

SPECIAL MEETING

CITY COUNCIL

SEPTEMBER 15, 2009

6:30 P.M.

AGENDA TO THE EXTENT KNOWN:

1. PUBLIC COMMENTS
2. RESOLUTIONS:

R272-09 RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF LONG BRANCH TO ENTER INTO A CONSENT ORDER OF SETTLEMENT AS A RESULT OF MEDIATION IN THE MATTER OF LONG BRANCH V. ANZALONE AND LONG BRANCH V. MELLILO, ET AL

R273-09 RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF LONG BRANCH TO SIGN FIFTH AMENDMENT TO THE REDEVELOPMENT AGREEMENT

OTHER MATTERS COUNCIL DEEMS NECESSARY TO ACT UPON. FORMAL ACTION WILL BE TAKEN.

R# 272-09

RESOLUTION AUTHORIZING THE MAYOR OF THE CITY OF LONG BRANCH TO ENTER INTO A CONSENT ORDER OF SETTLEMENT AS A RESULT OF MEDIATION IN THE MATTER OF LONG BRANCH V. ANZALONE AND LONG BRANCH V. MELLILO, ET AL

WHEREAS, the City of Long Branch has brought eminent domain complaints against various defendants in the Beachfront North Redevelopment Zone; and

WHEREAS, the contract developer with the City of Long Branch, Beachfront North II, LLC has advised the City of Long Branch that it is not interested in acquiring any further property in the Zone; and

WHEREAS, the City of Long Branch has prepared for a remand hearing of its prior finding of the area in Beachfront North being in need of redevelopment as ordered by the Appellate Division of the Superior Court of the State of New Jersey; and

WHEREAS, mediation has occurred over the last nine months; and

WHEREAS, the City of Long Branch and the property owners and the contract developer have agreed to a Consent Order of Settlement, a copy of which is annexed hereto and made a part hereof; and

WHEREAS, in addition to the Consent Order of Settlement, the City of Long Branch has agreed to an amendment of the Developer's Agreement with Beachfront North, II, LLC, a copy of which is annexed hereto and made a part hereof; and

WHEREAS, the continued development of the Beachfront North redevelopment area is depicted on a Beachfront North Density Study dated March 3, 2009, which is annexed to the Settlement Agreement; and

WHEREAS, said development will create a buffer zone between the presently developed Beachfront North Phase 1 and Seven President's Park; and

WHEREAS, the Consent Order of Settlement is in the best interests of the citizens of the City of Long Branch; and

WHEREAS, the amendment of the Developer's Agreement will help fund the City of Long Branch's obligations under the Consent Order of Settlement and further allow development in the Beachfront North Redevelopment Zone.

NOW THEREFORE BE IT RESOLVED, that the Mayor of the City of Long Branch be and the same hereby is authorized to execute the Consent Order of Settlement and to execute the amended Developer's Agreement with Beachfront North II, LLC.

MOVED:

SECONDED:

AND ADOPTED UPON THE FOLLOWING ROLE CALL:

AYES:

NAYES:

ABSENT:

ABSTAIN:

CITY OF LONG BRANCH, a Municipal Corporation in the State of New Jersey,

Plaintiffs,

vs.

LOUIS THOMAS ANZALONE and LILLIAN ANZALONE, h/w, CITY OF LONG BRANCH, LONG BRANCH SEWERAGE AUTHORITY, JOHN DOES 1-10 and JANE DOES 1-10,

Defendants.

CITY OF LONG BRANCH, a Municipal Corporation in the State of New Jersey,

Plaintiff,

vs.

JOYCE and PHILIP MELILLO; GREENWOOD TRUST CO. o/b/o DISCOVER CARD CO.; CITY OF LONG BRANCH; CITY OF LONG BRANCH SEWERAGE AUTHORITY; and JOHN DOW 1-10 and JANE DOE 1-10,

Defendants.

CITY OF LONG BRANCH, a Municipal Corporation in the State of New Jersey,

Plaintiff,

vs.

CARMEN VENDETTI; JOSEPHINE VENDETTI, his wife; CITY OF LONG BRANCH; LONG BRANCH SEWERAGE AUTHORITY; and JOHN and JANE DOE 1-10,

Defendants.

CITY OF LONG BRANCH, a Municipal Corporation in the State of New Jersey,

Plaintiff,

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MONMOUTH COUNTY
DOCKET NO.: MON-L-141-06
SAT BELOW:
HON. LAWRENCE M. LAWSON,
A.J.S.C.

Civil Action

CONSENT ORDER OF SETTLEMENT AS
A RESULT OF MEDIATION

vs.

ALAN A. COOK, married; LUCY HUNTER;
CITY OF LONG BRANCH; LONG BRANCH
SEWERAGE AUTHORITY; RESOLUTION
TRUST CORP.; MEMORIAL GENERAL
HOSPITAL; STATE OF NEW JERSEY,
DIVISION OF TAXATION; TRAVELERS
EXPRESS COMPANY, INC.; BUTTONWOOD
HOSPITAL OF BURLINGTON COUNTY;
JOHN DOES 1-10; and JANE DOES 1-10

Defendants.

GREGORY P. BROWER; VALLEY NATIONAL
BANK, as successor to Shrewsbury State
Bank; ANTONE DE FARIA and ANNE DE
FARIA, his wife; MARCELLO S. GRUBERG
and ELAINA G. GRUBERG, his wife;
ALEXANDER FRIDMAN, as Tenant in
Common; PROVIDENT SAVINGS BANK;
LEIGH HOGLAND and DENISE HOGLAND;
PRINCIPAL MUTUAL LIFE INSURANCE CO.;
KARIN LYNN KANDUR, unmarried; PATRICIA
M. TAYLOR; COUNTRYWIDE FUNDING
CORPORATION; WASHINGTON MUTUAL
BANK; PHILIP LAMOTTA and ANNA
LAMOTTA, his wife; CUMBERLAND COUNTY
WELFARE AGENCY; GLOUCESTER
COUNTY BOARD OF SOCIAL SERVICES;
CUMBERLAND COUNTY BOARD OF SOCIAL
SERVICES; ANTOINETTE ANASTASIA;
ANCORA PSYCHIATRIC HOSPITAL;
VERIZON BANK; LORING E. SYLVESTER,
MD; OHRBACHS, INC.; CAMDEN COUNTY
BOARD OF SOCIAL SERVICES;
ROSENBERG, CRUKER & COMPANY, P.A.;
ENDELWOOD MEMORIAL HOSPITAL;
INTERIM HEALTH CARE, d/b/a INTERIM
HEALTH CARE; SUFERIN, ZUCKER,
WALLER & WHIXTED PA; RICHARD J.
CLEAVE; DR. EDWARD L. APETZ; NWNJ
FEDERAL CREDIT UNION; SELECTIVE
INSURANCE COMPANY; AMERICAN
TRADING COMPANY; MERCER COUNTY
BOARD OF SOCIAL SERVICES; RETAILERS
NATIONAL BANK; BANK TARGET VISA;
MEDICAL PRACTICE MANAGEMENT
ASSOCIATION, assignee; GLOBAL HOLDING

& INVESTMENT; MERCER COUNTY OFFICE OF THE PUBLIC DEFENDER; ROSE LAROSA; MONMOUTH OCEAN HOSPITAL SERVICES; LOUIS WETSTEIN; GEORGE WARREN MCKENNA; MARY LA CONTE; MARYANN TESTA; OLGA NETTO; FIRST INTERSTATE FINANCIAL CORP.; RAGENDRABAHU PATEL and MANISHA PATEL, his wife; SOVEREIGN BANK, as successor of SHADOW LAWN SAVINGS BANK, SE; JOSEPH FRIEDMAN & SONS INTERNATIONAL, INC.; MANDINI SAWHNEY and SANJEEV SAWHNEY; DISCOVER4RY BANK; R.T. DEGUSMAN, MD; NEW CENTRAL FINANCIAL SERVICES; CHENG H. LIN, MD; SET SATELLITE SINGAPORE PTE, LTD.; YASJ RAJ FILSM; USA, INC.; LAURIE ANN VENDETTI; FLEET BANK; JERSEY CENTRAL POWER AND & LIGHT; STATE OF NEW JERSEY; CITY OF LONG BRANCH; LONG BRANCH SEWERAGE AUTHORITY; JOHN and JANE DOES 1-100,

Defendants.

CITY OF LONG BRANCH, a Municipal Corporation in the State of New Jersey,

Plaintiff,

vs.

ESTATE OF ELSA DEFARIA, her heirs, beneficiaries and assigns; CITY OF LONG BRANCH; LONG BRANCH SEWERAGE AUTHORITY; and JOHN DOE 1-10 and JANE DOE 1-10,

Defendants

CITY OF LONG BRANCH, a Municipal Corporation in the State of New Jersey,

Plaintiff,

vs.

ELLEN EAGAN and JEAN SADENWATER;
MORTGAGE ELECTRONIC REGULATION

SYSTEMS; WACHOVIA NATIONAL BANK, f/k/a FIRST UNION NATIONAL BANK; CITY OF LONG BRANCH; LONG BRANCH SEWERAGE AUTHORITY; JOHN DOE 1-10 and JANE DOE 1-10,

Defendants.

CITY OF LONG BRANCH, a Municipal Corporation in the State of New Jersey,

Plaintiff,

vs.

MARY MILANO and MARINO MILANO, Joint Tenants With Right of Survivorship; NEW YORK TIMES COMPANY; STATE OF NEW JERSEY; JERSEY CITY POWER & LIGHT COMPANY; CITY OF LONG BRANCH; LONG BRANCH SEWERAGE AUTHORITY; JOHN DOE 1-10 and JANE DOE 1-10,

Defendants.

THIS MATTER HAVING COME BEFORE THE COURT as the result of the Honorable Thomas C. Cavanagh, Jr. being named a mediator by the Monmouth County Assignment Judge, the Honorable Lawrence M. Lawson in a voluntary attempt by the parties to settle all matters in dispute between the parties; and

THE COURT HAVING PRESIDED over six separate mediation sessions and numerous telephonic conferences with counsel over a period of months and the plaintiff being represented by James G. Aaron of the law firm of Ansell, Zaro, Grimm & Aaron and Paul V. Fericola, Esq. of the law firm of Paul Fericola and Associates and the Defendants being represented by William J. Ward, Esq. of the law firm of Carlin & Ward, P.C. and Peter H. Wegener, Esq. of the law firm of Bathgate Wegener & Wolf and Scott

Bullock, Esq. of the Institute For Justice, attorneys for all Defendants and Non-party MM-Beachfront North II, L.L.C., the developer of the Beachfront North area, being jointly represented by its members' respective legal counsel, Carl W. Erler, Esq. and Barbara Stack, Esq.; and

SAID PARTIES BEING desirous of settling all matters in dispute without any admissions as to the validity of either party's claims against the other;

IT IS ON THIS _____ day of September, 2009

ORDERED THAT:

1. The City of Long Branch is to dismiss the within Complaints with prejudice and abandon the eminent domain proceedings without costs and shall file discharges of all lis pendens unless previously filed and the City agrees that all Defendants' properties shall be barred from taking by eminent domain during the life of the Beachfront North Redevelopment Plan or any subsequent redevelopment plan; and

2. That Defendants Karen Lynn Kandur, unmarried, Patricia M. Taylor, Lee Hoagland and Denise Hoagland, Alan A. Cook, and Lucy Hunter, are not releasing any claims they may have against the City of Long Branch (the "Non-Releasing Defendants"). All Defendants agree, including those Defendants not executing a Release, that the City of Long Branch, by paying the costs of the legal fees to date of the Defendants, shall include the legal fees of all individuals not signing Releases to the City. All Defendants agree that they shall not object to any development by any individual or entity that develops their property owned or hereinafter acquired pursuant to the design guidelines as set forth in this within Order of Settlement; and

3. That all Releasing Defendants shall have the ability to enter into

developer's agreements with the City of Long Branch pursuant to the redevelopment ordinance presently in effect for development of their respective properties or combinations thereof in conjunction with the Beachfront North Density Study, March 3, 2009; which are attached to this Order. All such rights shall run with the land; and

4. That the City of Long Branch shall take any and all steps necessary to enable the Releasing Defendants to avail themselves of the right to develop in accord with the design guidelines as incorporated in the Density Study by way of resolution or ordinance as deemed necessary and appropriate by and between the parties; and

5. That each Releasing Defendant shall have the right to apply for and receive short term tax abatements on improvements made to their properties which are made under said developer's agreements. Said short term tax abatements shall be defined as the Five Year Tax Abatement whereby the Releasing Defendants shall pay zero taxes on the improvements made in the first year that the improvements are made, twenty (20%) percent of the taxes the second year, forty (40%) percent of the taxes the third year, sixty (60%) percent of the taxes the fourth year, eighty (80%) percent of the taxes the fifth year and one hundred (100%) percent in years thereafter; and

6. That the City of Long Branch agrees that the roadways fronting the Defendant's properties shall be re-paved under the City's Road Program during the year 2010 or 2011 as the project progresses. However, it is understood and agreed by and between the herein parties that once the road is re-paved, then every development along those roads may cause the road to be opened for utility connections and the like. Therefore, it is the intention of the City to do the road repaving as soon as is practical given the number of developer agreements that are submitted by the Defendants and/or

MM-Beachfront North, II, L.L.C. But all new roads will be completed by December 2011; and

7. Upon execution of the within Order, the City shall contact and work with JCP&L to review, repair and reinstall, if necessary, all street lights in the Beachfront North area by the close of 2009; and

8. That the City is to hold all property owners within the Beachfront North Redevelopment Zone fully accountable under the City's presently existing property maintenance code; and

9. That the City shall promptly respond to and address any of all of the Defendant's inquiries or complaints concerning property owned by any other property owner in the Beachfront North Redevelopment Zone. Any property which is in the Beachfront North Redevelopment Zone which is structurally unsound to the extent that it meets the criteria of state statutes and procedures created thereunder for demolition shall be pursued by the City in the event there is discovery of any such factors that would require demolition pursuant to the standards set by New Jersey State Statute; and

10. That The City of Long Branch pay to the attorneys for the Defendants the sum of FOUR HUNDRED THIRTY FIVE THOUSAND (\$435,000.00) DOLLARS for legal fees incurred in the representation of the Defendants in the within litigation. Said monies are to be paid by the City of Long Branch to the Defendants' counsel within ninety (90) days of the date of the within Order; and

11. This Agreement shall be binding upon MM-Beachfront North, II, L.L.C., its assigns and/or successors in interest (hereinafter "MM-BFN") as signatory to this

Agreement as to this paragraph only; and shall address the demolition of all the seventeen structures owned by MM-BFN located within Phase II. The demolitions shall be performed as follows:

Within 45 days of the date of the Order of Settlement entered in this litigation, MM-BFN shall hire environmental consultants, demolition contractors, and/or engineering consultants (hereinafter "Consultants").

Within 75 days, one Preliminary Report for all homes will be issued addressing potential demolition issues. The Preliminary Report may, at MM-BFN's discretion, contain sub-reports prepared by different Consultants (for example, without limitation, an asbestos survey report, a structural report, an environmental report). The Preliminary Report will document which homes, based on a preliminary visual inspection (i.e. which may, at MM-BFN's discretion, include some laboratory testing), contain potential demolition issues and what further steps must be taken to address those potential issues (for example, without limitation, any necessary laboratory testing of materials found within the homes).

Within 105 days following the Order of Settlement, MM-BFN will issue one follow-up Demolition Report for all homes that will set forth the demolition issues for all the homes and further set forth a demolition date for all of the homes. The Demolition Report may, at MM-BFN's discretion, contain sub-reports prepared by different Consultants (for example, without limitation, reports containing the results of asbestos testing, structural testing, environmental testing). The Demolition Report will document the issues for all homes and why the time period is necessary to address those issues.

For those homes with minor or routine demolition issues (for example, without limitation, homes that do not have any suspected environmental contamination, asbestos containing materials, or structural issues), work will commence immediately on abatement and demolition of those structures. Demolition of those homes will be complete within 122 days of the date of this Order.

Although the dates for each home may vary, the remainder of the homes will be demolished within 199 days of the Date of this Order. Notwithstanding the foregoing, MM-BFN may apply to the Court for an extension of time if, due to circumstances beyond its reasonable control, it cannot complete the demolition within 199 days from the signing of this Order. The Court shall determine whether such an extension is justified.

Following the retention of the Consultants and the receipt of the above reports, MM-BFN shall diligently apply for all necessary and/or required governmental permits and/or approvals. The City shall agree to issue demolition permits within

3 business days following the submission of a properly-prepared application for same.

The Court will retain jurisdiction over this matter and the Preliminary Report and the Demolition Report will be filed with the City, Defendants, and with the Court. Defendants are free to challenge the determinations and demolition dates contained in the Preliminary Report, the Demolition Report, and any request for an extension beyond 199 days. The parties shall confer with one another over any dispute and seek a resolution before turning to the Court. If no agreement can be reached and a challenge is made, the Court will review the evidence and either uphold the date determined by MM-BFN or set a new date for demolition.

If the Court finds that MM-BFN's date was unreasonable and not in good faith, the Court may award attorney's fees and other costs to Defendants as circumstances may justify. If the Court finds that Defendants (or any single Defendant or group of Defendants) have raised unreasonable objections not in good faith, the Court may award attorney's fees and other costs to MM-BFN as circumstances may justify.

Within 45 and 55 days following the entry of this Settlement Order, Defendants will permit a representative of the Consultants the ability to conduct an inspection of their properties to determine whether there are pre-existing structural conditions or what additional precautions must be undertaken during demolition. MM-BFN and Defendants will work together to arrange a mutually convenient time for the inspections in order for MM-BFN to complete the Preliminary Report, the Demolition Report and the demolition within the timeframes provided by this Order of Settlement. If Defendants fail to cooperate in providing the necessary access for MM-BFN to complete the foregoing, then the timeframes set forth in this Settlement Order for MM-BFN to complete the Preliminary Report, the Demolition Report and the demolition shall be extended by the period of delay caused by Defendants' lack of cooperation. MM-BFN shall not be obligated to generate separate Preliminary Reports, Demolition Reports and demolition time frames to accommodate any Defendants that do not cooperate with MM-BFN under the terms of this Order of Settlement.

In the event of a default as defined and determined by a court of appropriate jurisdiction in the demolition schedule, the City of Long Branch shall continue to demolish all structures found to be in default and charge back to the developer any costs and expenses incurred by the City of Long Branch in said demolition. Said costs include, but are not limited to, all remediation activities, engineering studies, remediation work, and construction work necessary in the event that same is necessary to support adjoining buildings, any asbestos remediation and any professional fees and costs associated therewith. The City of Long Branch shall account to the developer for any and all costs incurred and the developer shall not receive any building permits until all costs are returned to the City of Long Branch.

Upon completion of demolition of all structures owned by MM-BFN, MM-BFN shall grade and hydro-seed all properties upon which such structures are located.

12. That the parties of this Consent Order agree to execute any agreements which are deemed to be reasonable and necessary within the settlement to become effectuated including but not limited to the aforementioned Stipulations of Dismissal with prejudice and without costs and releases except those parties not executing releases and a Notice of Abandonment by the City pursuant to N.J.S.A. 20:3-36; and

13. That the Releasing Defendants, as set forth previously herein, shall have the right to enter into developer agreements with the City at any time within ten (10) years pursuant to the Beachfront North Redevelopment Plan and the Beachfront North Density Study, March 3, 2009; and

14. That this Court shall retain jurisdiction for the purpose of enforcement of any of the provisions of this Order and/or issues regarding any interpretation of the terms and conditions of this Order. The City, MM-BFN, MM-BFN's members, and MM-BFN's affiliated legal entities may invoke this Court's jurisdiction in order to enforce any portion of the settlement that pertains to the settlement rights, responsibilities and benefits by and between them; including, without limitation, any agreements that relate in any manner to the consummation of the settlement herein.

15. For the reasons set forth above, the above is **ORDERED ON THIS**
_____ DAY OF SEPTEMBER, 2009.

**_____
THOMAS W. CAVANAGH, JR., JSC**

16. A copy of this Order shall be served upon the following parties within ten (10) days of entry:

BATHGATE WEGENER & WOLF

By: _____ DATE: _____
Peter H. Wegener, Esq.
One Airport Road
Lakewood, New Jersey 08701
Attorneys for all Defendants except
Louis Thomas Anzalone and Lillian Anzalone, h/w

CARLIN & WARD, P.C.

By: _____ DATE: _____
William J. Ward, Esq.
25A Vreeland Road; P.O. Box 751
Florham Park, New Jersey 07932
Attorneys for Defendant
Louis Thomas Anzalone and Lillian Anzalone, h/w

INSTITUTE FOR JUSTICE

By: _____ DATE: _____
Scott G. Bullock, Esq.
901 North Glebe Road; Suite 900
Arlington, Virginia 22203
Co-Counsel for all Defendants except
Louis Thomas Anzalone and Lillian Anzalone, h/w

MM-BEACHFRONT NORTH, II. LLC

By: _____ DATE: _____
Carl W. Erier, Esq.
Attorneys for Defendants:
MM-Beachfront North II, L.L.C.
110 Fieldcrest Avenue, Suite 50
Edison, New Jersey 08837-3634

Barbara Stack, Esq.
Co-Counsel for Defendants:
MM-Beachfront North II, L.L.C.
50 Washington Street
Hoboken, New Jersey 07030

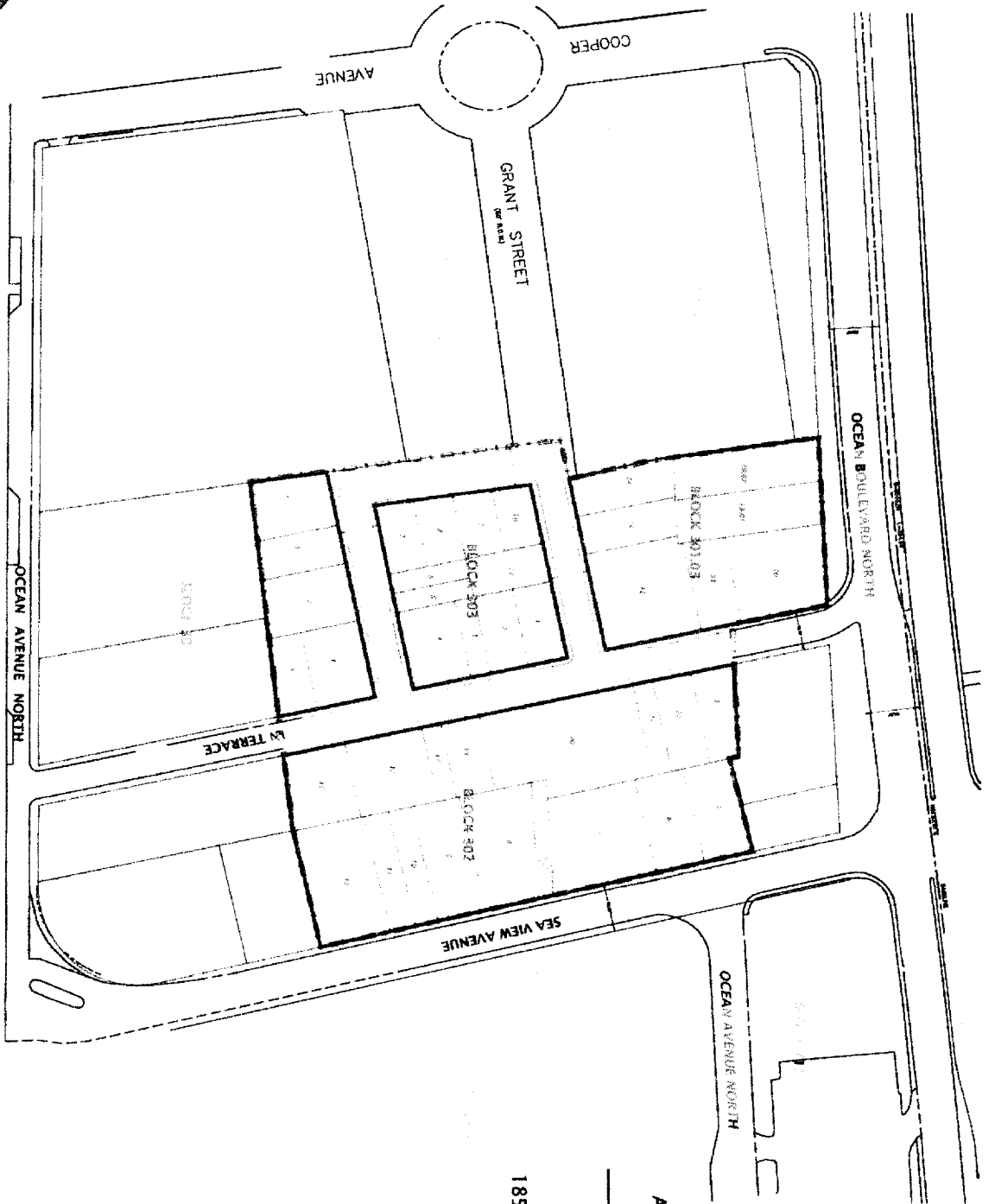
ANSELL, ZARO, GRIMM & AARON

By: _____
James G. Aaron, Esq.
1500 Lawrence Avenue
Ocean, New Jersey 07712
Attorneys for Defendants:
City of Long Branch

DATE: _____

ADAM SCHNEIDER
Mayor of the City of Long Branch

DATE: _____



Site Area
Road Area
Note: Buildout is additionally limited by parking (2/DU) and previous coverage (15%)

A. Entitlement: Lot by Lot	B. Entitlement: Full Tract Developed
185,527 SF (lots)	185,527 SF Lots + 43,634 SF Road
4.26 ac x 15 du 64DU	229,161 SF (5.48 ac) 5.26 ac x 15 du 79 DU

Zone Boundary



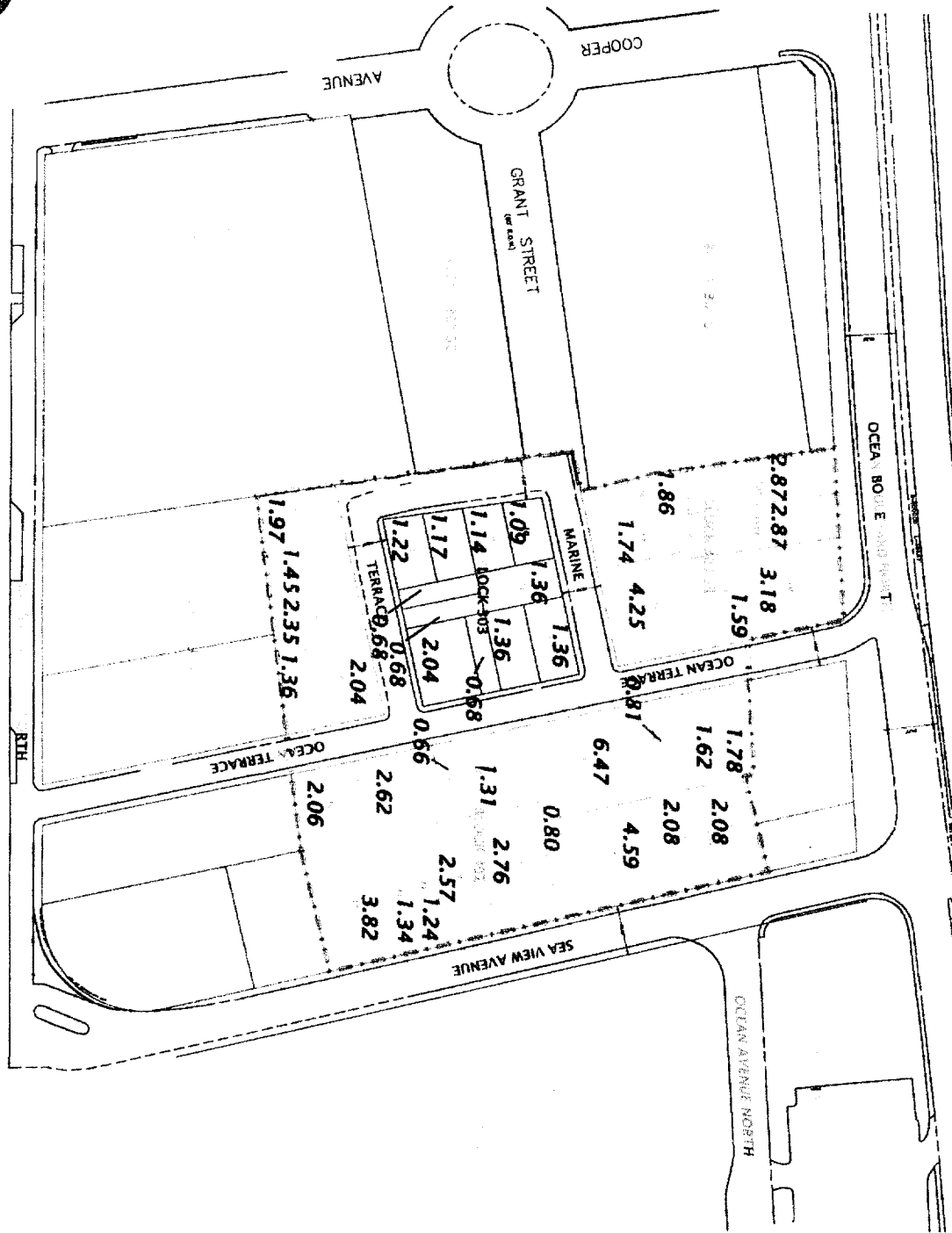


1B Maximum Permitted Build-out per Lot
(Based upon Lot-by-Lot Development)



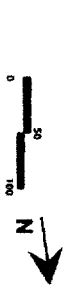


1C Maximum Permitted Build-out Assuming
Even Distribution of Tract Density
(Based upon Full Tract Development)

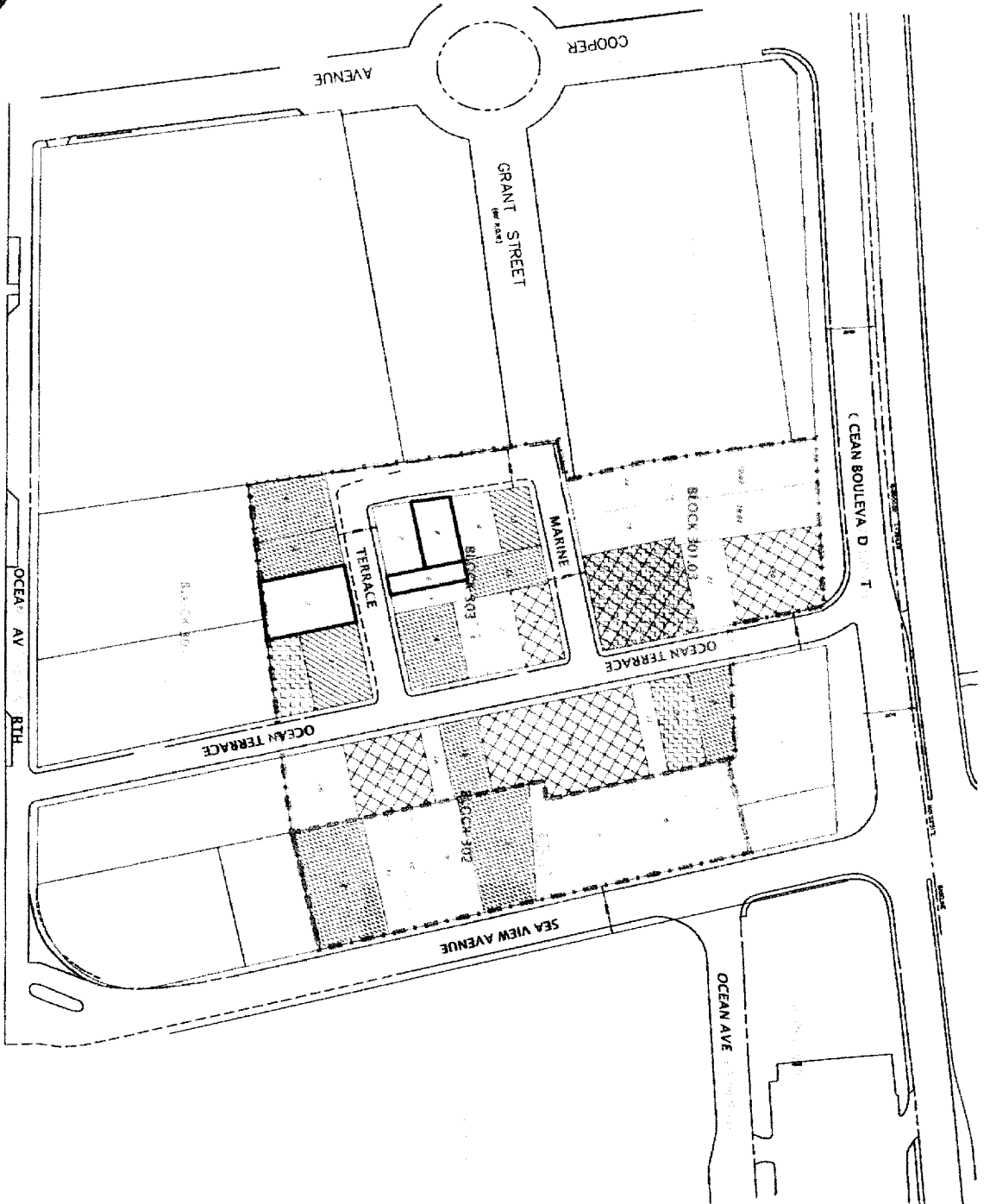


Less than 1 DU
1 DU
2 DU and more

Note: Buildout is additionally limited by parking (2/DU) and previous coverage (15%)
At 15 DU/ac, minimum lot size for 1DU is 2,904sf and for 2DU is 5,808sf.



Zone Boundary



Remain with no change
(3 lots; 7.7%)

Add accessory to existing
(2 lots; 5.1%)

Conversion to more units
(4 lots; 10.3%)

New Construction
(3 lots; 7.7%)

Undecided
(8 lots; 20.5%)

Lots owned by developer

Lots owned by separate owners

Total Lots: 39

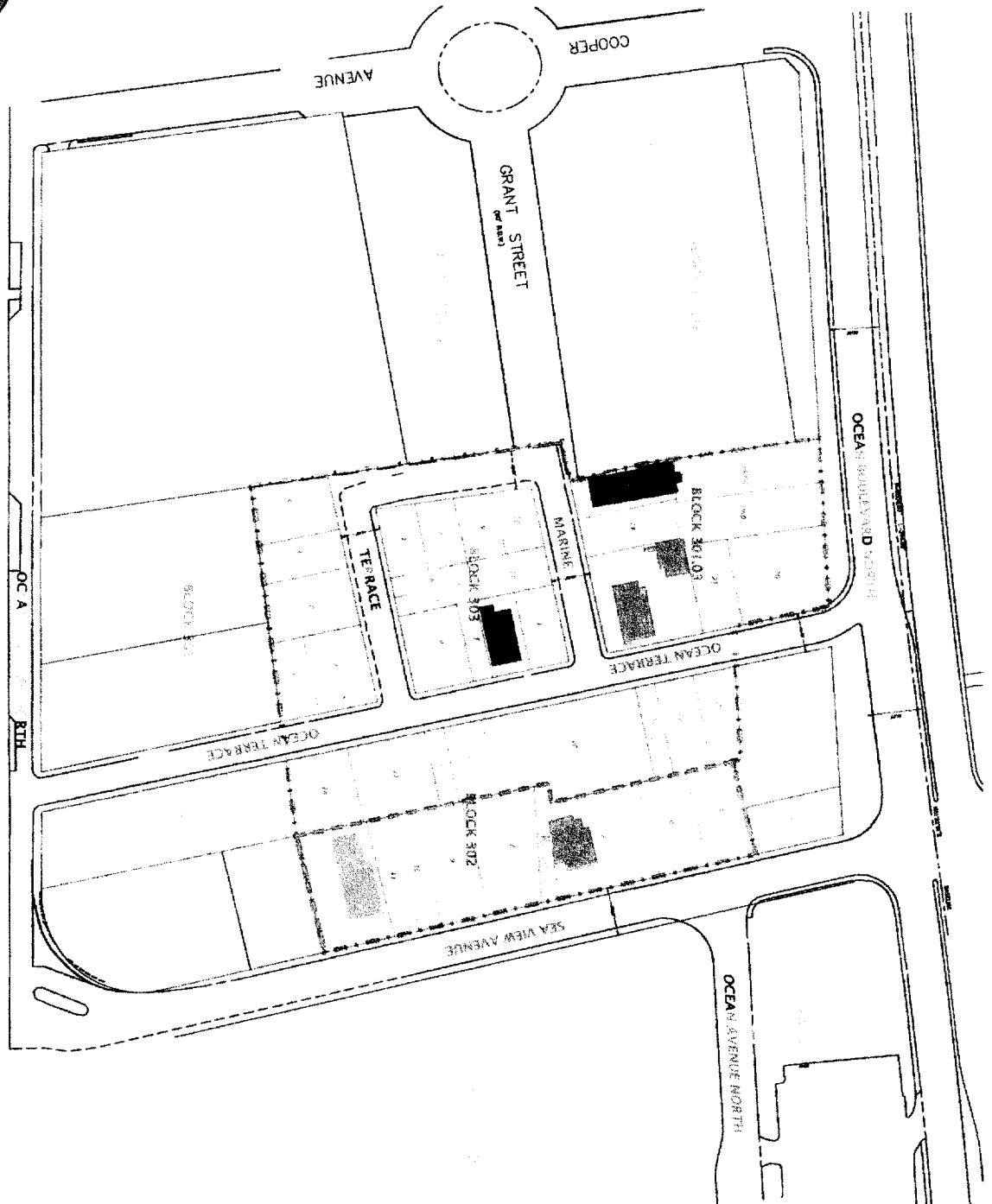
Source: Sketch generated by owners/stake holders at meeting on January 22, 2009

Zone Boundary

Sea View Boundary



2A Private Owner Development Preferences



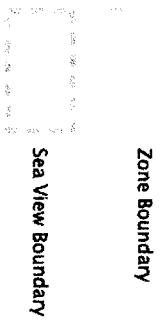
- 1 Unit
- 2 Units
- 3 Units
- 4 Units

Source: City of Long Branch
2006 Assessing Data

Total Units:
45 Ocean Terrace and Marine Terrace
+ 13 Seaview Avenue
58 Total

Lots owned by developer

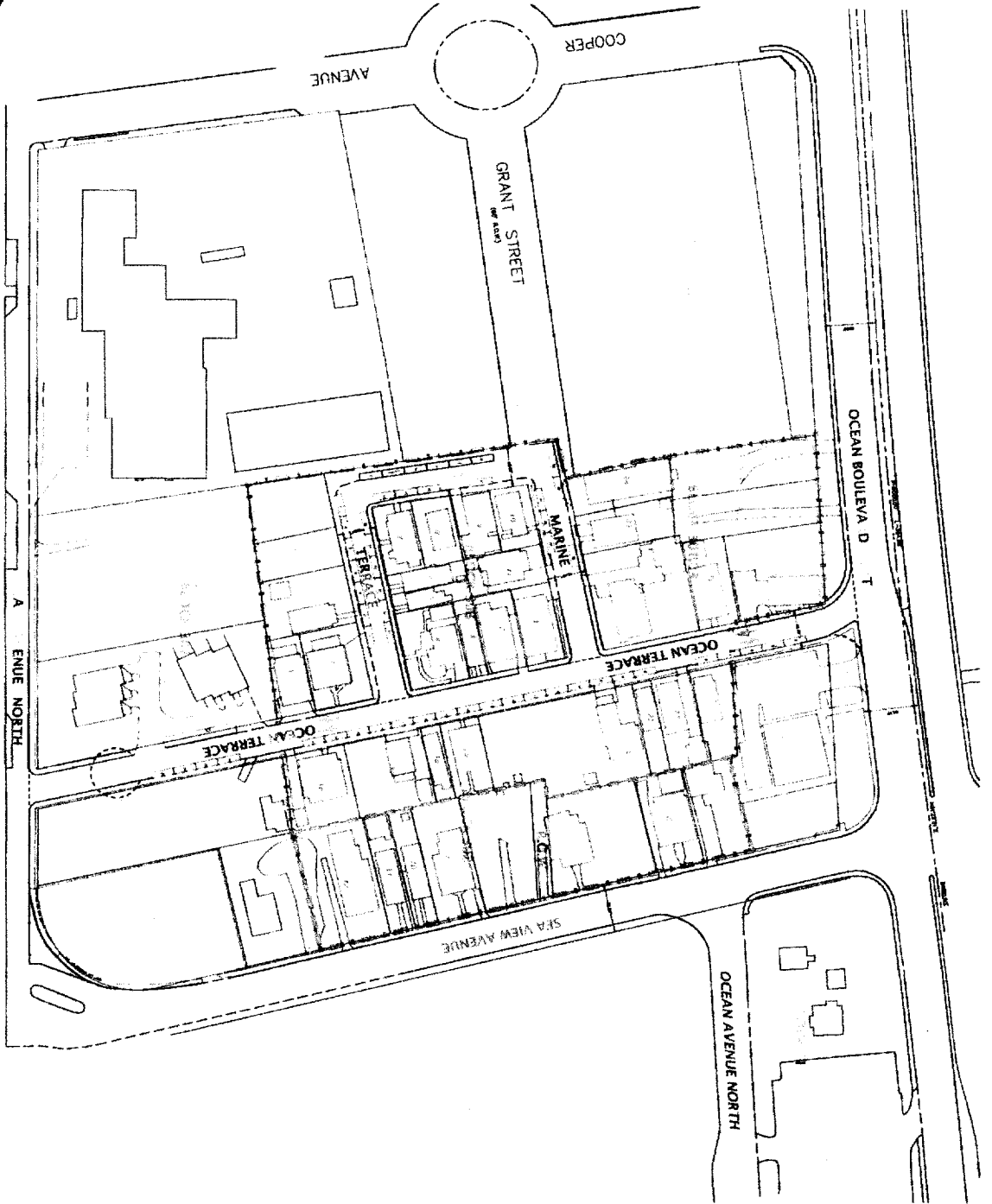
Lots owned by separate owners



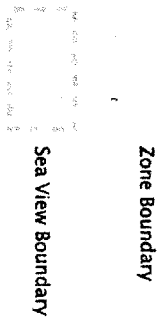
2B Existing Units per Lot:
Uneven Distribution of Density



2C(i) Possible Parking Capacity
Ocean Terrace - Two-way Street

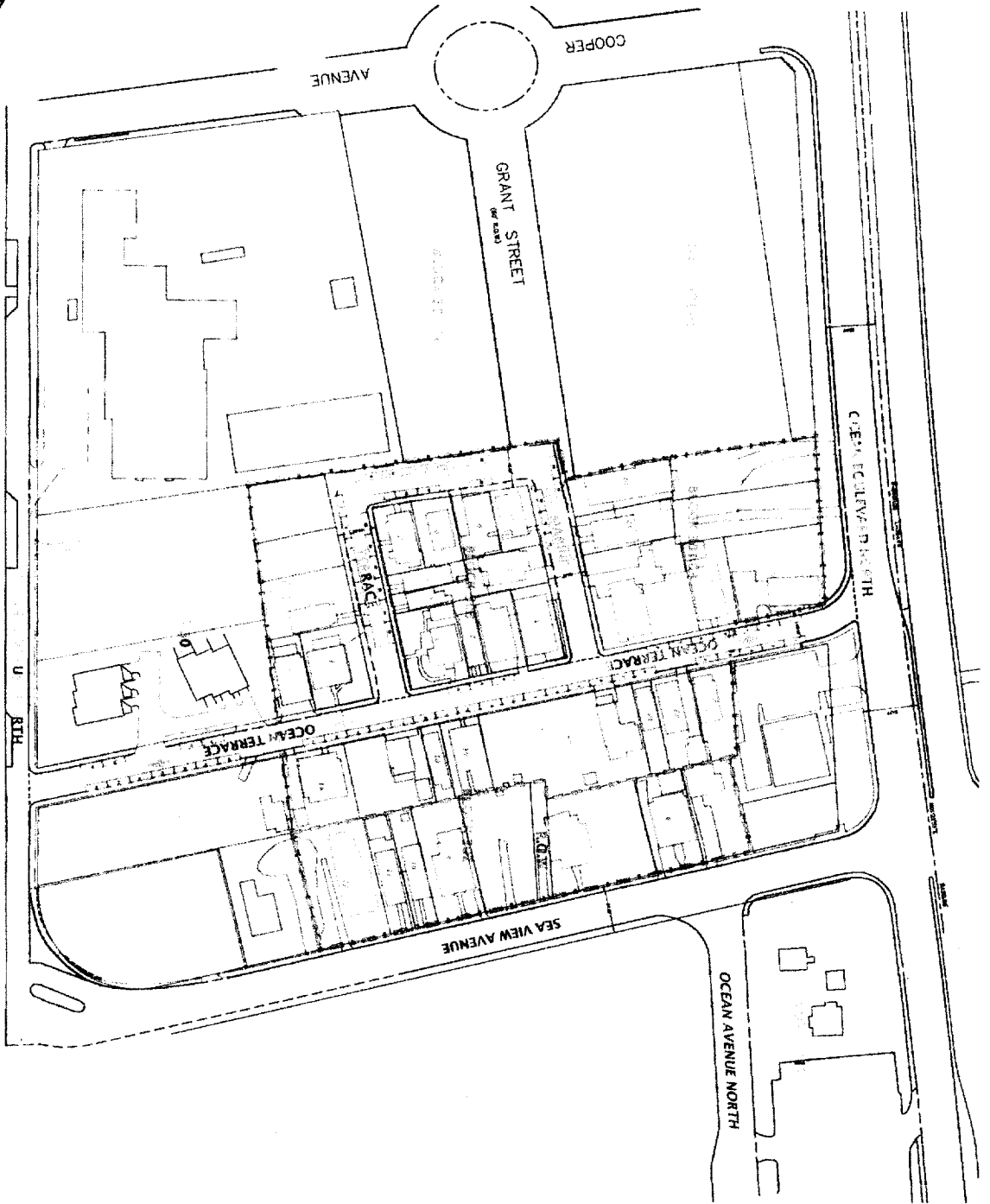


On-Street Parking
Ocean Terrace
 25 spaces
Marine Terrace
 (One side parallel parking)
 16 spaces
 (Two side parallel parking)
 29 spaces
Total (Max.):
 25 + 29 = 54 spaces

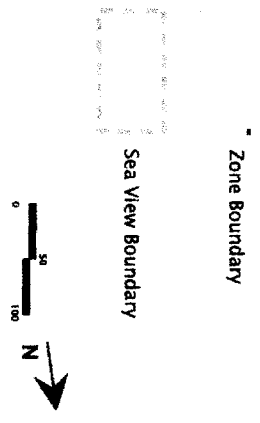


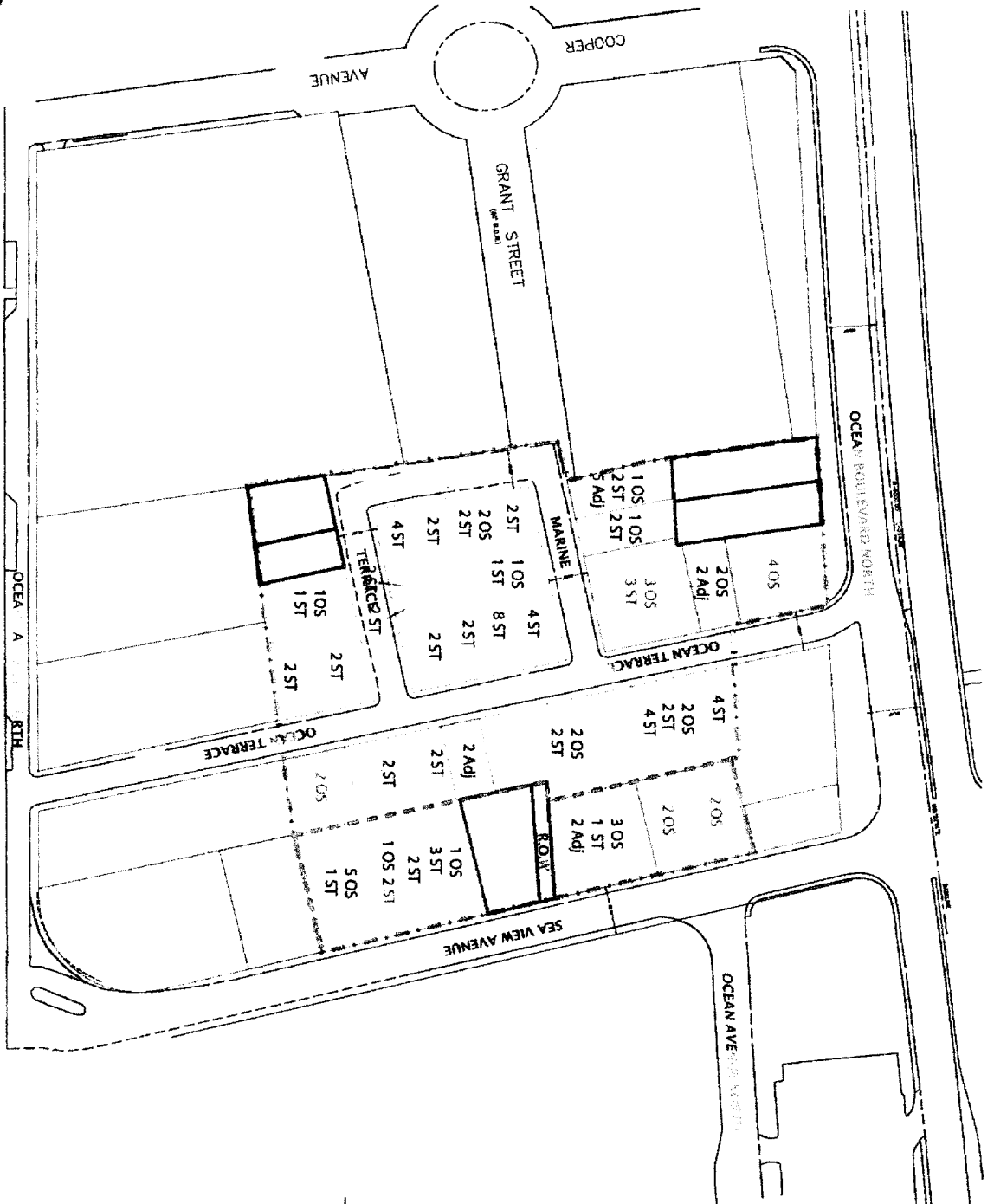


2C(ii) Existing (Maximum) Parking Capacity
Ocean Terrace - One-way street



- On-Street Parking**
- Ocean Terrace**
28 spaces + 15 spaces
- Marine Terrace**
(One side parallel parking)
16 spaces
- (Two side parallel parking)**
29 spaces
- Total (Max.):**
28+15+29 = 69 spaces





Current Sites Dependent on Street Parking to Meet Requirement

All Parking On-site (2 cars/DU)

Parking meets guidelines (2 cars/DU - 1 On-site/1 On-street)

Vacant Lot

Parking meets guidelines using adjacent lot

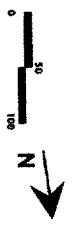
OS ON-SITE
ST ON-STREET
Adj ON ADJACENT LOT

Existing Parking Required:
58 DU X 2 cars = 116 cars

33 ON-SITE
11 ON ADJACENT LOT

Zone Boundary

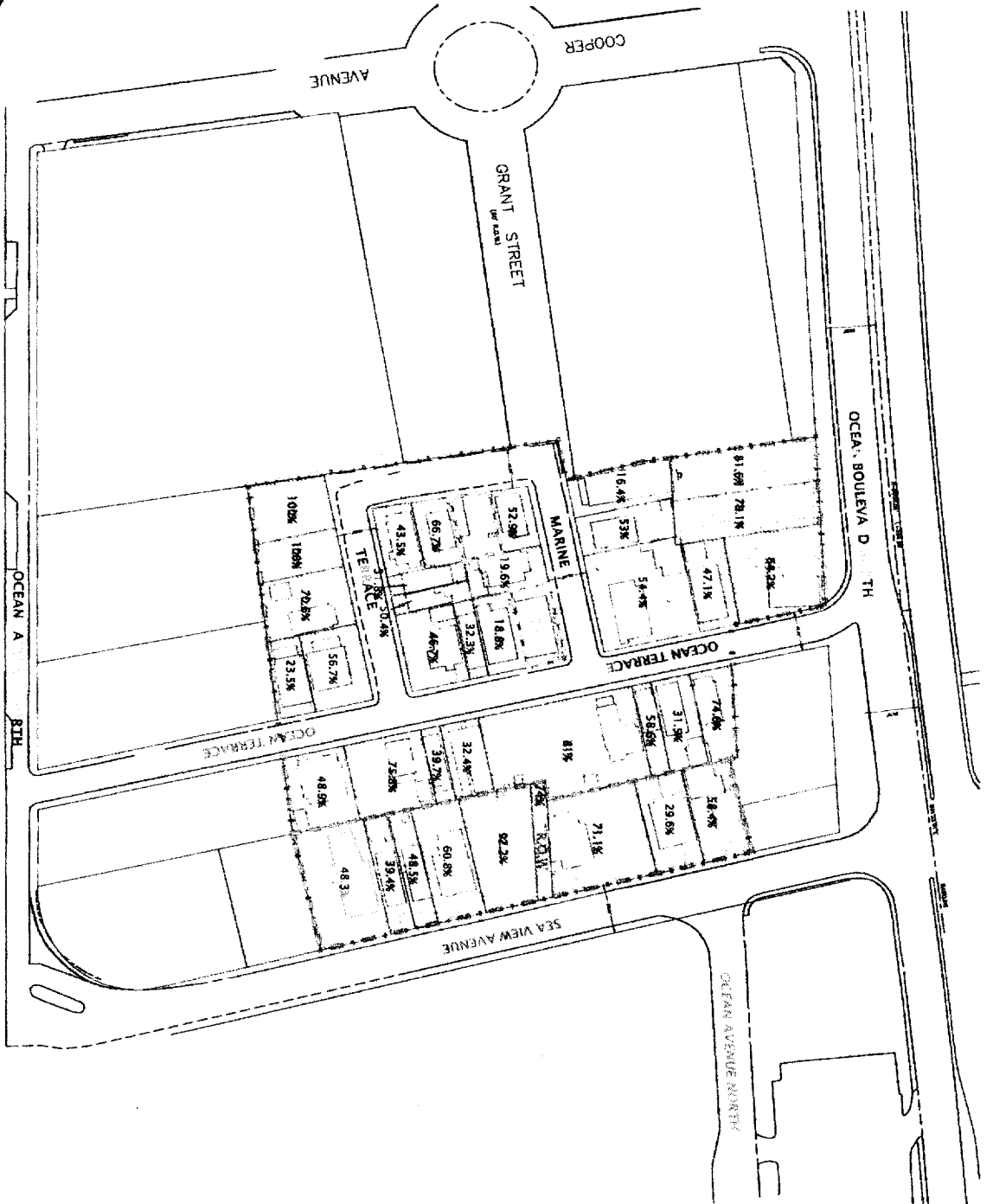
Sea View Boundary



2D Current Parking Conditions
(Underparked on-site)



2E Current Pervious Conditions



Existing Pervious Coverage

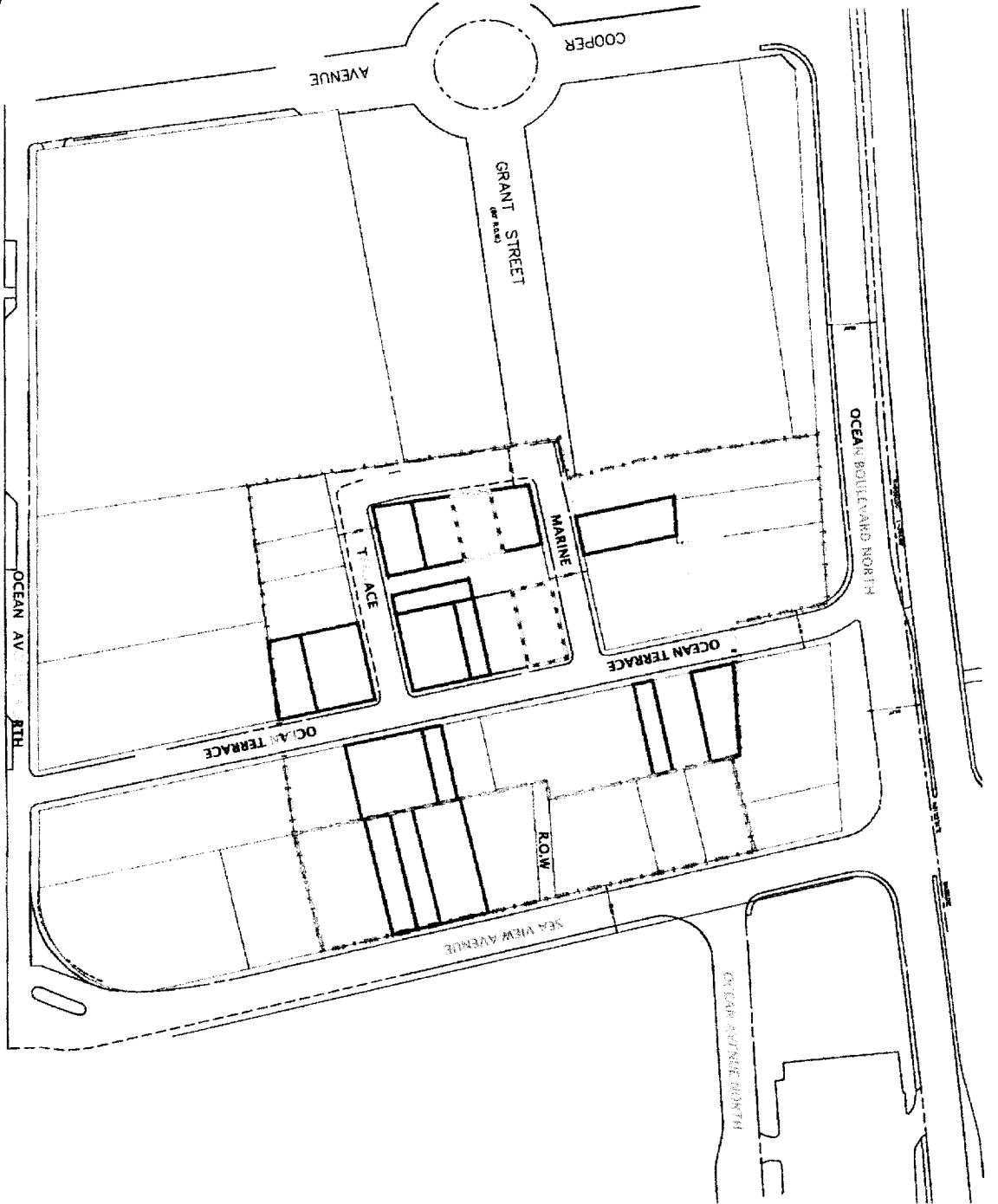
Sites below required 15% Pervious Coverage requirement

Note: Based upon County Aerial Survey

Zone Boundary

Sea View Boundary





- Overbuilt (beyond allowable number of units) Per Beachfront North Guidelines (15 lots; 38.5%)
- Sites below required 1.5% Previous Coverage requirement (2 lots; 5.1%)
- Sites dependent on Street Parking to meet requirements (16 lots; 41%)

Note: Suitability of site conversion is contingent on compliance with required on-site parking, minimum previous coverage, site area and site organization per guidelines.

Zone Boundary

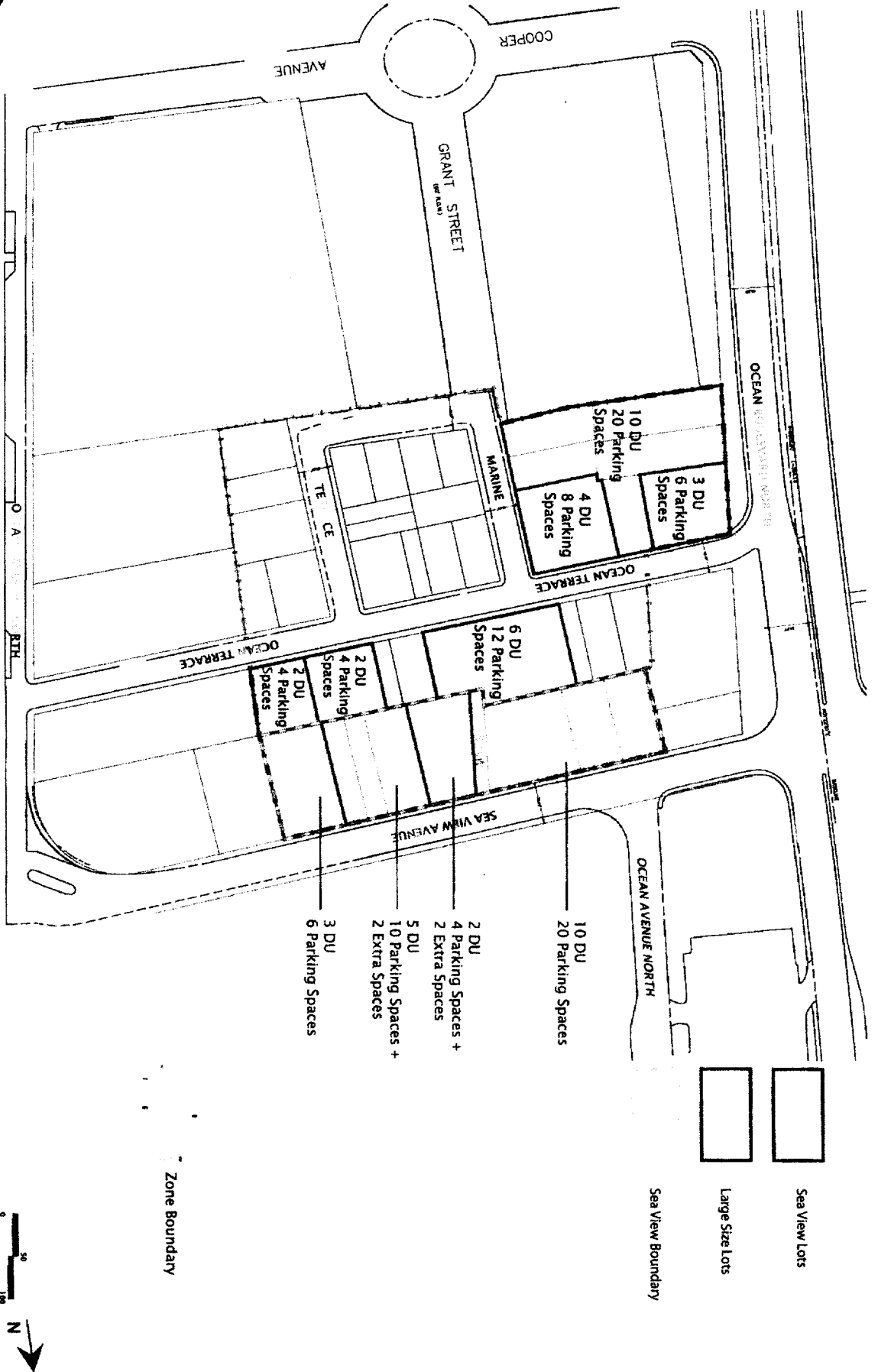


Sea View Boundary



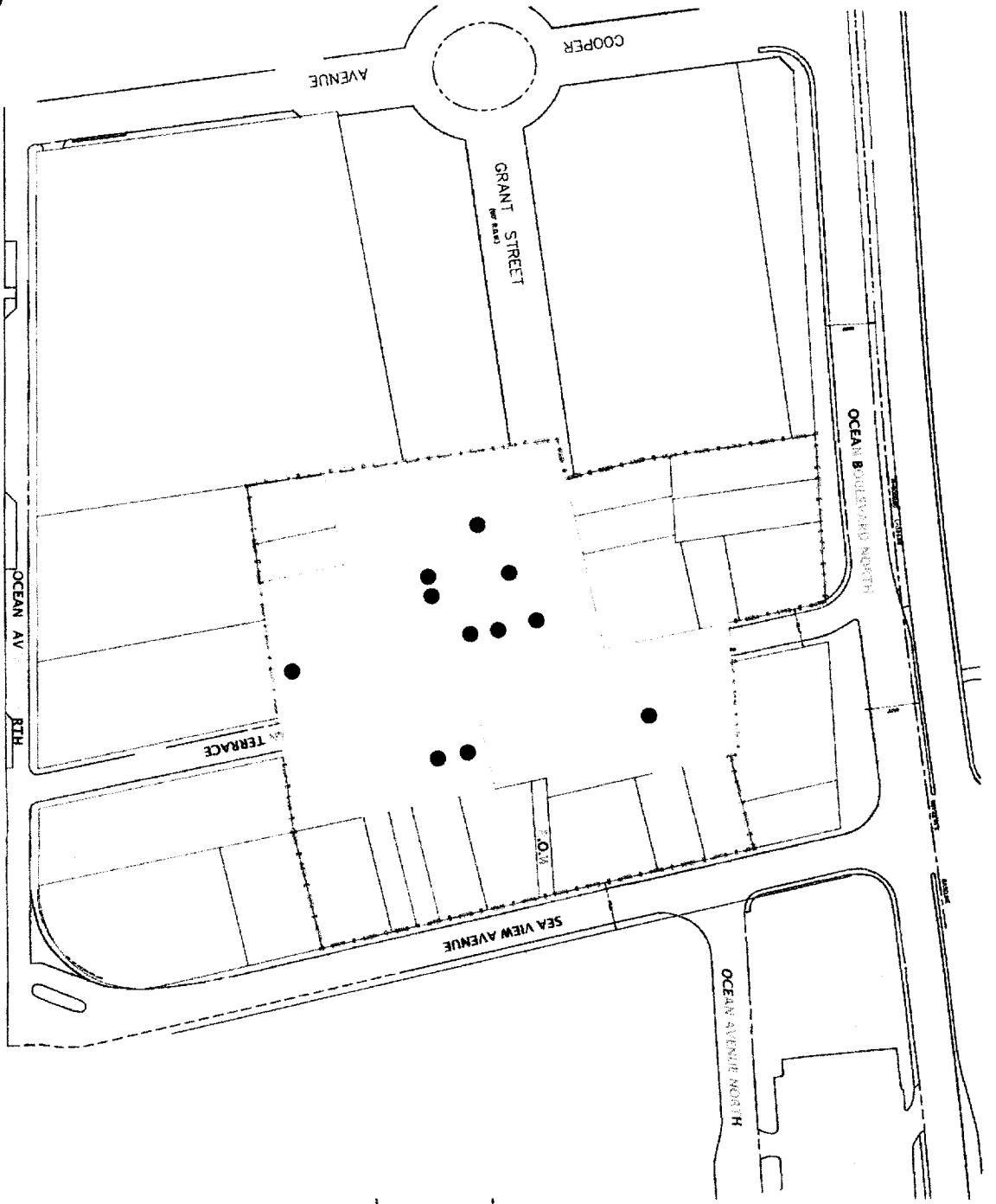


3A Potentially Self-Parking Sites





3B Parking Limits Density



Area with Parking Limitations

Current Sites Dependent on Street Parking to Meet Parking Requirement

Lots where existing site layout does not permit additional development. **

** Lot does not meet previous coverage requirement, does not have sufficient space to accommodate current required parking, or does not have sufficient space for additional required parking.

30 DU (Exist)
x 2

60 Parking Spots Required

8 On-Site

28 On-Street

+ 2 Other Site

38 Parking Spots Provided

22 (Underparked*)

* On-site space not available/ not provided. Dependent on on-street parking to meet requirements.

Zone Boundary



R# 273-09

**RESOLUTION AUTHORIZING THE MAYOR TO SIGN
THE FIFTH AMENDMENT TO THE REDEVELOPMENT AGREEMENT**

BE IT RESOLVED by the City Council of the City of Long Branch that they hereby authorize the Mayor to sign the Fifth Amendment to the Redevelopment Agreement.

MOVED:
SECOND:

AYES:
NAYES:
ABSENT:
ABSTAIN:

FIFTH AMENDMENT TO THE REDEVELOPMENT AGREEMENT

THIS FIFTH AMENDMENT TO THE REDEVELOPMENT AGREEMENT (“FIFTH AMENDMENT”) is made this ____ day of September, 2009 by and between the **CITY OF LONG BRANCH**, a New Jersey body politic, with principal offices at 344 Broadway, Long Branch, NJ 07740, and **MM-BEACHFRONT NORTH II, L.L.C.**, A New Jersey limited liability company, with principal offices at 110 Fieldcrest Avenue, Suite 50, Edison, New Jersey 08837-3634.

WHEREAS, the City of Long Branch (hereinafter “City”) on May 14, 1996, adopted the Oceanfront-Broadway Redevelopment Plan (“Redevelopment Plan”) for the redevelopment of, among other areas, the Beachfront North Redevelopment Area; and

WHEREAS, the City and Beachfront North, L.L.C. entered into “An Agreement Between the City of Long Branch and Beachfront North, L.L.C. for the Redevelopment Area Designated as Beachfront North”, dated February 22, 2000 (hereinafter “Original Agreement”); and

WHEREAS, the City and Beachfront North, L.L.C. entered into an “Amended and Restated Agreement Between the City of Long Branch and Beachfront North, L.L.C. for the Redevelopment Area Designated as Beachfront North” dated February, 2001 (hereinafter “First Amendment”); and

WHEREAS, the City and Beachfront North, L.L.C. entered into a “Second Amended and Restated Agreement Between the City of Long Branch and Beachfront North, L.L.C. for the Redevelopment Area Designated as Beachfront North” on or about July 16, 2002 (hereinafter “Second Amendment”); and

WHEREAS, the Second Amendment named MM-Beachfront North I, L.L.C. the designated successor Redeveloper for Phase I and Phase II of the Beachfront North Redevelopment Area (the Second Amendment actually misidentified the successor Redeveloper as “MM-Beachfront I, L.L.C.”; however, the City’s June 25, 2002 Resolution authorizing that Second Amendment properly identified the Redeveloper as MM-Beachfront North I, L.L.C.); and

WHEREAS, MM-Beachfront North I, L.L.C. completed the construction of Phase I of the Beachfront North Redevelopment Area, and the final closing of the homes located in Phase I occurred in or about October of 2005; and

WHEREAS, MM-Beachfront North I, L.L.C. and the City entered into an “Amendment To Redeveloper’s Agreement for Beachfront North Phase II” on September 13, 2005 (hereinafter “Third Amendment”) which named MM-Beachfront North II, L.L.C. as the successor Redeveloper for purposes of developing Phase II of the Beachfront North Redevelopment Area; and

WHEREAS, subsequent to the completion of Phase I, the City sought certain changes to some of the publicly dedicated components constructed in Phase I by MM-Beachfront North I, L.L.C.; and

WHEREAS, in lieu of implementing the changes to Phase I by MM-Beachfront North I, L.L.C., the Parties entered into a Fourth Amendment to Redevelopment Agreement wherein MM-Beachfront North I, L.L.C. agreed to construct and/or implement certain other, public improvements for the benefit of the City; and

WHEREAS, several property owners located in Phase II of the Beachfront North Redevelopment Area (commonly referred to as “MTOTSA” which is an acronym for the street names located within Phase II) challenged the City’s condemnation authority relative to their properties, and the City and those property owners have been engaged in ongoing litigation since late 2005 (entitled City of Long Branch v. Anzalone, Consolidated Docket Number L-141-06) (“MTOTSA Litigation”); and

WHEREAS, the City and MTOTSA, with the participation of MM-Beachfront North II, L.L.C., have been engaged in settlement discussions before the Superior Court of New Jersey, Monmouth County in order to try and resolve the MTOTSA Litigation; and

WHEREAS, the City and the property owners located within Phase II are in the process of finalizing the terms of a settlement agreement, with the anticipation that a Consent Order will ultimately be entered resolving the MTOTSA Litigation; and

WHEREAS, in order to help facilitate the City’s settlement with MTOTSA, MM-Beachfront North II, L.L.C. and the City agreed to amend the parties’ respective obligations for Phase II of the Beachfront North Redevelopment Area, as set forth herein.

NOW THEREFORE, in consideration of the covenants and promises set forth herein and other valuable consideration, it is hereby agreed by and between the parties that the prior Original Agreement, First Amendment, Second Amendment, and the Third Amendment (collectively “the Agreement”) are hereby amended as follows:

1. Amended Zoning and Redevelopment Plan for Phase II. The City and MM-Beachfront North II, L.L.C. hereby agree that the City and any of its affiliated entities (e.g. zoning boards, planning boards, departments, agencies, etc.) shall undertake any and all actions necessary to implement and enact the proposed zoning criteria set forth on Exhibit A, attached hereto, within ninety (90) days following the full execution of this Fifth Amendment in order to accommodate the redevelopment of the parcels presently owned by MM-Beachfront North II, L.L.C. or subsequently acquired by MM-Beachfront North II, L.L.C. in accordance with the Overall Property Exhibit set forth as Exhibit A attached hereto. The intent of this Fifth Amendment is to permit MM-Beachfront North II, L.L.C. to fully and completely redevelop Phase II in accordance with Exhibit A. The City and all of its affiliated entities shall, without limitation and without cost to MM-Beachfront North II, L.L.C., fully cooperate to grant, within sixty (60) days of the date of this Fifth Amendment, any and all lot consolidations, subdivisions, permits, agreements, zoning ordinance amendments and/or any other governmental approval within the City’s purview or authority which is necessary for MM-Beachfront North II, L.L.C. to promptly obtain building permits for the construction of the single family homes and the town homes, in accordance with the criteria set forth in Exhibit A. Further, the City shall fully cooperate and assist MM-Beachfront North II, L.L.C. in expediting the procurement of any and all County, State and Federal governmental approvals that may be necessary in order to complete the construction of the homes set forth in Exhibit A in a manner which does not result in any unnecessary delay to MM-Beachfront North II, L.L.C. The City may not impose any undue cost generative planning and/or architectural guidelines relative to the redevelopment as set forth in Exhibit A, and the design aesthetics of the single family homes and town homes shall be within the sole control of MM-Beachfront North II, L.L.C. Further, there shall be no affordable housing fees or any other administrative costs whatsoever to MM-Beachfront North II, L.L.C.

2. Short Term Tax Abatements For Redeveloped Parcels in Phase II. The City shall provide MM-Beachfront North II, L.L.C. with a short term tax abatement for the redevelopment of the parcels presently owned or subsequently acquired by MM-Beachfront North II, L.L.C. within Phase II. The City shall take such action, pursuant to N.J.S.A. 54:4-3.141, as is necessary to provide a short term tax abatement(s) to MM-Beachfront North II, L.L.C., or at MM-Beachfront North II, L.L.C.'s discretion, the prospective purchasers of each residential unit within Phase II, to be phased in pursuant to N.J.S.A.54:4-3.145c.

3. Conveyance of City-Owned Parcels within Phase II. In accordance with the Second Amendment, the City shall convey, without further consideration, any and all City-owned parcels located within Phase II that are depicted on Exhibit A and that are required by MM-Beachfront North II, L.L.C. in order to fully and completely effectuate the redevelopment depicted on Exhibit A. The City shall convey such parcels to MM-Beachfront North II, L.L.C. within thirty (30) days of the City's receipt of a written notice from MM-Beachfront North II, L.L.C. requesting the transfer of title to such City-owned parcels to MM-Beachfront North II, L.L.C.

4. City Infrastructure Improvements within Phase II. The City shall undertake the repaving of all the roadways located within Phase II during either 2010 or 2011 under the City's Road Program as development within Phase II progresses, but in any event no later than December 31, 2011. Notwithstanding the foregoing, Redeveloper shall not be liable and is hereby released from any and all liability to the City for any damage (excluding any damage caused by the gross negligence or willful misconduct of Redeveloper) to any of the City's property if the City repaves any roads within Phase II prior to Redeveloper's completion of all of its utility connection. The City shall contact and work with JCP&L to review, repair and reinstall, if necessary, all street lights in the Beachfront North area by the close of 2009.

5. Demolition of Structures within Phase II. MM-Beachfront North II, L.L.C. shall demolish all structures located on parcels owned by MM-Beachfront North II, L.L.C. and which are located within Phase II pursuant to the schedule set forth in the Order of Settlement to be signed in connection with the settlement of the MTOTSA Litigation, which order of settlement shall be in the form annexed hereto as Exhibit B (the "Settlement Order").

6. Redeveloper Financial Contributions to Settlement. MM-Beachfront North II, L.L.C. shall provide the City with a payment in the amount of One Hundred Ninety Thousand (\$190,000.00) Dollars within thirty (30) days following the complete execution of this Fifth Amendment and the City's entry into the Settlement Order.. MM-Beachfront North II, L.L.C. shall also provide the City with an additional payment in the amount of Two Hundred Thousand (\$200,000.00) Dollars within two (2) years following the complete execution of this Fifth Amendment and the City's entry into the Settlement Order. In order to secure the foregoing financial obligations to the City, MM-Beachfront North II, L.L.C. shall provide the City with a first mortgage on lots 19.01 and 19.02, block 301 as shown on the tax maps of the City of Long Branch as soon as practicable after the title search has been delivered to the City and Redeveloper. In the event of a default by MM-Beachfront North II, L.L.C. in its failure to tender the aforementioned Two Hundred Thousand Dollars (\$200,000.00) within the timeframes provided by this Fifth Amendment, the City shall notify MM-Beachfront North II, L.L.C. in writing within ten (10) days of such default and MM-Beachfront North II, L.L.C. shall be provided a reasonable opportunity to cure such default. In the event that MM-Beachfront North II, L.L.C. cannot cure said default within a period of thirty (30) days following MM-Beachfront North II, L.L.C.'s receipt of the City's notice or such longer period of time as may be reasonable depending upon the nature of the default, then the City may record the aforementioned mortgage. It is understood and

agreed by the parties that the payment of the foregoing sums constitute the only financial obligation of MM-Beachfront North II, L.L.C. to the City in order to effectuate the redevelopment set forth on Exhibit A attached hereto. MM-Beachfront North II, L.L.C. shall not be required under any circumstances to provide any additional funding, fees, or other costs to the City or its affiliated entities in order to pull building permits and implement the redevelopment set forth on Exhibit A attached hereto.

7. Tax Assessment Reductions for Existing Structures. The City agrees to reduce the assessed valuations of the lots owned by the Redeveloper for the 2010 tax year and all years thereafter by reducing the assessed valuation of the improvements on each lot to \$25,000 per lot and by maintaining the current assessment of the land component of each lot's assessed valuation (the "New Assessed Value"), unless Redeveloper shall begin construction on a lot, in which case the City shall reassess such lot as required by law. The City agrees to include the New Assessed Value of each of Redeveloper's lots in the assessor's duplicate which is filed with the Monmouth County Board of Taxation by January 10, 2010 and January 10 of each year thereafter, unless with respect to a lot, on an individual basis, construction shall have been begun on or before the October 1 assessed valuation date for any tax year.

8. No Change to the Agreement. All other terms of the Agreement that are otherwise unaffected by this Fifth Amendment, remain in full force and effect. Unless otherwise expressly modified by this Fifth Amendment such that the terms would conflict, any rights and/or obligations of the parties under this Fifth Amendment shall be supplemental to and cumulative of any such rights and/or obligations which may exist in the Agreement.

WHEREFORE, authorized representatives of the parties have signed this agreement below.

WITNESS:

CITY OF LONG BRANCH

By: _____
MAYOR ADAM SCHNEIDER

MM-BEACHFRONT NORTH II, L.L.C.

By: _____
By: M&M Investments, L.P.,
By: Its General Partner, The Matzel &
Mumford Organization, Inc.

By: JOHN MOORZITZ, President

By: _____
By: Beachfront North, L.L.C.,
GREGORY RUSSO, Vice President