THE WESTERLY LINE OF RIVER STREET AND RUNNING THE FOLLOWING TWO (2) COURSES AND DISTANCES: (1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST ALONG SAID LINE 70.00 FEET EAST OF THE WESTERLY LINE OF RIVER STREET A DISTANCE OF 212.50 FEET TO A POINT; THENCE (2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET, A DISTANCE OF 112.50 FEET TO THE TRUE POINT AND PLACE OF BEGINNING.

THENCE, FROM THE TRUE POINT AND PLACE OF BEGINNING, THE FOLLOWING FOUR COURSES AND DISTANCES:

(1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL WITH THE WESTERLY LINE OF RIVER STREET, A DISTANCE OF 212.50 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST, PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET PROJECTED EASTERLY, A DISTANCE OF 112.50 FEET TO THE POINT AND PLACE OF BEGINNING.

PARCEL 6: TO LOCATE THE POINT OF BEGINNING, COMMENCE AT A MONUMENT IN THE NORTHERLY LINE OF FIRST STREET (50 FEET WIDE) PROJECT EASTERLY WHERE THE SAME IS INTERSECTED BY A LINE 70.00 FEET EAST OF AND PARALLEL WITH THE WESTERLY LINE OF RIVER STREET AND RUNNING THE FOLLOWING TWO (2) COURSES AND DISTANCES, (1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST ALONG SAID LINE 70.00 FEET EAST OF THE WESTERLY LINE OF RIVER STREET A DISTANCE OF 475.00 FEET TO A POINT IN THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY; THENCE (2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST PARALLEL WITH THE NORTHERLY LINE OF FIRST STREET, A DISTANCE OF 93.27 FEET TO THE TRUE POINT AND PLACE OF BEGINNING.

THENCE, FROM THE TRUE POINT AND PLACE OF BEGINNING THE FOLLOWING FIVE COURSES AND DISTANCES:

(1) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST, AND ALONG THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY A DISTANCE OF 131.73 FEET TO A POINT; THENCE

(2) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, AND PARALLEL TO SECOND STREET A DISTANCE OF 240.20 FEET TO A POINT; THENCE

(CONTINUED)

(3) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST, AND PARALLEL TO THE NORTHERLY LINE OF SECOND STREET PROLONGED EASTERLY A DISTANCE OF 117.00 FEET TO A POINT; THENCE

(4) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, AND PARALLEL TO RIVER STREET A DISTANCE OF 154.62 FEET TO A POINT OF CURVATURE; THENCE

(5) SOUTHERLY ON A CURVE TO THE RIGHT HAVING A RADIUS OF 256 FEET AN ARC DISTANCE OF 87.25 FEET TO A POINT IN THE NORTHERLY LINE OF SECOND STREET PROLONGED EASTERLY, SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

PARCEL 8: TO LOCATE THE POINT OF BEGINNING, COMMENCE AT A MONUMENT IN THE NORTHERLY LINE OF FIRST STREET (50 FEET WIDE) PROJECTED EASTERLY WHERE THE SAME IS INTERSECTED BY A LINE 70.00 FEET EAST OF AND PARALLEL WITH THE WESTERLY LINE OF RIVER STREET AND RUNNING THE FOLLOWING TWO (2) COURSES AND DISTANCES: (1) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST ALONG SAID LINE 70.00 FEET TO A POINT IN THE SOUTHERLY LINE OF THIRD STREET PROJECTED EASTERLY; THENCE (2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST PARALLEL WITH THE NORHTERLY LINE OF FIRST STREET, A DISTANCE OF 112.50 FEET TO THE TRUE POINT AND PLACE OF BEGINNING.

THENCE FROM THE TRUE POINT AND PLACE OF BEGINNING, THE FOLLOWING FOUR COURSES AND DISTANCES:

(1) SOUTH 13 DEGREES 04 MINUTES 29 SECONDS WEST, PARALLEL TO RIVER STREET A DISTANCE OF 184.80 FEET TO A POINT; THENCE

(2) SOUTH 76 DEGREES 55 MINUTES 31 SECONDS EAST, AND PARALLEL TO THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT; THENCE

(3) NORTH 13 DEGREES 04 MINUTES 29 SECONDS EAST, AND PARALLEL TO RIVER STREET A DISTANCE OF 184.80 FEET TO A POINT; THENCE

(4) NORTH 76 DEGREES 55 MINUTES 31 SECONDS WEST, AND PARALLEL TO THE NORTHERLY LINE OF SECOND STREET PROJECTED EASTERLY A DISTANCE OF 112.50 FEET TO A POINT SAID POINT BEING THE POINT OR PLACE OF BEGINNING.

FOR INFORMATION ONLY: BEING ALSO KNOWN AS PART OF LOT 3, BLOCK 231 ON THE CURRENT TAX ASSESSMENT MAP OF THE CITY OF HOBOKEN.

OWNER'S FORM

SCHEDULE B

Policy Number 31904 106 03748 **Title No.** 9524-03748
Owners

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees and expenses resulting from:

SPECIAL EXCEPTION: The mortgage, if any, referred to in Item 4 of Schedule A.

1. TAX EXEMPT THRU DATE OF CLOSING. OPEN WATER AND SEWER CHARGES, IF ANY.

2. SUBJECT TO PRODUCTION AND RECORDATION OF ROAD VACATION FOR THE EASTERLY FIVE FEET OF RIVER STREET BETWEEN FIRST AND SECOND STREET.

3. TERMS AND CONDITIONS OF DEED, HOBOKEN LAND & IMPROVEMENT COMPANY TO THE NORTH GERMAN LLOYD DOCK COMPANY, DATED MARCH 1, 1901 AND RECORDED APRIL 22, 1901 IN DEED BOOK 775 PAGE 404. NOTE: THIS POLICY AFFIRMATIVELY INSURES AGAINST ENFORCEMENT OF SAID TERMS AND CONDITIONS.

4. RIGHTS OF THE DIVISION OF PLANNING AND DEVELOPMENT IN THE DEPARTMENT OF CONSERVATION AND ECONOMIC DEVELOPMENT TO SUPERVISE PLANS FOR ANY BUILDING OR OTHER IMPROVEMENTS, OR DEVELOPMENT TO BE ERECTED OR MADE ON THE WATERFRONT AND TO ABATE AS A PUBLIC NUISANCE ANY IMPROVEMENT THEREOF COMMENCED OR MADE SINCE APRIL 8, 1914, WITHOUT THE APPROVAL OF THE NEW JERSEY HARBOR COMMISSION OR SAID DIVISION UNDER AUTHORITY OF N.J.S.A. 12:5-1 ET SEQ.

5. SUBJECT TO TERMS, CONDITIONS AND EASEMENTS AS REFERRED TO IN AGREEMENT IN DEED BOOK 4590 PAGE 119. ***(SAID TERMS, CONDITIONS AND EASEMENTS ARE LIMITED TO THOSE SET FORTH IN #2 ON PAGE 120, #2 ON PAGE 127 AND #3 ON PAGE 128)***

6. TERMS AND CONDITIONS, OTHER THAN THE PROVISIONS THAT THE GRANTEE MUST BE THE OWNER OF THE UPLAND, AS CONTAINED IN RIPARIAN GRANTS FROM THE STATE OF NEW JERSEY TO THE HOBOKEN LAND AND IMPROVEMENT COMPANY AND THE MAYOR AND COUNCIL OF THE CITY OF HOBOKEN IN DEED BOOK 249 PAGE 448, DEED BOOK 405 PAGE 344, DEED BOOK 721 PAGE 551, DEED BOOK 245 PAGE 40, DEED BOOK 201 PAGE 396 RE-RECORDED IN DEED BOOK 241 PAGE 400, DEED BOOK 488 PAGE 70 AND GRANT BY ACT OF LEGISLATURE TO UNITED DELAWARE AND RARITAN CANAL COMPANY APPROVED MARCH 31, 1869.
   NOTE: THE AUTOMATIC EXTENSION CLAUSES WHICH WOULD EXTEND THE GRANTS UPON THE ESTABLISHMENT OF NEW PIERHEAD AND BULKHEAD LINES ARE NOT INSURED.

   NOTE: THIS POLICY AFFIRMATIVELY INSURES AGAINST LOSS BY REASON OF ANY UNCOMPENSATED TAKING OF THE INSURED PREMISES.

7. SUBJECT TO TERMS AND CONDITIONS OF LEASE BETWEEN THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY AND THE CITY OF HOBOKEN DATED AUGUST 16, 1996, RECORDED AUGUST 16, 1995 AS INSTRUMENT NO. 006228.

8. SUBJECT TO TERMS AND CONDITIONS OF MUNICIPAL DEVELOPMENT AGREEMENT DATED AUGUST 16, 1995 AS CONTAINED IN DEED FROM THE CITY OF HOBOKEN TO THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY, DATED AUGUST 16, 1995, RECORDED AUGUST 16, 1995 AS INSTRUMENT #006227.

(CONTINUED)

9. THE FOLLOWING ITEMS DISCLOSED BY A SURVEY MADE BY J.F. CAULFIELD ASSOCIATES, DATED AUGUST 8, 1995, ARE HEREBY ADDED AS EXCEPTIONS IN SCHEDULE B:
   (A) EXISTING 2 STORY BRICK (PARTIALLY DEMOLISHED) BUILDING SITUATE ON PARCELS 4,6 & 8.
   (B) GUARDHOUSES SITUATE ON PARCELS 1 & 3.
   (C) RAMP SITUATE ON PARCEL 6.
   (D) GUARDHOUSE EXTENDING INTO RIVER STREET.

10. SUBJECT TO PRODUCTION AND RECORDATION OF GRANT OF PERMANENT EASEMENT FROM UNITED STATES POSTAL SERVICE TO THE CITY OF HOBOKEN FOR PUBLIC ACCESS AND RIGHT OF WAY. (POLICY TO BE ENDORSED TO INCLUDE SAID EASEMENT AS A "TOGETHER WITH" PROVISION OF THE INSURED DESCRIPTION UPON RECORDATION).

Countersigned

Authorized Signatory

Schedule B of this Policy consists of 2 pages.

it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act which in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. PROOF OF LOSS OR DAMAGE

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 90 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy which constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or,

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. APPORTIONMENT

If the land described in Schedule A consists of two or more parcels which are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, or cures the claim of unmarketability of title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. LIABILITY NONCUMULATIVE

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.