

City Clerk File No.                      Ord. 10-115

Agenda No.                      3.A                      1st Reading

Agenda No.                      2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-115

TITLE:

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO THE MORRIS CANAL REDEVELOPMENT PLAN TO  
REVISE FEES FOR PLAN AMENDMENTS**

**WHEREAS**, the Municipal Council of the City of Jersey City adopted the Morris Canal Redevelopment Plan in March of 1999, and amended the Plan numerous times subsequently, most recently on August 25, 2010; and

**WHEREAS**, the Planning Board, at its meeting of August 17, 2010, determined that the Morris Canal Redevelopment Plan would benefit from amendments to revise fees for plan amendments; and

**WHEREAS**, community groups recognized as review agents within the plan shall be exempt from these fees; and

**WHEREAS**, a copy of the Planning Board's recommended amendments to the Morris Canal Redevelopment Plan is attached hereto, and made a part hereof, and is available for public inspection at the office of the City Clerk, City Hall, 280 Grove Street, Jersey City, NJ;

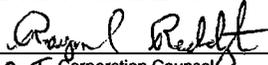
**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that the aforementioned amendments to the Morris Canal Redevelopment Plan be, and hereby are, adopted.

**BE IT FURTHER ORDAINED THAT:**

- A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
- B. This ordinance shall be a part of the Jersey City Code as though codified and set forth fully herein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
- C. This ordinance shall take effect at the time and in the manner as provided by law.
- D. The City Clerk and the Corporation Council be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible repealers of existing provisions.
- E. The City Clerk is hereby directed to give notice at least ten days prior to hearing on the adoption of this Ordinance to the County Planning board and to all other persons entitled thereto pursuant to N.J.S. 40:55D-15 and N.J.S. 40:55D-63 (if required). Upon the adoption of this Ordinance after public hearing thereon, the City Clerk is further directed to publish notice of the passage thereof and to file a copy of the Ordinance as finally adopted with the Hudson County Planning Board as required by N.J.S. 40:55D-16. The clerk shall also forthwith transmit a copy of this Ordinance after final passage to the Municipal Tax Assessor as required by N.J.S. 40:49-2.1.

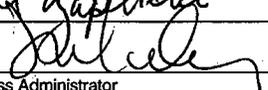
Robert D. Cotter, PP, AICP  
Director, Division of City Planning

APPROVED AS TO LEGAL FORM

  
Raymond Redelt  
Corporation Counsel

APPROVED: \_\_\_\_\_

APPROVED: \_\_\_\_\_

  
  
Business Administrator

Certification Required

Not Required

**ORDINANCE FACT SHEET**

**1. Full Title of Ordinance:**

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO THE MORRIS CANAL REDEVELOPMENT  
PLAN TO REVISE FEES FOR PLAN AMENDMENTS**

**2. Name and Title of Person Initiating the Ordinance, etc.:**

Carl Czaplicki, Director of Housing, Economic Development, and Commerce

**3. Concise Description of the Program, Project or Plan Proposed in the Ordinance:**

This ordinance modifies the Procedures for Amending the Plan by making amendment fees applicable to all applicants except the Community Groups recognized as review agents within the Plan.

**4. Reasons (Need) for the Proposed Program, Project, etc.:**

At present, developers who have not been designated by JCRA are not subject to fees fro plan amendment requests

**5. Anticipated Benefits to the Community:**

Decreased City expenditure for costs of Plan amendments

**6. Cost of Proposed Plan, etc.:**

\$0.00. Plan was prepared by Division of City Planning staff.

**7. Date Proposed Plan will commence:**

Upon Adoption.

**8. Anticipated Completion Date: N/A**

**9. Person Responsible for Coordinating Proposed Program, Project, etc.:**

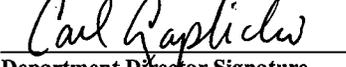
Robert D. Cotter, Director, City Planning 547-5050

**10. Additional Comments:**

**I Certify that all the Facts Presented Herein are Accurate.**

  
Division Director

August 27, 2010  
Date

  
Department Director Signature

8/27/10  
Date

Summary Sheet:

**ORDINANCE OF THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY  
ADOPTING AMENDMENTS TO THE MORRIS CANAL REDEVELOPMENT  
PLAN TO REVISE FEES FOR PLAN AMENDMENTS**

This ordinance modifies the Procedures for Amending the Plan by making amendment fees applicable to all applicants except the Community Groups recognized as review agents within the Plan.

## Morris Canal Redevelopment Plan

### XIV. Procedure for Amending the Plan

- A. The Plan may be amended from time to time upon compliance with the requirements of law. A fee of One Thousand dollars \$ 1,000, plus all costs for copying and transcripts shall be payable *by the applicant* to the City of Jersey City for any request to amend this Plan. ~~If there is a designated developer, as provided for under NJSA 40A:12A-1 et. seq., said developer shall pay these costs. If there is no developer the appropriate agency shall be responsible for any and all such costs.~~ *Fees shall not be charged for amendments proposed by any of the community groups listed in Section VI of this Plan.*
- B. No amendment to this Plan shall be approved without a public hearing by the Planning Board, and a public hearing and adoption by Municipal Council. A copy of any proposed change to the Plan shall be filed with the Office of the City Clerk.
  1. In addition, notice of a hearing to amend the Plan shall be sent to the designated agent that are registered with the Division of City Planning (refer to section IV) at least twenty-one (21) calendar days prior to the date set for the hearing. In addition, an affidavit showing proof of submission of the proposed amendment to the aforementioned agents shall be submitted to the Division of City Planning not less than ten (10) calendar days prior to said hearing.

City Clerk File No. Ord. 10-116

Agenda No. 3.B 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-116

TITLE:

**ORDINANCE AUTHORIZING THE EXECUTION OF A RIGHT-OF-WAY USE AGREEMENT BETWEEN THE CITY OF JERSEY CITY AND NEXTG NETWORKS OF NY, INC. FOR THE INSTALLATION, USE AND MAINTENANCE OF TELECOMMUNICATIONS FACILITIES WITHIN CERTAIN PUBLIC RIGHTS-OF-WAY FOR THE PURPOSE OF PROVIDING TELECOMMUNICATIONS SERVICES**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, NextG Networks of NY, Inc., (NextG) is a telecommunications carrier authorized to provide service by the New Jersey Board of Public Utilities (BPU) and the Federal Communications Commission (FCC); and

**WHEREAS**, NextG owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the New Jersey Board of Public Utilities, a fiber-based telecommunication network serving NextG's wireless carrier customers utilizing microcellular optical repeater equipment certified by the FCC; and

**WHEREAS**, NextG has requested that the City of Jersey City's (City) grant it permission to use the public rights-of-way within the City as shown on Exhibits A, B, C, and D attached hereto for a period of time of ten (10) years, and unless terminated by NextG, three (3) automatic renewals each having a term of five (5) years for the purpose of operating its network to serve its wireless carrier customers located in the Jersey City; and

**WHEREAS**, it is deemed to be in the best interests of the City and its citizenry, particularly its commercial and industrial citizens, for the City to grant municipal consent for NextG to use the rights-of-way within the City for this purpose; and

**WHEREAS**, the granting of such consent is conditioned upon NextG's continued compliance with all existing and future ordinances of the City and its entering into the attached Right-of-Way Use Agreement; and

**WHEREAS**, N.J.S.A. 48:17-10 and N.J.S.A. 40:67-1 authorize the City to grant municipal consent for the placement of public utility equipment in its rights-of-way; and

**WHEREAS**, NextG agrees to pay the City the sum of \$500.00 per year for the use of each municipal facility that is located within the public rights-of-way; and

**WHEREAS**, NextG agrees to pay the City an annual rights-of-way use fee which will be an amount equal to 5% of NextG's adjusted gross revenues; and

**WHEREAS**, NextG agrees to indemnify, defend and hold the City harmless as to all claims and liability resulting from any injury or damage which may arise from the construction, installation, operation, repair, maintenance, disconnect, replacement and removal of its telecommunications equipment within certain public rights-of-way and provide liability insurance coverage for personal

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injury and property damage.

**NOW, THEREFORE BE IT ORDAINED**, by the governing body of the City of Jersey City that:

- 1. Nonexclusive consent is hereby granted to NextG to use certain public rights-of-way within the City for the purpose of locating, placing, attaching, installing, operating, controlling and maintaining equipment for a period of time of ten (10) years, and unless terminated by NextG, three (3) automatic renewals each having a term of five (5) years, subject to the mutual covenants and obligations set forth in the Right-of-Way Use Agreement attached hereto;
- 2. The granting of this permission is conditioned upon NextG executing the attached Right-of-Way Use Agreement and providing liability and property damage insurance; and.
- 3. The Mayor or Business Administrator is hereby authorized to execute the attached Right-of-Way Use Agreement or such substantially similar agreement as approved by the City's Corporation Counsel.
  - A. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
  - B. This ordinance shall be a part of the Jersey City Code as though codified and fully set forth therein. The City shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
  - C. This ordinance shall take effect in the manner as prescribed by law.
  - D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

**NOTE:** All new material is underlined; words in [brackets] are omitted. For purposes of advertising only, new matter is indicated by **boldface** and repealed matter by *italic*.

RR/cw  
9-8-10

APPROVED AS TO LEGAL FORM

Raymond Reddington  
Act Corporation Counsel

APPROVED: \_\_\_\_\_

J. [Signature]  
Business Administrator

Certification Required   
Not Required



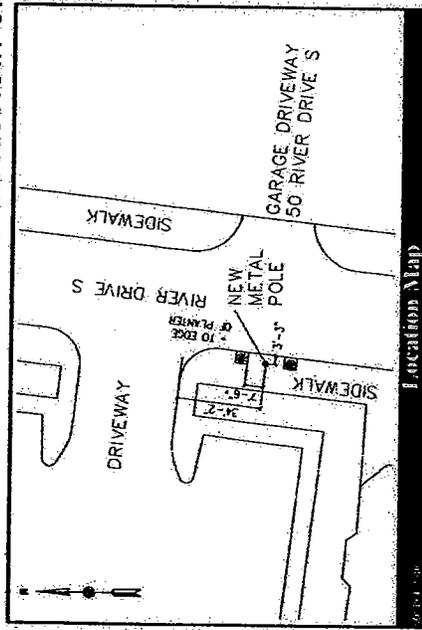
NextG Networks

NextG Networks

New Jersey One-Call

General Contractor Notes

MPC1039 PROJECT NYD5066 50 RIVER DRIVE (OPPOSITE OF) (WEST SIDE OF STREET) JERSEY CITY, NJ 07310 JURISDICTION: CITY OF JERSEY CITY

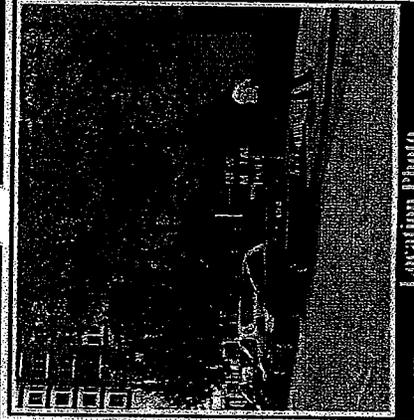


Location Map



Vicinity Map

Project Description
Project Scope
Code Compliance
Sheet Index



Location Photo

Project Summary
Property Information

NextG Networks
1160 Pennsylvania Ave, New York, NY
11104

Project Title: MPC1039
MPC1039
NOBLE NUMBER NYD5066
50 RIVER DRIVE S (OPPOSITE OF)
WEST SIDE OF STREET
JERSEY CITY, NEW JERSEY 07310
Current Issue Date: 7/9/10
Permit: Substation

Comments:
3. 1/24/10 Per Electrical Engineering.
4. 1/27/10 Per REC Comments.
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NextG Networks
Approved By: Robert M. Eschebacher
7/9/10



Veritas Hanger Brackets, Inc.
Lead Designer
Environmental Services
1000 West 10th Street
Bloomington, MN 55425
612.835.1234
www.veritas-hanger.com

NextG Networks
Drawing Title:
Made Number NYD5066
Drawing Number:
Sheet No. 1 of 6
Scale:
Notes:
Revision:

C-1

Exhibit "A"





1

1

Exhibit "D"

**New Jersey One Call**  
 800-452-7529  
 NEW JERSEY ONE CALL (1-800-452-7529) PRIOR TO ANY EXCAVATION.

**General Contractor Notes**  
 CONTRACTOR SHALL VERIFY ALL PLANS AND SPECIFICATIONS AND CONDITIONS ON THE JOB SITE AND SHALL IMMEDIATELY NOTIFY THE ENGINEER OF ANY DISCREPANCIES OR OMISSIONS. THE WORK IS THE RESPONSIBILITY OF THE CONTRACTOR.

**NextG Networks**  
 MPC1039 PROJECT  
 NYD5065  
 WASHINGTON BLVD AND NEWPORT PARKWAY  
 (SOUTHWEST CORNER)  
 JERSEY CITY, NJ 07310  
 JURISDICTION: CITY OF JERSEY CITY

**Reference Drawings**

Number	Drawing Title	Date
10171	Final Design Plan & Installation Schedule	12-24-17
10172	Final Design Plan & Installation Schedule	12-24-17
10173	Final Design Plan & Installation Schedule	12-24-17
10174	Final Design Plan & Installation Schedule	12-24-17
10175	Final Design Plan & Installation Schedule	12-24-17

**Project Title**  
 MPC1039  
 WASHINGTON BLVD AND NEWPORT PARKWAY  
 SOUTHWEST CORNER  
 JERSEY CITY  
 CITY OF JERSEY CITY

**Permit Submission**  
 7/19/10

**Comments:**

- 1. 12/24/17 Per. Final Comments
- 2. 12/24/17 Per. Final Comments
- 3. 12/24/17 Per. Final Comments
- 4. 12/24/17 Per. Final Comments
- 5. 12/24/17 Per. Final Comments
- 6. 12/24/17 Per. Final Comments
- 7. 12/24/17 Per. Final Comments
- 8. 12/24/17 Per. Final Comments
- 9. 12/24/17 Per. Final Comments
- 10. 12/24/17 Per. Final Comments

**Project Summary**

**Client:** NextG Networks  
**Project:** MPC1039  
**Job No.:** NYD5065  
**Latitude:** 40.2979  
**Longitude:** -74.0599  
**Street Address:** WASHINGTON BLVD AND NEWPORT PARKWAY  
**City, State:** JERSEY CITY, NEW JERSEY  
**Suburb:** CITY OF JERSEY CITY  
**Map Ref:** NA  
**Pole Type:** METAL TRAFFIC POLE  
**Pole Owner:** TO BE DETERMINED  
**Antenna Center Height:** 31'-0" ADJ.  
**Antenna Type:** TO BE DETERMINED  
**Adm. For Antenn.:** N/A  
**Power To Pole:** TO BE DETERMINED  
**Pole Access:** STREET ACCESS  
**Pole Location #:** SOUTHWEST CORNER OF WASHINGTON BLVD AND NEWPORT PARKWAY  
**Description:** BLVD AND NEWPORT PARKWAY

**Property Information**

**Title Sheet:** None  
**Block Number:** NYD5065  
**Drawing Number:** C-1  
**Sheet No.:** 1 of 6  
**Scale:** N/A  
**Issue Number:** NYD5065

**Project Description**  
 THE PROJECT CONSISTS OF THE INSTALLATION AND OPERATION OF ANTENNAS AND ASSOCIATED EQUIPMENT CURRENTS AND CABLES FOR NEXTG NETWORKS. THE PROJECT IS TO BE INSTALLED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF WASHINGTON BLVD AND NEWPORT PARKWAY. THE PROJECT IS TO BE INSTALLED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF WASHINGTON BLVD AND NEWPORT PARKWAY. THE PROJECT IS TO BE INSTALLED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF WASHINGTON BLVD AND NEWPORT PARKWAY.

**Project Scope**  
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**Code Compliance**  
 ALL WORK AND MATERIALS SHALL BE PERFORMED AND INSTALLED IN ACCORDANCE WITH THE LOCAL GOVERNMENT, AUTOMATICALLY APPLIED TO THE PROJECT. THE PROJECT IS TO BE INSTALLED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF WASHINGTON BLVD AND NEWPORT PARKWAY. THE PROJECT IS TO BE INSTALLED IN THE SOUTHWEST CORNER OF THE INTERSECTION OF WASHINGTON BLVD AND NEWPORT PARKWAY.

**Sheet Index**

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C-2	Final Design Plan & Installation Schedule	10172
C-3	Final Design Plan & Installation Schedule	10173
C-4	Final Design Plan & Installation Schedule	10174
C-5	Final Design Plan & Installation Schedule	10175

**Location Map**

**Vicinity Map**

**Location Photo**

**NextG Networks**  
 NextG Networks of New York, Inc.  
 110 Park Street, New York, NY 10038  
 Tel: 212-486-1335

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## RIGHT-OF-WAY USE AGREEMENT

**T**HIS RIGHT-OF-WAY USE AGREEMENT (this "Use Agreement") is dated as of \_\_\_\_\_, 2010 (the "Effective Date"), and entered into by and between the CITY OF JERSEY CITY, a New Jersey municipal corporation (the "City"), and NEXTG NETWORKS OF NY, INC. a Delaware corporation ("NextG").

### RECITALS

A. NextG owns, maintains, operates and controls, in accordance with regulations promulgated by the Federal Communications Commission and the New Jersey Board of Public Utilities, a fiber-based telecommunications Network or Networks (as defined below) serving NextG's wireless carrier customers and utilizing microcellular optical repeater Equipment (as defined below) certified by the Federal Communications Commission.

B. For purpose of operating the Network, NextG wishes to locate, place, attach, install, operate, control, and maintain Equipment in the Public Way (as defined below) on facilities owned by the City, as well as on facilities owned by third parties therein.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

**1 DEFINITIONS.** The following definitions shall apply generally to the provisions of this Use Agreement:

**1.1 City.** ("City") shall mean City of Jersey City, New Jersey.

**1.2 Decorative Streetlight Pole.** "Decorative Streetlight Pole" shall mean any streetlight pole that incorporates artistic design elements not typically found in standard steel or aluminum streetlight poles.

**1.3 Equipment.** "Equipment" means the optical repeaters, DWDM and CWDM multiplexers, antennas, fiber optic cables, wires, and related equipment, whether referred to singly or collectively, to be installed and operated by NextG hereunder. Examples of typical Equipment types and installation configurations are shown in the drawings and photographs attached hereto as Exhibit A and incorporated herein by reference.

**1.4 Fee.** "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the City lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

**1.5 ILEC.** "ILEC" means the Incumbent Local Exchange Carrier that provides basic telephone services, among other telecommunications services, to the residents of the City.

**1.6 Installation Date.** "Installation Date" shall mean the date that the first Equipment is installed by NextG pursuant to this Use Agreement.

**1.7 Laws.** "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

**1.8 Municipal Facilities.** "Municipal Facilities" means City-owned Streetlight Poles, Decorative Streetlight Poles, lighting fixtures, electroliers, or other City-owned structures located within the Public Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

**1.9 Network.** "Network" or collectively "Networks" means one or more of the neutral-host, protocol-agnostic, fiber-based optical repeater networks operated by NextG to serve its wireless carrier customers in the City.

**1.10 NextG.** "NextG" means NextG Networks of NY, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

**1.11 Public Way.** "Public Way" means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such person or entity.

**1.12 BPU.** "BPU" means the New Jersey State Board of Public Utilities.

**1.13 Services.** "Services" means the RF transport and other telecommunications services provided through the Network by NextG to its wireless carrier customers pursuant to one or more tariffs filed with and regulated by the BPU.

**1.14 Streetlight Pole.** "Streetlight Pole" shall mean any standard-design concrete, fiberglass, metal, or wooden pole used for streetlighting purposes.

**2 TERM.** This Use Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Use Agreement shall be renewed automatically for three (3) successive terms of five (5) years each on the same terms and conditions as set forth herein, unless NextG notifies the City of its intention not to renew not less than thirty (30) calendar days prior to commencement of the relevant renewal term. Upon termination of this Use Agreement, NextG agrees to remove its Equipment from the Public Ways at its sole cost and expense and shall promptly repair and return the Public Way in which the equipment was located to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted.

**3 SCOPE OF USE AGREEMENT.** Any and all rights expressly granted to NextG under this Use Agreement, which shall be exercised at NextG's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in NextG a real property interest in land, including any fee, leasehold interest, or easement. It is agreed that no zoning or planning board permit, variance, conditional use permit or site plan permit, or the equivalent under the City's ordinances, codes or laws, shall be required for the installation of NextG's Equipment installed in the Public Way and/or on Municipal Facilities, unless such a process has been

required for the placement of all communications facilities and equipment in the Public Way by all other telecommunications providers, including but not limited to the ILEC and local cable provider(s).

**3.1 Attachment to Municipal Facilities.** The City hereby authorizes and permits NextG to enter upon the Public Way and to locate, place, attach, install, operate, maintain, control, remove, reattach, reinstall, relocate, and replace Equipment in or on Municipal Facilities for the purposes of operating the Network and providing Services. Any work performed pursuant to the rights granted under this Use Agreement shall be done under the supervision of the proper Department or Departments of the City. All work authorized shall comply with the State of New Jersey Uniform Construction Code requirements. The construction plans shall be submitted to the Municipal Engineer for his review and approval prior to the start of construction. After construction there shall remain no damage to the sidewalk or roadway or interference with the free and safe flow of pedestrian and vehicular traffic. NextG, and its successors and assigns, shall maintain all Equipment installed by it for the entire term of this Use Agreement at no cost to the City. NextG agrees to pay for the repair or replacement of any City equipment damaged by NextG. If NextG removes or relocates Equipment or if NextG determines that Equipment is no longer needed at a location, NextG agrees to remove its Equipment from the Public Ways at its sole cost and expense and shall promptly repair and return the Public Way in which the Equipment was located to a safe and satisfactory condition in accordance with applicable laws, normal wear and tear excepted. In addition, subject to the provisions of § 4.5 below, NextG shall have the right to draw electricity for the operation of the Equipment from the power source associated with each such attachment to Municipal Facilities. A denial of an application for the attachment of Equipment to Municipal Facilities shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A.

**3.2 Attachment to Third-Party Property.** Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits NextG to enter upon the Public Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Equipment in or on poles or other structures owned by public utility companies or other property owners located within the Public Way as may be permitted by the public utility company or property owner, as the case may be. Upon request, NextG shall furnish evidence of NextG's pole-attachment agreement made pursuant to N.J.A.C. 14:18-2-9 *et seq.* A denial of an application for the attachment of Equipment to third-party-owned poles or structures in the Public Way shall not be based upon the size, quantity, shape, color, weight, configuration, or other physical properties of NextG's Equipment if the Equipment proposed for such application substantially conforms to one of the approved configurations and the Equipment specifications set forth in Exhibit A. Where third-party property is not available for attachment of Equipment, NextG may install its own utility poles in the Public Way, consistent with the requirements that the City imposes on similar installations made by other utilities that use and occupy the Public Way, and consistent with the requirements that the City asks of other utilities pursuant to N.J.S.A. 48:3-17a, provided, however, that NextG will agree that installation of poles shall be subject to prior administrative review and approval by the City which may consider the appropriateness to the specific location. NextG agrees to visit each location with the appropriate reviewing City department, which agrees in good faith to make a determination within thirty (30) days of any application. Notwithstanding, in the event the City denies any future location for installation of a pole proposed by NextG, City agrees to work expeditiously and diligently together with NextG to determine a mutually beneficial, viable and practical alternate locate for NextG's Equipment that will allow the level of coverage necessary for NextG's Network. The parties agree that any application for a new pole may be subject to the provisions of §3.3, below.

**3.3 Preference for Municipal Facilities.** In any situation where NextG has a choice of attaching its Equipment to either Municipal Facilities or third-party-owned property in the Public Way, NextG agrees to attach to the Municipal Facilities, provided that (i) such Municipal Facilities are at least equally suitable functionally for the operation of the Network and (ii) the rental fee and installation costs associated with such attachment over the length of the term are equal to or less than the fee or cost to NextG of attaching to the alternative third-party-owned property. In the event that it shall appear to the City that installation of a new pole in the Public Way is in close proximity to residences, and if the proposed location in the Public Way can be avoided by relocating it to City-owned property in the vicinity, and if the Commissioner of the City Department having managerial authority over such property determines that relocation to such City property (a) will not have a substantial impact on City operations at such property, (b) is safe, and (c) is otherwise in the public interest, and if NextG determines that relocation to such property is acceptable for its Services, then such property may be used as a location for the installation of a new pole. Additionally, upon request of NextG, the City, utilizing the same standards as (a) through (c) above, may permit installation of NextG poles or equipment on City property, to eliminate placement of NextG equipment on an existing pole that is not owned by the City and is in close proximity to residences. Any new pole placed on City property shall be owned and maintained by NextG, but will be subject to the payment of a Municipal Facility Fee as set forth in §4.1.

**3.4 No Interference.** NextG in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement. City agrees to require the inclusion of the same or a similar prohibition on interference as that stated above in all agreements and franchises City may enter into after the Effective Date with other information or communications providers and carriers.

**3.5 Compliance with Laws.** NextG shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

**4 COMPENSATION; UTILITY CHARGES.** NextG shall be solely responsible for the payment of all lawful Fees in connection with NextG's performance under this Use Agreement, including those set forth below.

**4.1 Annual Fee.** In order to compensate City for NextG's entry upon and deployment within the Public Way and as compensation for the use of Municipal Facilities, NextG shall pay to the City an annual fee (the "Annual Fee") in the amount of Five Hundred Dollars (\$500.00) for the use of each Municipal Facility, if any, upon which a Equipment has been installed pursuant to this Use Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Equipment installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be due and payable not later than forty-five (45) days after each anniversary of the Installation Date. City represents and covenants that City owns all Municipal Facilities for the use of which it is collecting from NextG the Annual Fee pursuant to this § 4.1.

**4.1.1 CPI Adjustment.** Effective commencing on the fifth (5<sup>th</sup>) anniversary of the Installation Date and continuing on each fifth (5<sup>th</sup>) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be adjusted by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Urban Consumers, 1982-1984=100) which occurred during the previous five-year period for the New York-Northern New Jersey-Long Island, NY-NJ-PA Metropolitan Statistical Area (MSA).

**4.2 Right-of-Way Use Fee.** In order to compensate the City for NextG's entry upon and deployment of Equipment within the Public Way, NextG shall pay to the City, on an annual basis, an amount equal to five percent (5%) of Adjusted Gross Revenues (the "Right-of-Way Fee") payable within thirty (30) days of the Effective Date and on each anniversary thereafter. The Right-of-Way Fee shall be payable for the period commencing with the Effective Date and ending on the date of termination of this Use Agreement. NextG shall make any payment of the Right-of-Way Fee that may be due and owing within forty-five (45) days after the first anniversary of the Effective Date and within the same period after each subsequent anniversary of the Effective Date. Within forty-five (45) days after the termination of this Use Agreement, the Right-of-Way Fee shall be paid for the period elapsing since the end of the last calendar year for which the Right-of-Way Fee has been paid. NextG shall furnish to the City with each payment of the Right-of-Way Fee a statement, executed by an authorized officer of NextG or his or her designee, showing the amount of Adjusted Gross Revenues for the period covered by the payment. If NextG discovers any error in the amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the City of any payment of the Right-of-Way Fee shall not be deemed to be a waiver by the City of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City.

**4.3 Accounting Matters.** NextG shall keep accurate books of account at its principal office in San Jose, CA or such other location of its choosing for the purpose of determining the amounts due to the City under §§ 4.1 and 4.2 above. The City may inspect NextG's books of account relative to the City at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the City's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 4.1 above. The City agrees to hold in confidence any non-public information it learns from NextG to the fullest extent permitted by Law.

**4.4 Most-Favored Municipality.** Should NextG after the parties' execution and delivery of this Agreement enter into an attachment or franchise agreement with another municipality of the same size or smaller than the City in the same County, which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Agreement, City shall have the right to require that NextG modify this Use Agreement to incorporate the same or substantially similar superior benefits and such other terms and burdens by substitution, *mutatis mutandis*, of such other agreement or otherwise.

**4.5 Electricity Charges.** NextG shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Equipment' usage of electricity and applicable tariffs.

**5 CONSTRUCTION.** NextG shall comply with all applicable federal, State, and City codes, specifications, and requirements, if any, related to the construction, installation, operation, maintenance, and control of NextG's Equipment installed in the Public Way and on Municipal Facilities in the City. NextG shall not attach, install, maintain, or operate any Equipment in or on the Public Way and/or on Municipal Facilities without the prior approval of the Municipal Engineer for each location.

**5.1 Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment in the Public Way shall require any permits, NextG shall, if required under applicable City ordinances, apply for the appropriate permits and pay any standard and customary permit fees, so long as the permit fees and process that the City requests of NextG are functionally equivalent to the fees and the process that are applied to the ILEC and/or the cable provider(s). In the case of Third Party attachments (to existing utility infrastructure), NextG agrees to provide the City with a list of proposed attachments in advance of its deployment to the City and, the City agrees to use reasonable efforts to

review and approve NextG's list of proposed attachments to Third Party utility infrastructure within thirty (30) days of submission, and if no comment is received within thirty (30) days, NextG shall notify the Municipal Engineer at least five (5) days before NextG's installation.

**5.2 Location of Equipment.** The proposed locations of NextG's planned initial installation of Equipment shall be provided to the City promptly after NextG's review of available street light maps (if applicable) and prior to deployment of the Equipment. Upon the completion of installation, NextG promptly shall furnish to the City a pole list showing the exact location of the Equipment in the Public Way. If NextG installs additional Equipment after the initial installation of Equipment, NextG shall provide the City with an updated pole listing showing the exact location of the additional Equipment in the Public Way.

**5.3 Relocation and Displacement of Equipment.** NextG understands and acknowledges that City may require NextG to relocate one or more of its Equipment installations. NextG shall at City's direction relocate such Equipment at NextG's sole cost and expense, whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Equipment is interfering with or adversely affecting proper operation of City-owned light poles, traffic signals, or other Municipal Facilities; or (c) to protect or preserve the public health or safety. In any such case, City shall use its best efforts to afford NextG a reasonably equivalent alternate location. If NextG shall fail to relocate any Equipment as requested by the City within a reasonable time under the circumstances in accordance with the foregoing provision, City shall be entitled to relocate the Equipment at NextG's sole cost and expense, without further notice to NextG. To the extent the City has actual knowledge thereof, the City will attempt promptly to inform NextG of the displacement or removal of any pole on which any Equipment is located.

**5.4 Relocations at NextG's Request.** In the event NextG desires to relocate any Equipment from one Municipal Facility to another, NextG shall so advise City. City will use its best efforts to accommodate NextG by making another reasonably equivalent Municipal Facility available for use in accordance with and subject to the terms and conditions of this Use Agreement.

**5.5 Damage to Public Way.** Whenever the removal or relocation of Equipment is required or permitted under this Use Agreement, and such removal or relocation shall cause the Public Way to be damaged, NextG, at its sole cost and expense, shall promptly repair and return the Public Way in which the Equipment are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If NextG does not repair the site as just described, then the City shall have the option, upon fifteen (15) days' prior written notice to NextG, to perform or cause to be performed such reasonable and necessary work on behalf of NextG and to charge NextG for the proposed costs to be incurred or the actual costs incurred by the City at City's standard rates. Upon the receipt of a demand for payment by the City, NextG shall promptly reimburse the City for such costs.

**6 INDEMNIFICATION AND WAIVER.** NextG agrees to indemnify, defend, protect, and hold harmless the City, its council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from NextG's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council or board members, officers, elected trustees, employees, agents, or contractors.

**6.1 Waiver of Claims.** NextG waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Equipment or any loss or

degradation of the Services as a result of any event or occurrence which is beyond the reasonable control of the City.

**6.2 Limitation of City's Liability.** The City shall be liable only for the cost of repair to damaged Equipment arising from the negligence or willful misconduct of City, its employees, agents, or contractors and shall in no event be liable to indirect or consequential damages.

**7 INSURANCE.** NextG shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting NextG in an amount not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the City, its elected officials, officers, and employees as additional insureds as respects any covered liability arising out of NextG's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the City has received at least thirty (30) days' advance written notice of such cancellation or change. NextG shall be responsible for notifying the City of such change or cancellation.

**7.1 Filing of Certificates and Endorsements.** Prior to the commencement of any work pursuant to this Use Agreement, NextG shall file with the City the required original certificate(s) of insurance with endorsements, which shall state the following:

(a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;

(b) that the City shall receive thirty (30) days' prior notice of cancellation;

(c) that NextG's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

(d) that NextG's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the City.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City at the address specified in § 8 below.

**7.2 Workers' Compensation Insurance.** NextG shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than One Million Dollars (\$1,000,000) and shall furnish the City with a certificate showing proof of such coverage.

**7.3 Insurer Criteria.** Any insurance provider of NextG shall be admitted and authorized to do business in the State of New Jersey and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (i.e., a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

**7.4 Severability of Interest.** Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

**8 NOTICES.** All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email transmission, if a hard copy of the same is followed by delivery through the U. S. mail or by overnight delivery service as just described, addressed as follows:

*if to the City:*

CITY OF JERSEY CITY  
Attn: Business Administrator  
City Hall  
280 Grove Street  
Jersey City, NJ 07302

*if to NextG:*

NEXTG NETWORKS OF NY, INC.  
Attn: Contracts Administration  
2216 O'Toole Ave  
San Jose, CA 95131

**8.1 Date of Notices; Changing Notice Address.** Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

**9 TERMINATION.** This Use Agreement may be terminated by either party upon forty five (45) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

**10 ASSIGNMENT.** This Use Agreement shall not be assigned by NextG without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of NextG to a parent, subsidiary, or other affiliate of NextG or to any successor in interest or entity acquiring fifty-one percent (51%) or more of NextG's stock or assets (collectively "Exempted Transfers") shall not be deemed an assignment for the purposes of this Agreement and therefore shall not require the consent of the City, provided that NextG reasonably demonstrates to the City's lawfully empowered designee the following criteria (collectively the "Exempted Transfer Criteria"): (i) such transferee will have a financial strength after the proposed transfer at least equal to that of NextG immediately prior to the transfer; (ii) any such transferee assumes all of NextG's obligations hereunder; and (iii) the experience and technical qualifications of the proposed transferee, either alone or together with NextG's management team, in the provision of telecommunications or similar services, evidences an ability to operate the NextG Network. NextG shall give at least thirty (30) days' prior written notice (the "Exempted Transfer Notice") to the City Business

Administrator of any such proposed Exempted Transfer and shall set forth with specificity in such Exempted Transfer Notice the reasons why NextG believes the Exempted Transfer Criteria have been satisfied. The City Business Administrator shall have a period of thirty (30) days (the "Exempted Transfer Evaluation Period") from the date that NextG gives the City its Exempted Transfer Notice to object in writing to the adequacy of the evidence contained therein. Notwithstanding the foregoing, the Exempted Transfer Evaluation Period shall not be deemed to have commenced until the City has received from NextG any and all additional information the City may reasonably require in connection with its evaluation of the Exempted Transfer Criteria as set forth in the Exempted Transfer Notice, so long as the City gives NextG notice in writing of the additional information the City requires within fifteen (15) days after the City's receipt of the original Exempted Transfer Notice. If the City Business Administrator fails to act upon NextG's Exempted Transfer Notice within the Exempted Transfer Evaluation Period (as the same may be extended in accordance with the foregoing provisions), such failure shall be deemed an affirmation by the City that NextG has in fact established compliance with the Exempted Transfer Criteria to the City's satisfaction.

**11 MISCELLANEOUS PROVISIONS.** The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

**11.1 Environmental Review.** NextG agrees to comply with any applicable rules pertaining to environmental quality review promulgated by the New Jersey Department of Environmental Protection and to submit any required environmental forms for the City's review and approval, so long as the review that the City requires is the same that the City requires of all other telecommunications providers, including but not limited to the ILEC and the cable provider(s), for their installation of any facilities or equipment in the Public Way.

**11.2 Nonexclusive Use.** NextG understands that this Use Agreement does not provide NextG with exclusive use of the Public Way or any Municipal Facility and that City shall have the right to permit other providers of communications services to install equipment or devices in the Public Way and on Municipal Facilities. City agrees promptly to notify NextG of the receipt of a proposal for the installation of communications equipment or devices in the Public Way or on Municipal Facilities. In addition, City agrees to advise other providers of communications services of the presence or planned deployment of the Equipment in the Public Way and/or on Municipal Facilities.

**11.3 Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

**11.4 Severability of Provisions.** If any one or more of the provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

**11.5 Contacting NextG.** NextG shall be available to the staff employees of any City department having jurisdiction over NextG's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Equipment. The City may contact by telephone the network control center operator at telephone number 1-866-44-NEXTG (446-3984) regarding such problems or complaints.

**11.6 Governing Law; Jurisdiction.** This Use Agreement shall be governed and construed by and in accordance with the laws of the State of New Jersey, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of New Jersey, in the County where the City is incorporated or in the United States District Court for the District of New Jersey.

**11.7 Consent Criteria.** In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

**11.8 Representations and Warranties.** Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 3.2 above.

**11.9 Amendment of Use Agreement.** This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

**11.10 Entire Agreement.** This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

City: CITY OF JERSEY CITY, a New Jersey municipal corporation

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

[name typed]

Its: \_\_\_\_\_

Date: \_\_\_\_\_, 2010

NextG: NEXTG NETWORKS OF NY, Inc., a Delaware corporation

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

Date: \_\_\_\_\_, 2010

I HEREBY APPROVE the form and legality of the foregoing Use Agreement this \_\_\_\_\_, day of \_\_\_\_\_, 2010.

\_\_\_\_\_, City Attorney

By \_\_\_\_\_  
\_\_\_\_\_, Deputy City Attorney

# **Exhibit A**

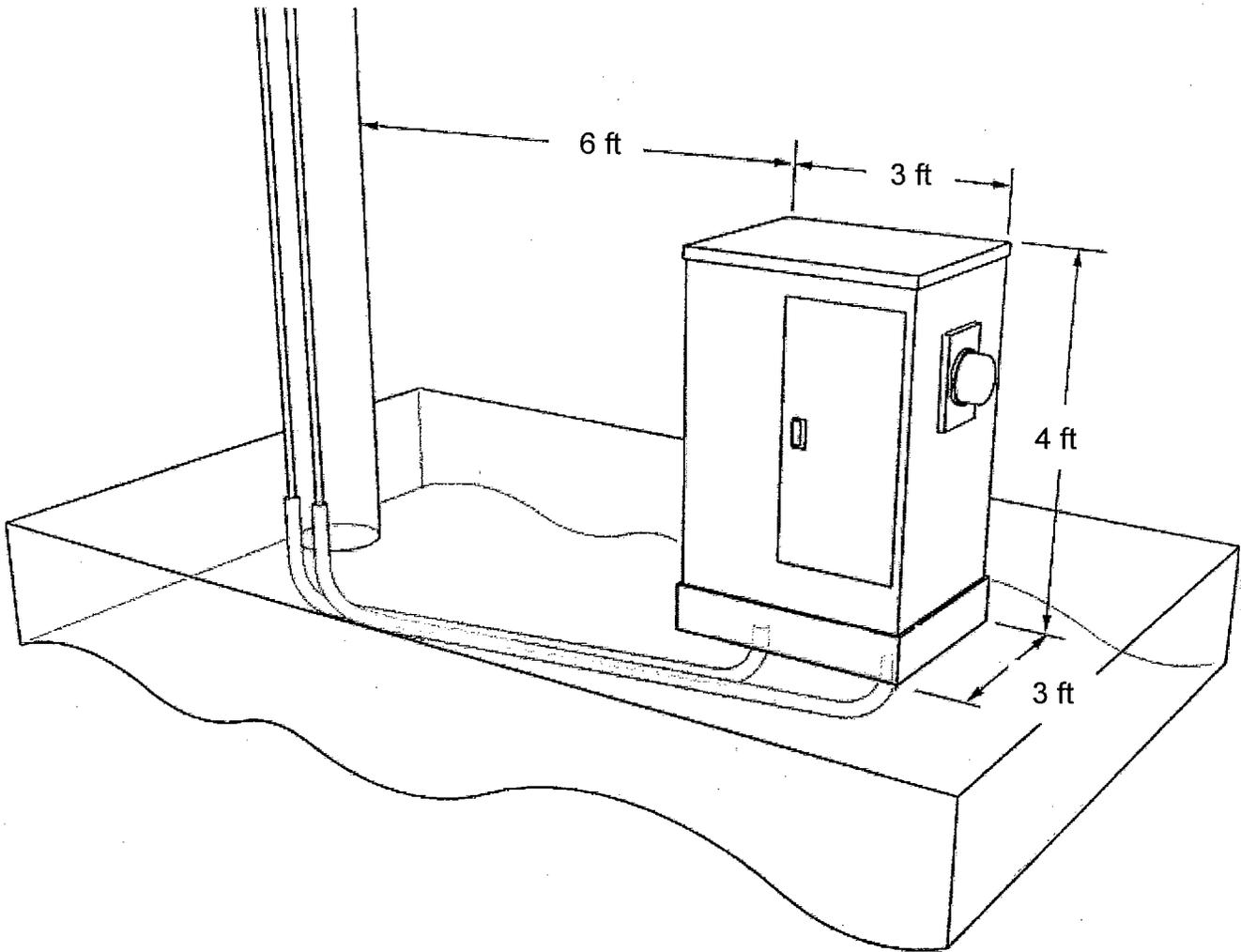
**New Jersey**  
**Rev 12-15-09**



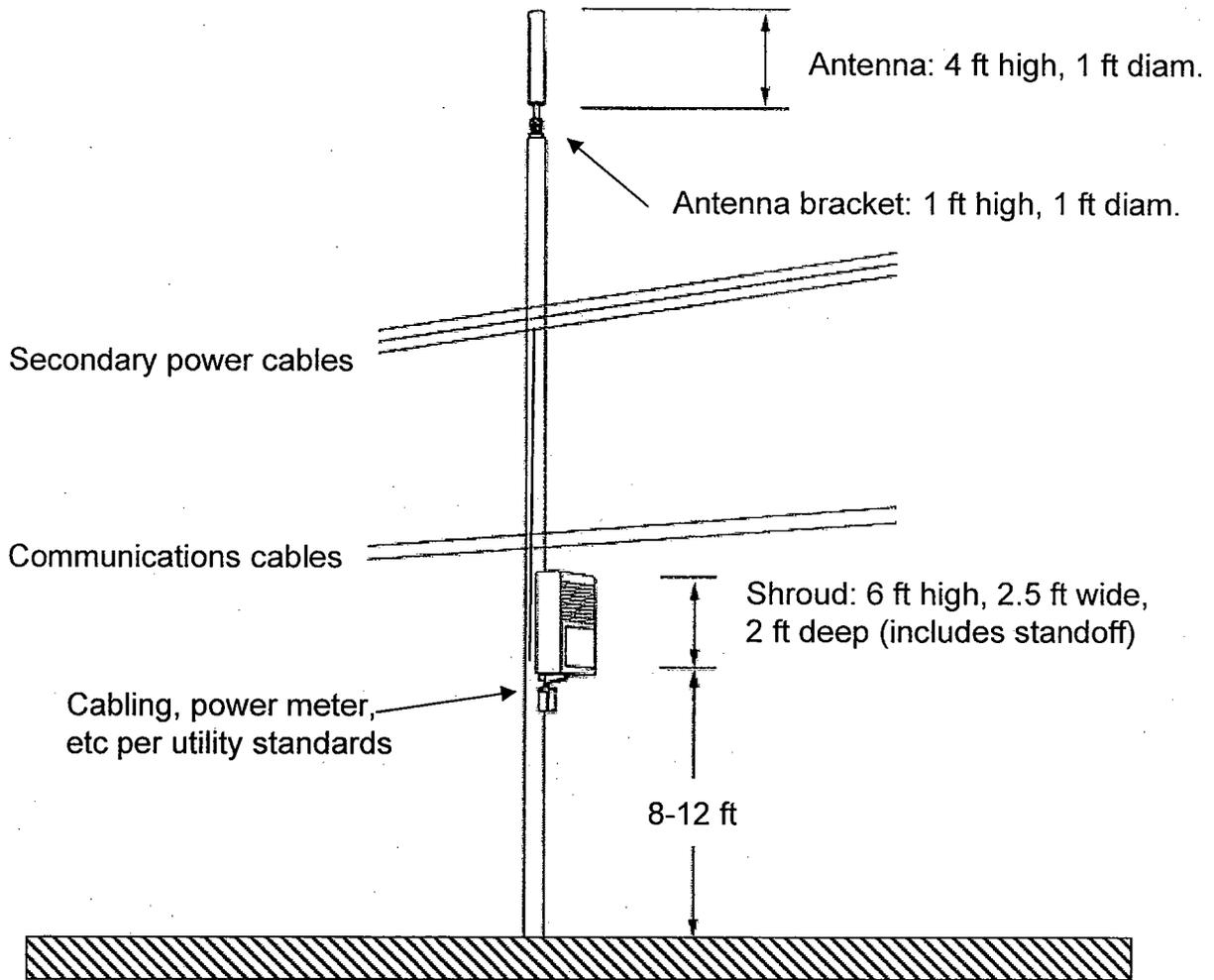
**Exhibits:**

Exhibit A -- Equipment

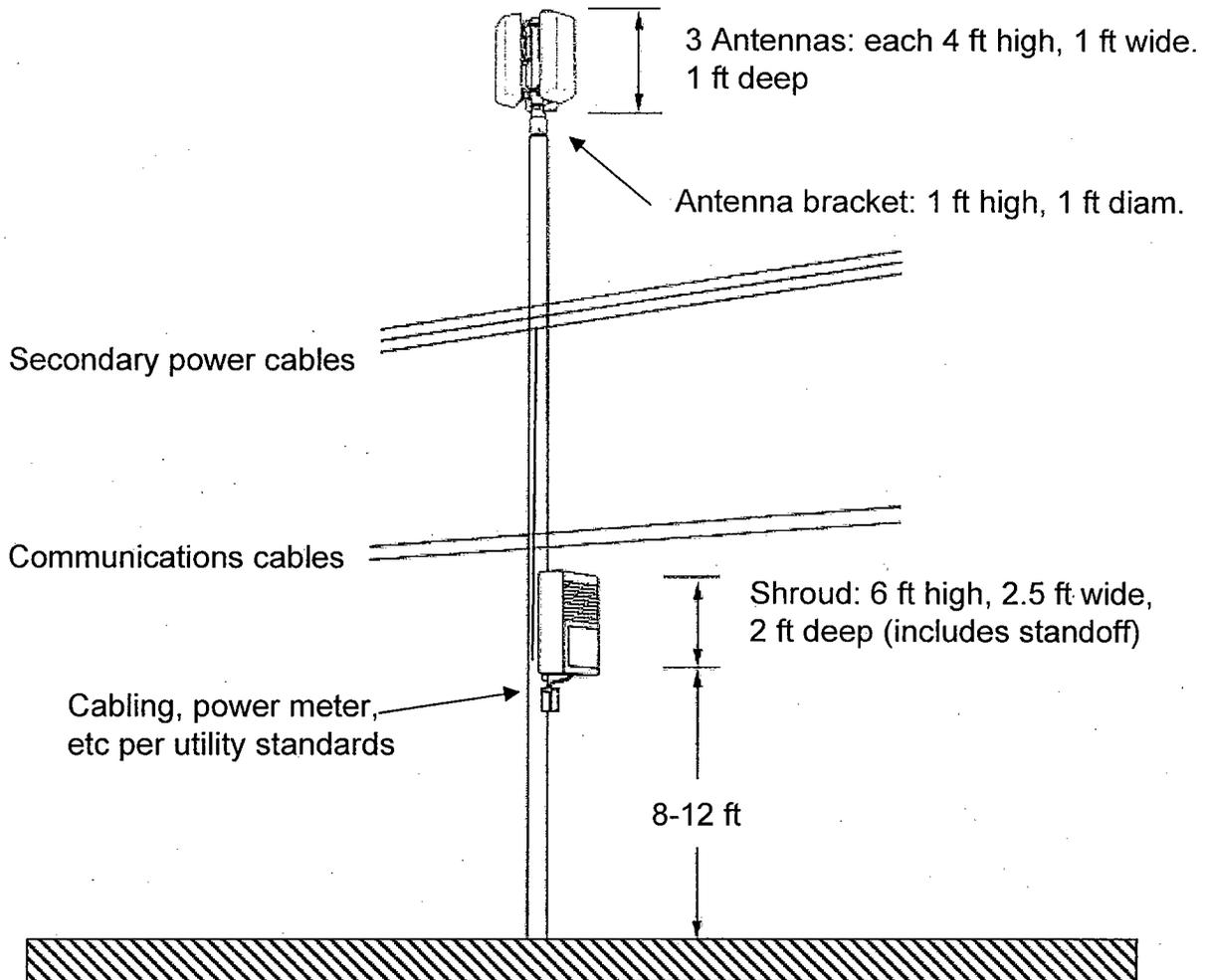
# Equipment in Pedestal



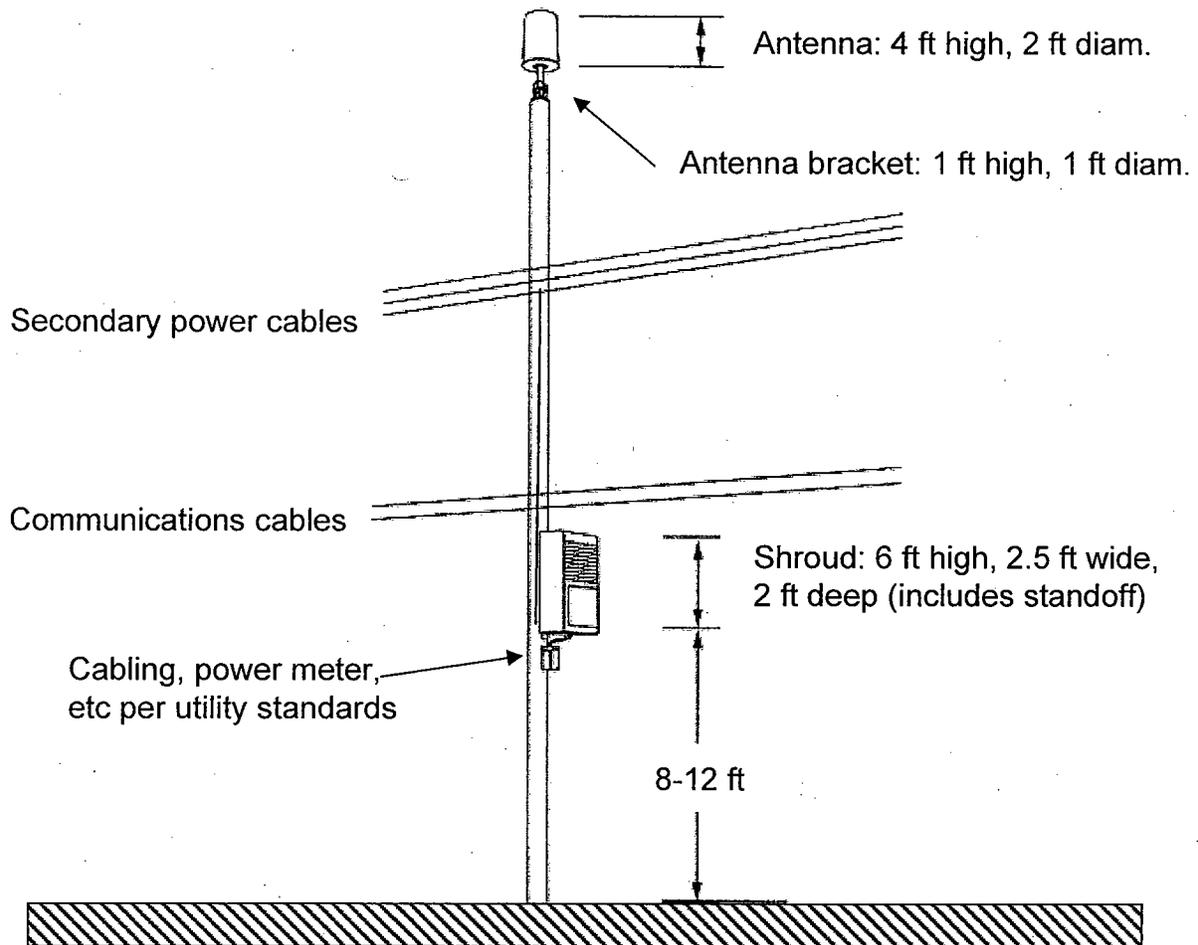
# Antenna at Top of Power Pole



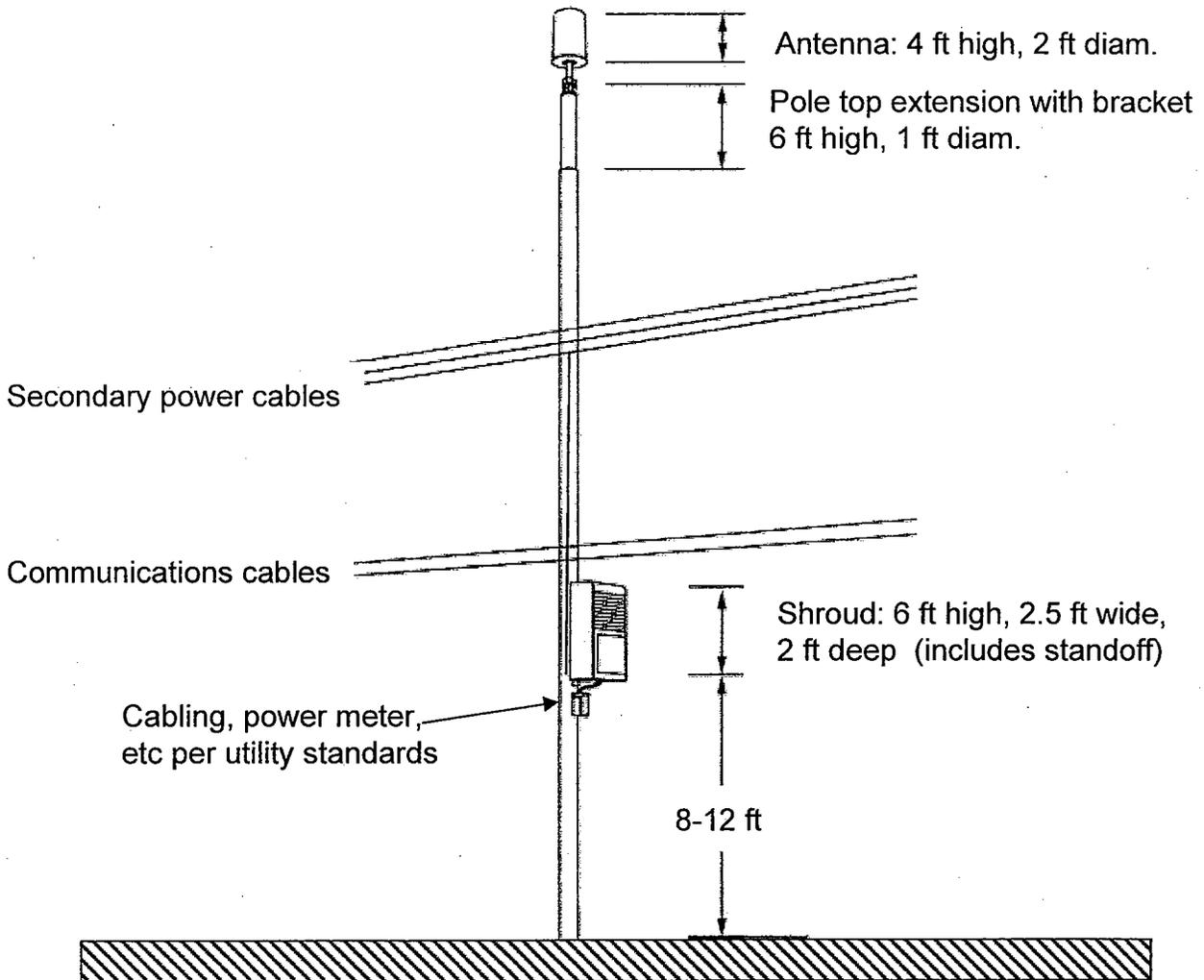
# Antenna at Top of Power Pole



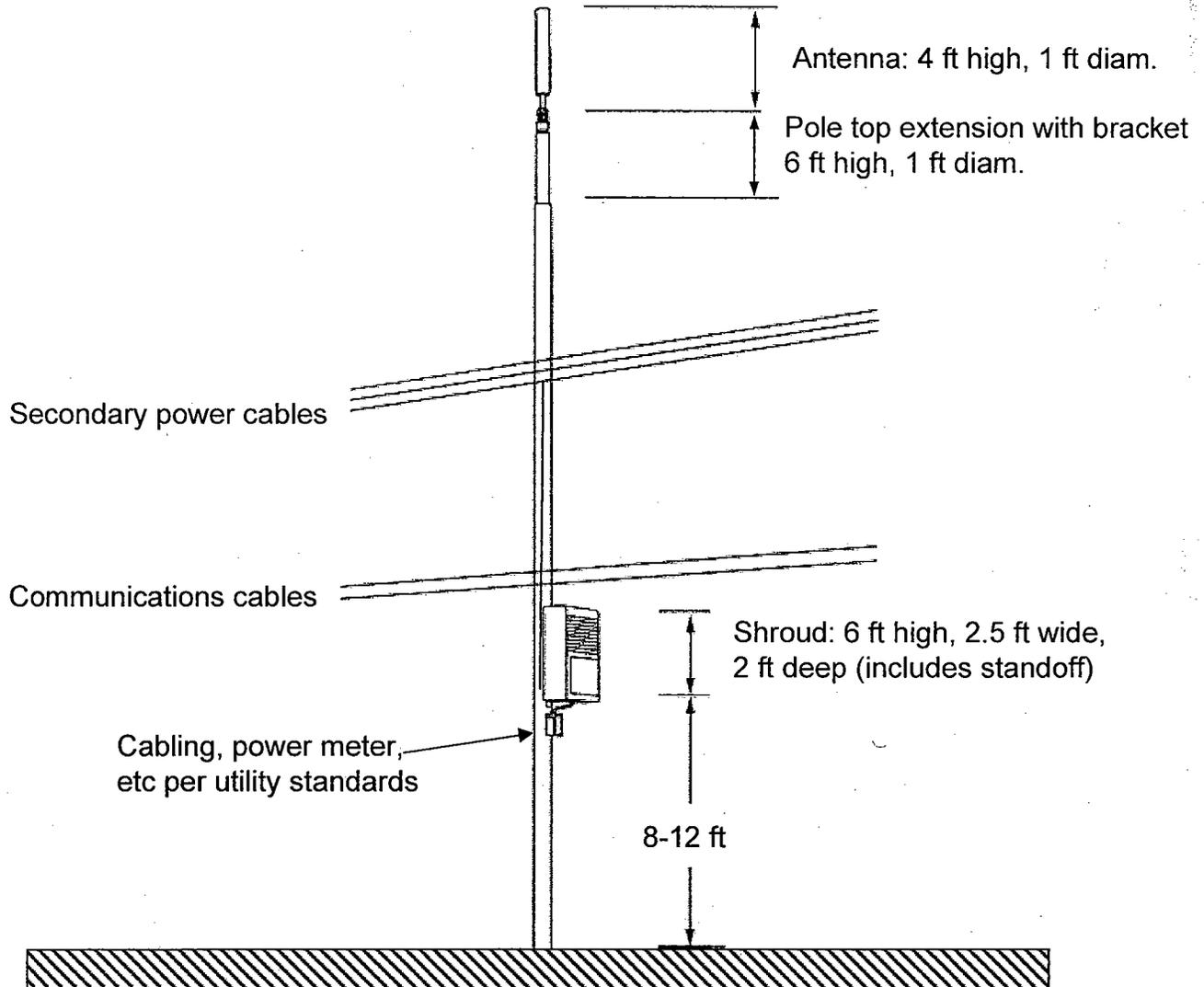
# Antenna at Top of Power Pole



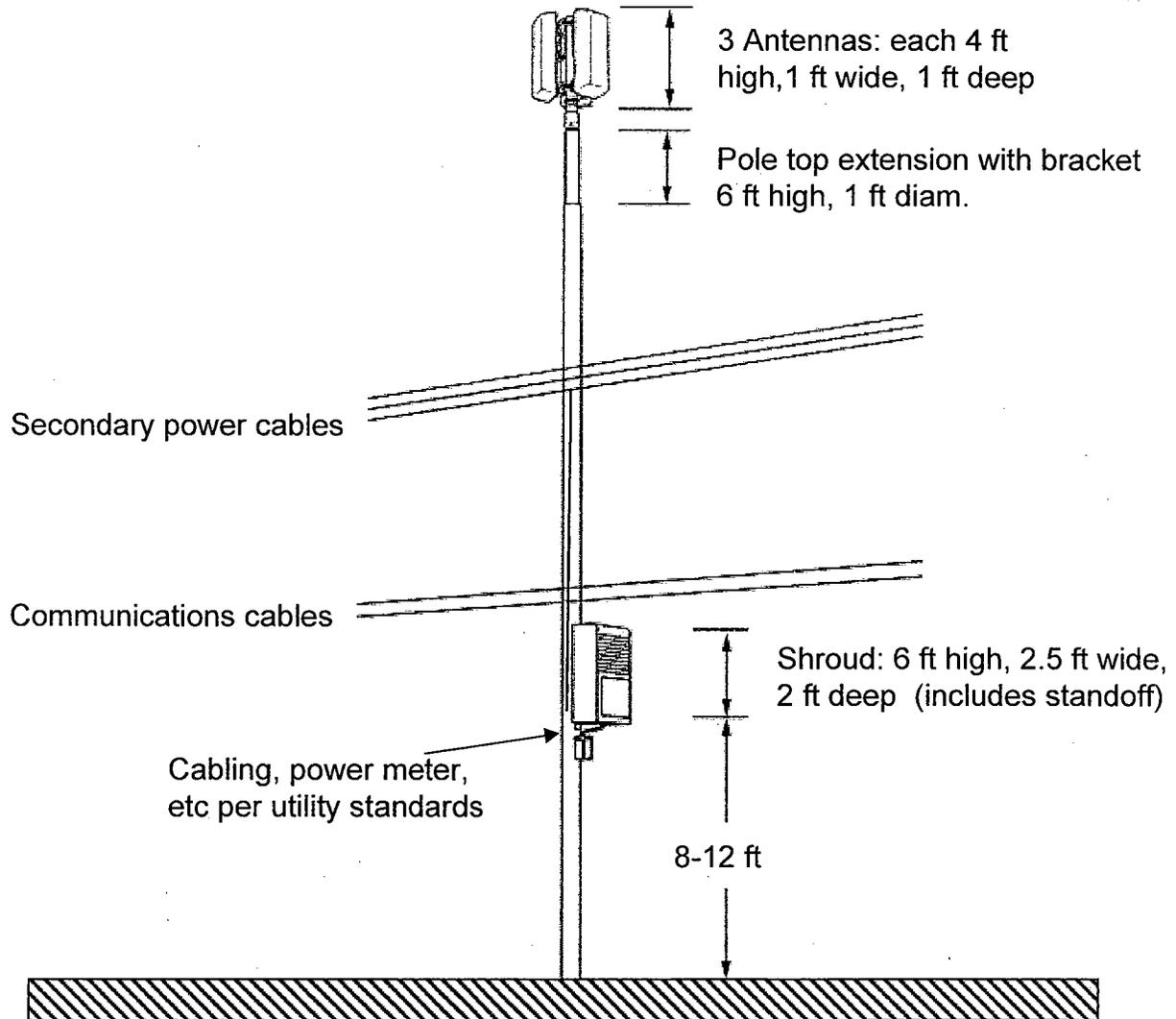
# Antenna at Top of Power Pole



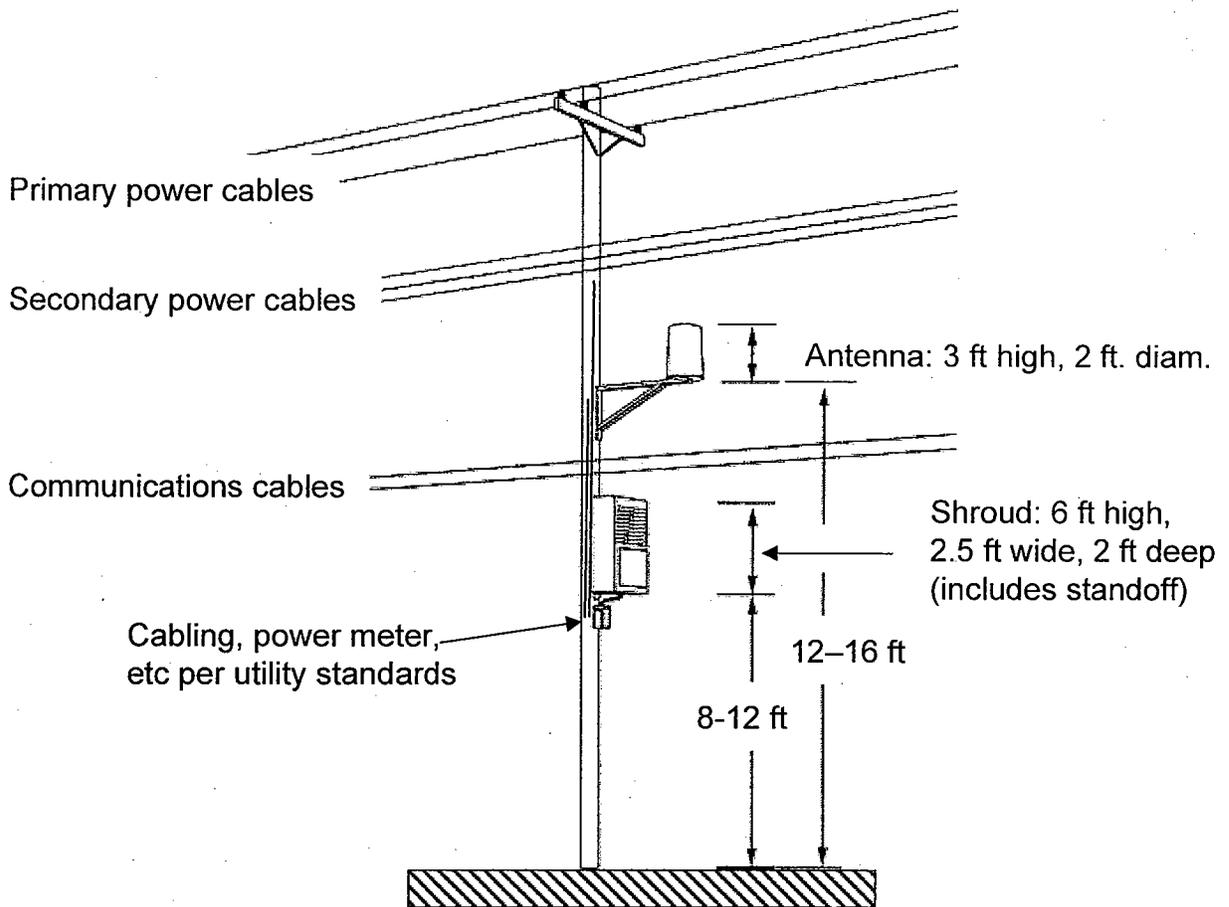
# Antenna at Top of Power Pole



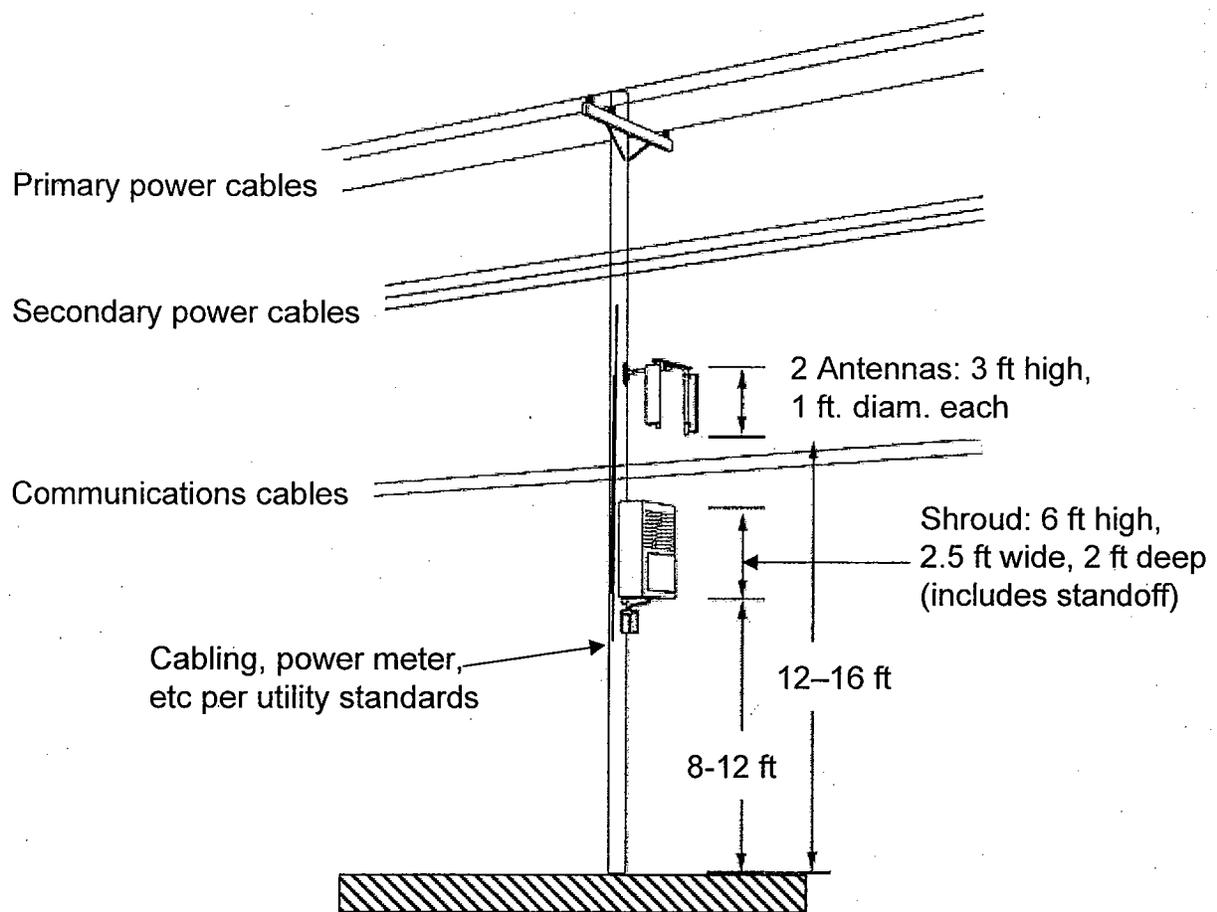
# Panel pole top ext over primary



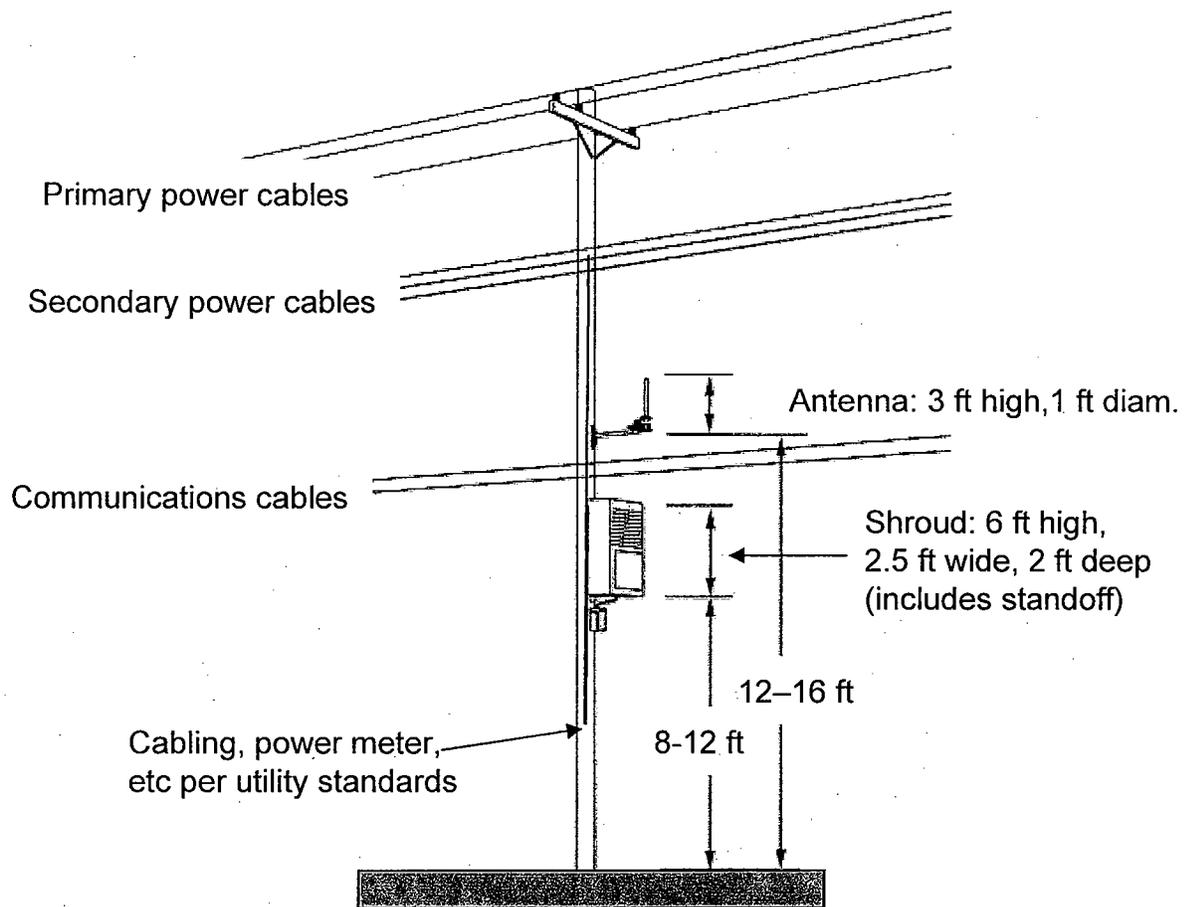
# Antenna in Communications Space on Power Pole



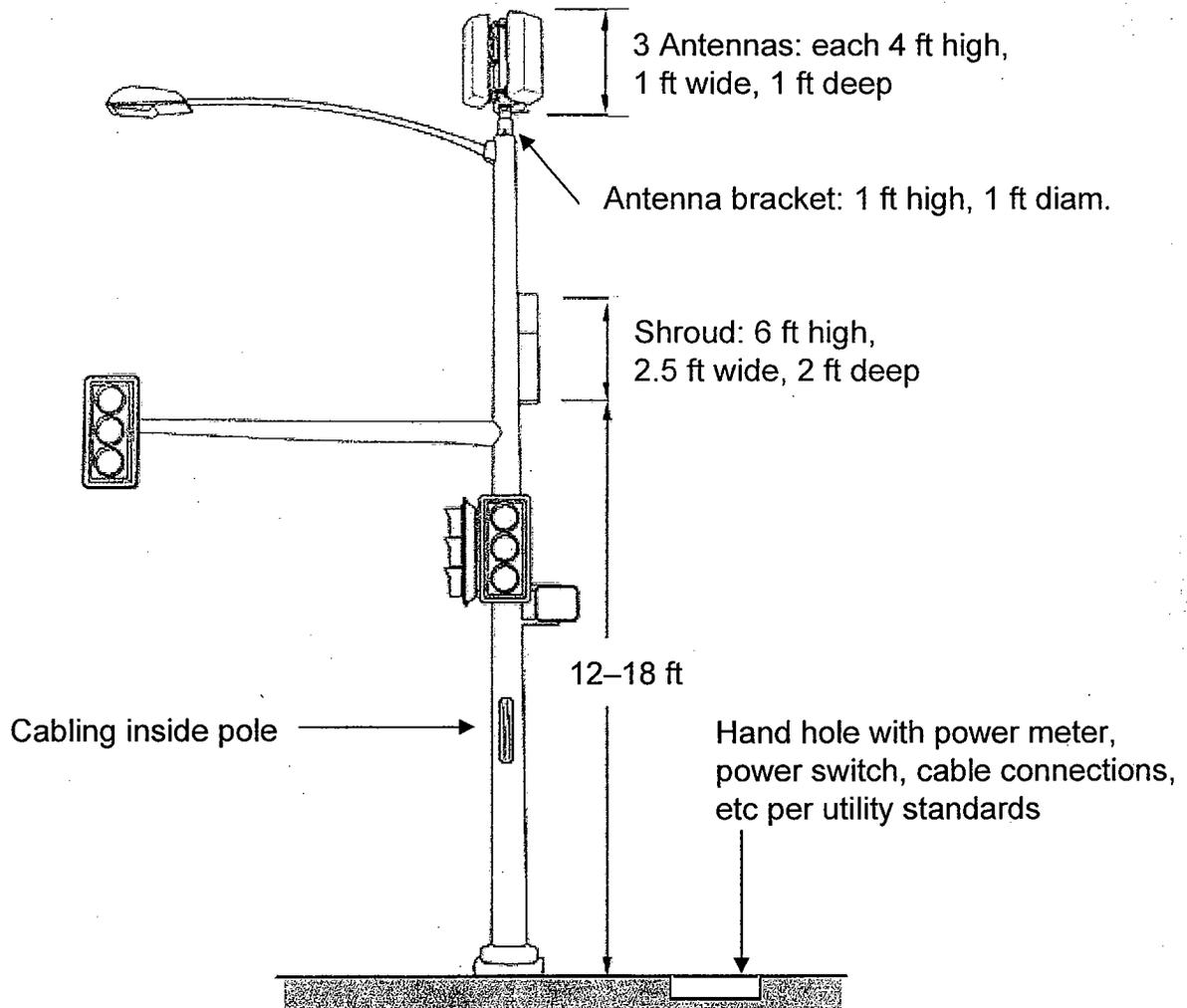
# Antenna in Communications Space on Power Pole



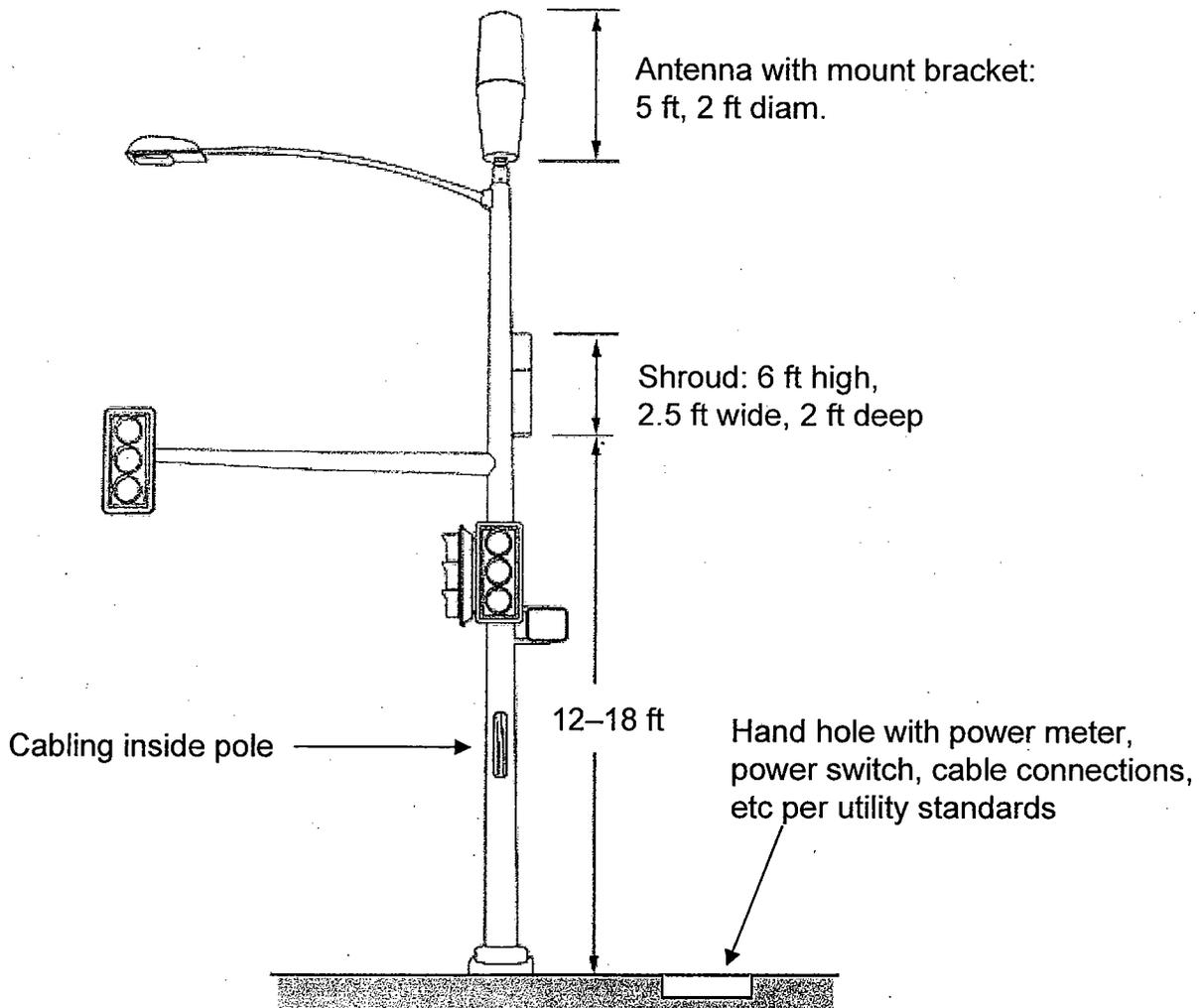
# Antenna in Communications Space on Power Pole



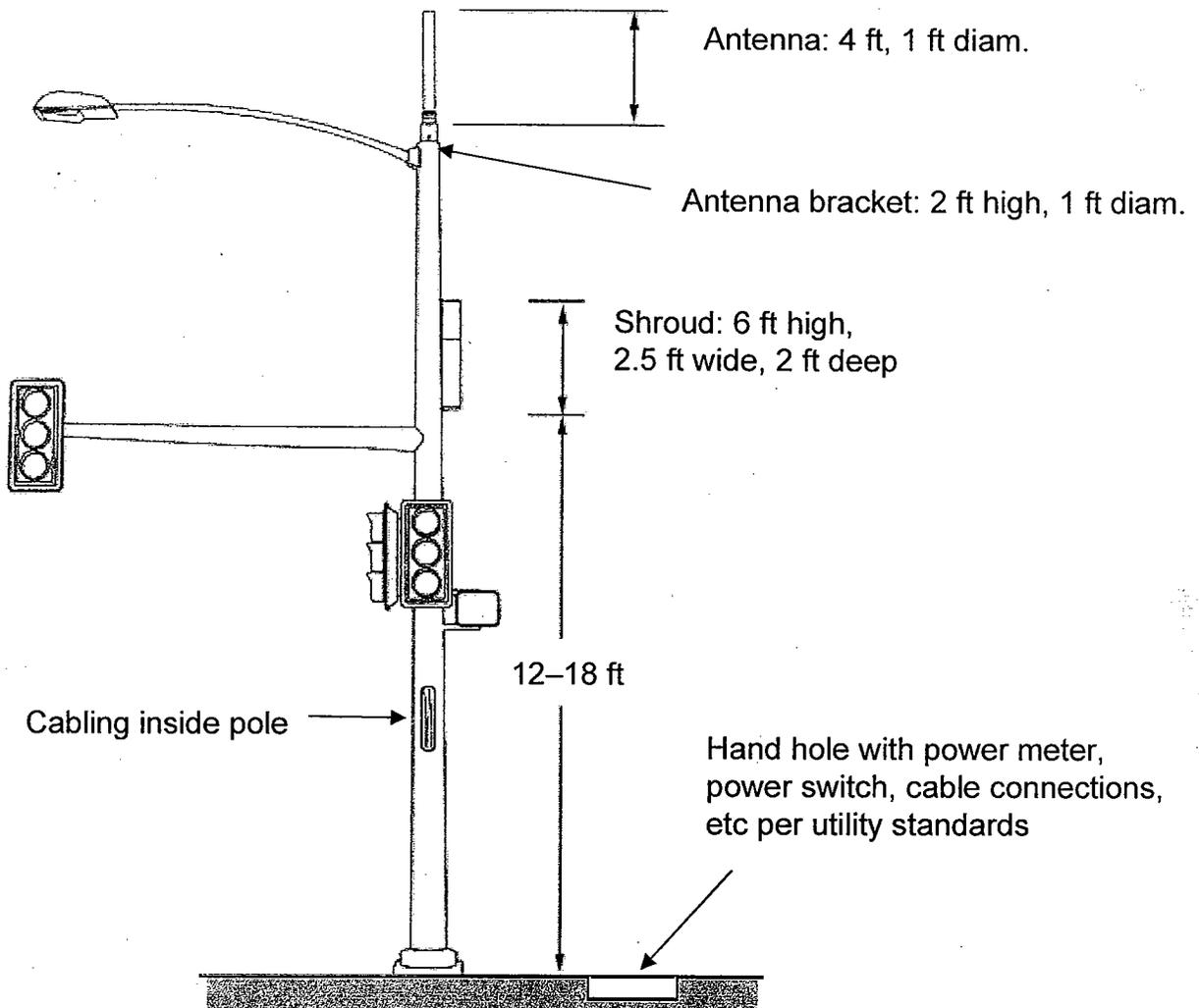
# Metal Traffic Light Pole



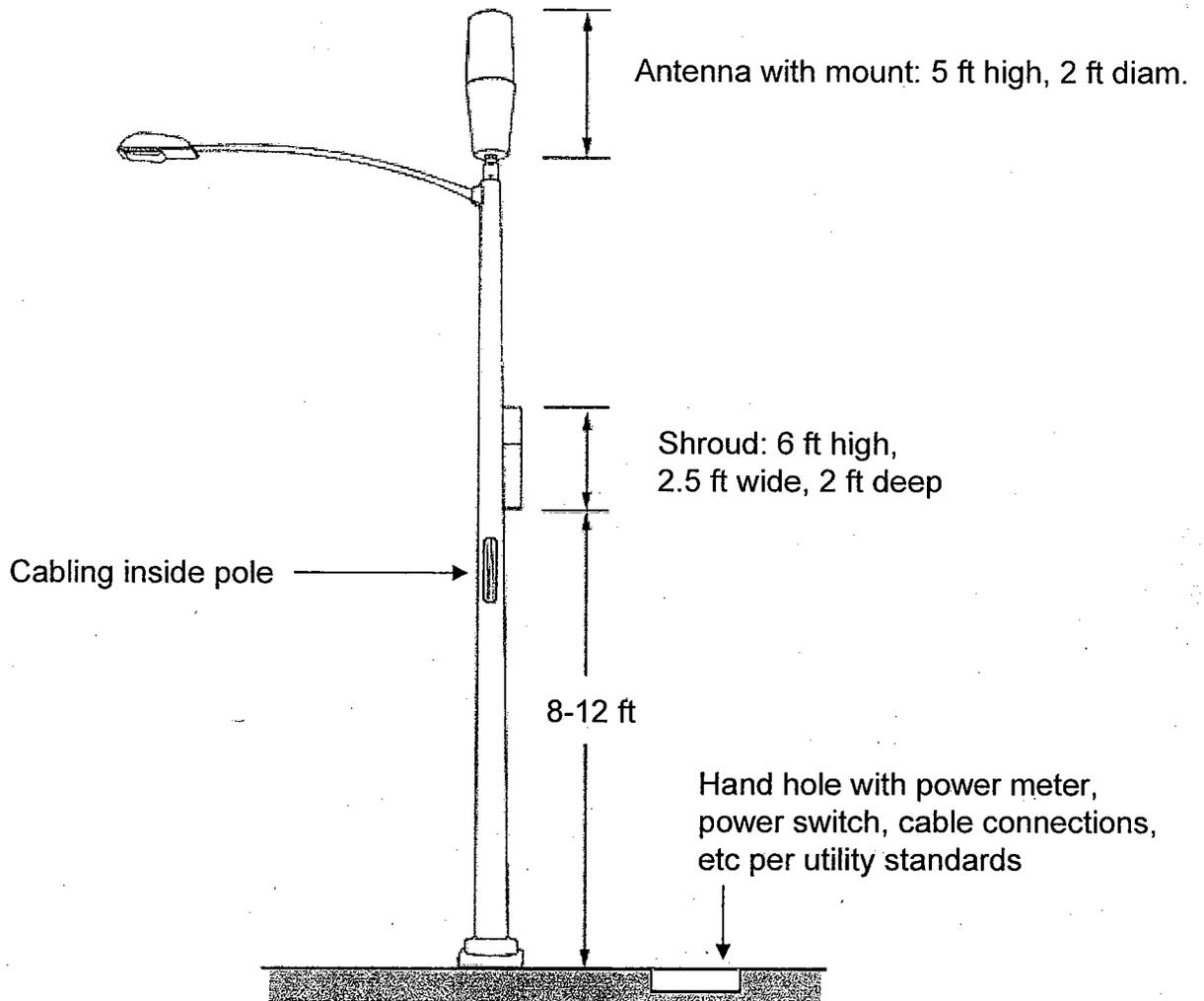
# Metal Traffic Light Pole



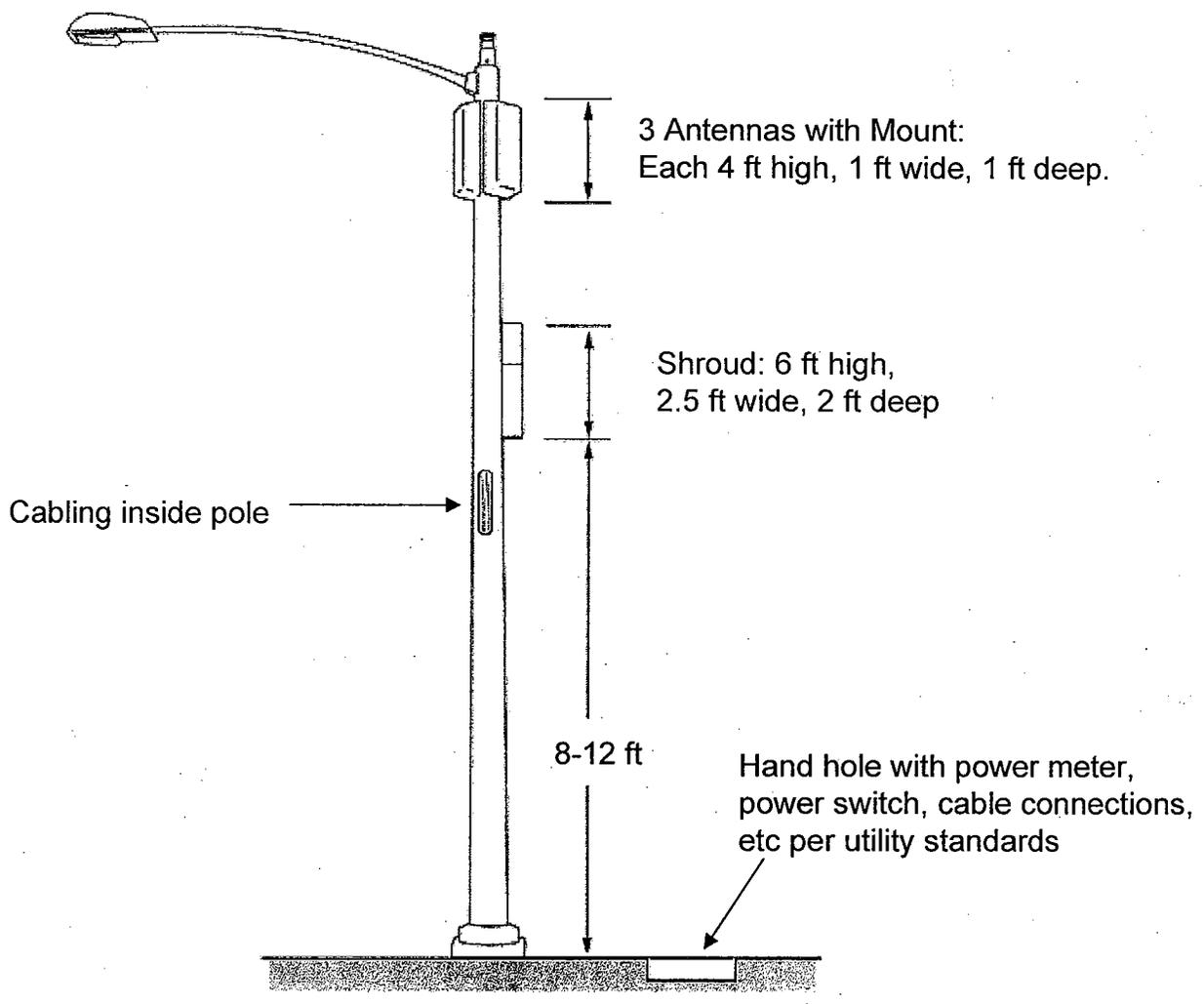
# Metal Traffic Light Pole



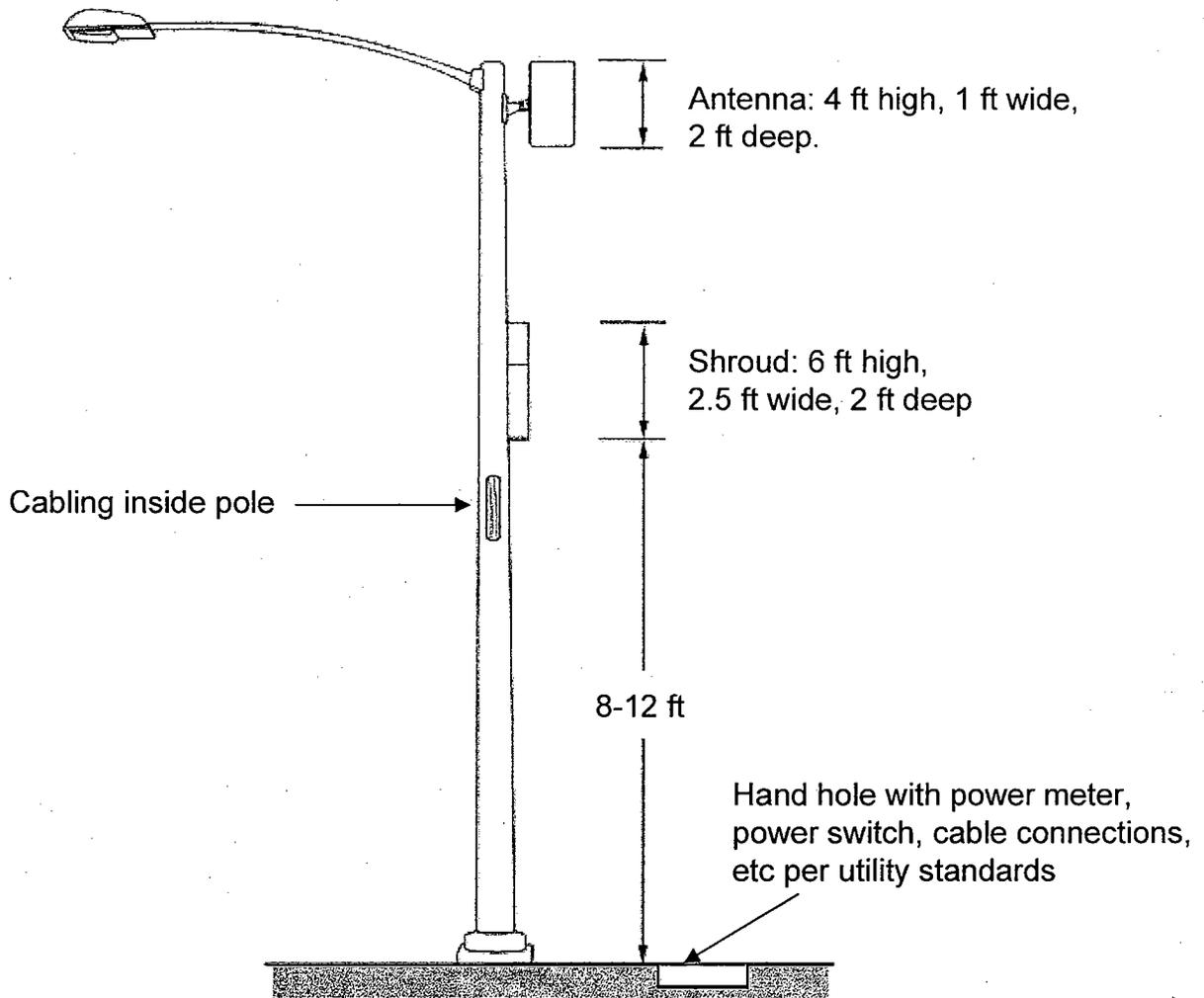
# Street Light Pole



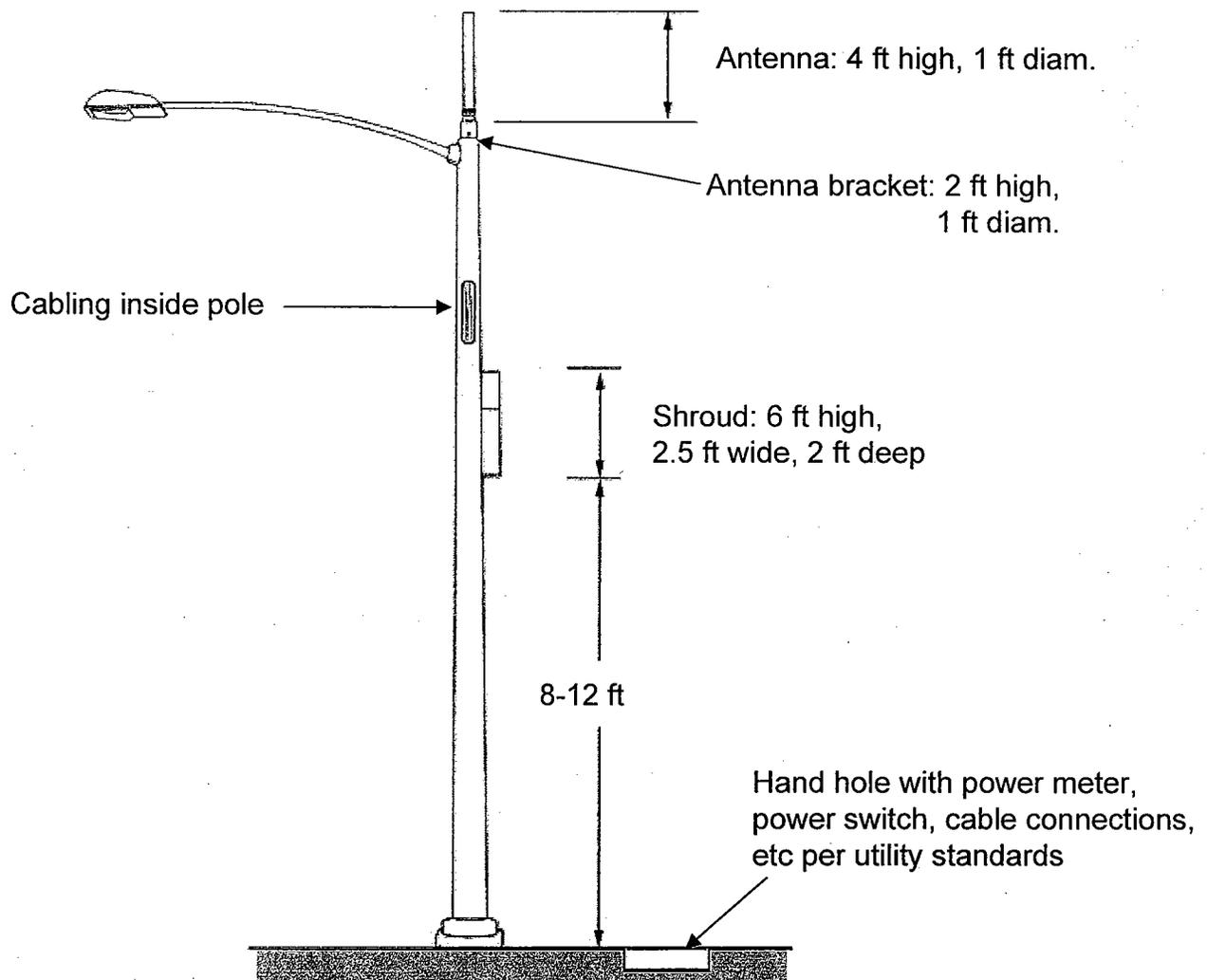
# Street Light Pole



# Street Light Pole



# Street Light Pole



City Clerk File No. Ord. 10-117

Agenda No. 3.C 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-117

TITLE:

## AN ORDINANCE AUTHORIZING THE TRANSFER OF CITY-OWNED PROPERTY WITHIN THE MARTIN LUTHER KING DRIVE REDEVELOPMENT AREA TO THE JERSEY CITY REDEVELOPMENT AGENCY

**WHEREAS**, the City of Jersey City is the owner of a certain parcel of real property known and designated as:

<u>BLOCK</u>	<u>LOT</u>	<u>STREET ADDRESS</u>
1987	4.A	292 Martin Luther King Drive

situated in the City of Jersey City, Hudson County, New Jersey; and as more particularly shown on the Official Assessment Map and referenced in the designation assigned to individual tax lot n the records of the Tax Assessor (hereinafter "Property"); and

**WHEREAS**, the Municipal Council of the City of Jersey City has declared, that the Property contained within the Martin Luther King Drive Redevelopment Avenue Area is an area deemed "in need of redevelopment" pursuant to N.J.S.A. 40A:55-12 et. seq.; and

**WHEREAS**, the Municipal Council adopted, by Ordinance No.93-138 at its meeting of December 8, 1993, the Martin Luther King Drive Redevelopment Plan; and

**WHEREAS**, the Property lies within the legally established boundaries of the Martin Luther King Drive Redevelopment Area; and

**WHEREAS**, the Jersey City Redevelopment Agency has the responsibility of acquiring property within the Martin Luther King Drive Redevelopment Area to effectuate the rehabilitation, redevelopment and revitalization of the Martin Luther King Drive Redevelopment Area; and

**WHEREAS**, the Jersey City Redevelopment Agency has deemed it necessary to acquire the Property from the City of Jersey City to accomplish the objectives of the Martin Luther King Drive Avenue Redevelopment Plan; and

**WHEREAS**, the City of Jersey City may transfer the Property to the Jersey City Redevelopment Agency pursuant to N.J.S.A. 40A:12A-39(a) & (f).

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. Pursuant to N.J.S.A. 40A:12A-39(a) & (f) the transfer of Property known as

<u>BLOCK</u>	<u>LOT(S)</u>	<u>STREET ADDRESS</u>
1987	4.A	292 Martin Luther King Drive

to the Jersey City Redevelopment Agency is hereby authorized.

2. That the Mayor, Business Administrator and appropriate Division of the municipality are hereby authorized and directed to execute a deed and all necessary or appropriate instruments to convey and effectuate the transfer of the aforesaid Property to the Jersey City Redevelopment Agency.

A. All Ordinances and part of Ordinances inconsistent herewith are hereby repealed.

B. This Ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Jersey City Code.

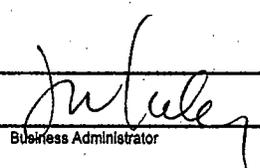
C. This Ordinance shall take effect at the time and in the manner as provided by law.

D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of the Ordinance reveals that there is a conflict between those numbers and the existing code in order to avoid confusion and possible accidental repealers of existing provisions.

APPROVED AS TO LEGAL FORM

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_

APPROVED:   
Business Administrator

Certification Required

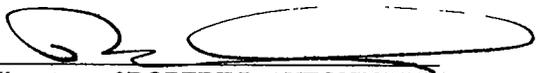
Not Required

**ORDINANCE/RESOLUTION FACT SHEET**

This summary sheet is to be attached to the front of any ordinance, resolution, cooperation agreement or contract that is submitted for Council consideration. Incomplete or sketchy summary sheets will be returned with the resolution or ordinance. The department, division or agency responsible for the overall implementation of the proposed project or program should provide a concise and accurate statement of facts.

1. **Full Title of Ordinance/Resolution/Cooperation Agreement:**  
**AN ORDINANCE AUTHORIZING THE TRANSFER OF CITY-OWNED PROPERTY WITHIN THE MARTIN LUTHER KING DRIVE REDEVELOPMENT AREA TO THE JERSEY CITY REDEVELOPMENT AGENCY**
2. **Name and Title of Person Initiating the Ordinance/Resolution, etc.:**  
Franklyn Ore, Project Manager, Jersey City Redevelopment Agency, 201-547-4560
3. **Concise Description of the Program, Project or Plan Proposed in the Ordinance/Resolution:**  
This Ordinance will authorize the City of Jersey City, to transfer City owned property within the Martin Luther King Drive Redevelopment Area for development purposes.
4. **Reasons (Need) for the Proposed Program, Project, etc:**  
The Jersey City Redevelopment Agency has been charged with the responsibility of acquiring property in the Martin Luther King Drive Redevelopment Area to effectuate the rehabilitation, redevelopment and revitalization initiatives of the Martin Luther King Drive Redevelopment Plan.
5. **Anticipated Benefits to the Community:**  
Rehabilitation of vacant property located in Block 1987 Lot 4.A (292 Martin Luther King Drive).
6. **Cost of Proposed Program, Project, etc. (Indicate the dollar amount of City, State and Federal Funds to be used, as well as match and in-kind contributions.):**  
  
Subsidy - CDBG
7. **Date Proposed Program or Project will Commence:**  
Upon adoption of this Ordinance
8. **Anticipated Completion Date:**  
Building will be completed in July 2012.
9. **Person Responsible for Coordinating Proposed Program, Project, etc.:**  
Robert P. Antonicello, Executive Director, JCRA
10. **Additional Comments:**

**I certify that all the Facts Presented Herein are Accurate.**

  
**Signature of ROBERT P. ANTONICELLO**  
**Executive Director**  
**Jersey City Redevelopment Agency**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of CARL CZAPLICKI**  
**Director, Department of Housing, Economic**  
**Development and Commerce**

\_\_\_\_\_  
**Date**



City Clerk File No. Ord. 10-118

Agenda No. 3.D 1st Reading

Agenda No. \_\_\_\_\_ 2nd Reading & Final Passage



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-118

TITLE:

## AN ORDINANCE AUTHORIZING THE TRANSFER OF CITY-OWNED PROPERTY WITHIN THE MARTIN LUTHER KING DRIVE REDEVELOPMENT AREA TO THE JERSEY CITY REDEVELOPMENT AGENCY

**WHEREAS**, the City of Jersey City is the owner of a certain parcel of real property known and designated as:

<u>BLOCK</u>	<u>LOT</u>	<u>STREET ADDRESS</u>
1972	5.A	15.5 Oak Street

situated in the City of Jersey City, Hudson County, New Jersey; and as more particularly shown on the Official Assessment Map and referenced in the designation assigned to individual tax lot n the records of the Tax Assessor (hereinafter "Property"); and

**WHEREAS**, the Municipal Council of the City of Jersey City has declared, that the Property contained within the Martin Luther King Drive Redevelopment Avenue Area is an area deemed "in need of redevelopment" pursuant to N.J.S.A. 40A:55-12 et. seq.; and

**WHEREAS**, the Municipal Council adopted, by Ordinance No.93-138 at its meeting of December 8, 1993, the Martin Luther King Drive Redevelopment Plan; and

**WHEREAS**, the Property lies within the legally established boundaries of the Martin Luther King Drive Redevelopment Area; and

**WHEREAS**, the Jersey City Redevelopment Agency has the responsibility of acquiring property within the Martin Luther King Drive Redevelopment Area to effectuate the rehabilitation, redevelopment and revitalization of the Martin Luther King Drive Redevelopment Area; and

**WHEREAS**, the Jersey City Redevelopment Agency has deemed it necessary to acquire the Property from the City of Jersey City to accomplish the objectives of the Martin Luther King Drive Avenue Redevelopment Plan; and

**WHEREAS**, the City of Jersey City may transfer the Property to the Jersey City Redevelopment Agency pursuant to N.J.S.A. 40A:12A-39(a) & (f).

**NOW, THEREFORE, BE IT ORDAINED** by the Municipal Council of the City of Jersey City that:

1. Pursuant to N.J.S.A. 40A:12A-39(a) & (f) the transfer of Property known as

<u>BLOCK</u>	<u>LOT(S)</u>	<u>STREET ADDRESS</u>
1972	5.A	15.5 Oak Street

to the Jersey City Redevelopment Agency is hereby authorized.

2. That the Mayor, Business Administrator and appropriate Division of the municipality are hereby authorized and directed to execute a deed and all necessary or appropriate instruments to convey and effectuate the transfer of the aforesaid Property to the Jersey City Redevelopment Agency.

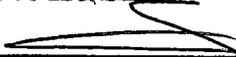
A. All Ordinances and part of Ordinances inconsistent herewith are hereby repealed.

B. This Ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this Ordinance codified and incorporated in the official copies of the Jersey City Code.

C. This Ordinance shall take effect at the time and in the manner as provided by law.

D. The City Clerk and the Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of the Ordinance reveals that there is a conflict between those numbers and the existing code in order to avoid confusion and possible accidental repealers of existing provisions.

APPROVED AS TO ~~LEGAL FORM~~

  
\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_

APPROVED:   
\_\_\_\_\_  
Business Administrator

Certification Required   
Not Required

**ORDINANCE/RESOLUTION FACT SHEET**

This summary sheet is to be attached to the front of any ordinance, resolution, cooperation agreement or contract that is submitted for Council consideration. Incomplete or sketchy summary sheets will be returned with the resolution or ordinance. The department, division or agency responsible for the overall implementation of the proposed project or program should provide a concise and accurate statement of facts.

1. **Full Title of Ordinance/Resolution/Cooperation Agreement:**  
**AN ORDINANCE AUTHORIZING THE TRANSFER OF CITY-OWNED PROPERTY WITHIN THE MARTIN LUTHER KING DRIVE REDEVELOPMENT AREA TO THE JERSEY CITY REDEVELOPMENT AGENCY**
2. **Name and Title of Person Initiating the Ordinance/Resolution, etc.:**  
 Franklyn Ore, Project Manager, Jersey City Redevelopment Agency, 201-547-4560
3. **Concise Description of the Program, Project or Plan Proposed in the Ordinance/Resolution:**  
 This Ordinance will authorize the City of Jersey City, to transfer City owned property within the Martin Luther King Drive Redevelopment Area for development purposes.
4. **Reasons (Need) for the Proposed Program, Project, etc:**  
 The Jersey City Redevelopment Agency has been charged with the responsibility of acquiring property in the Martin Luther King Drive Redevelopment Area to effectuate the rehabilitation, redevelopment and revitalization initiatives of the Martin Luther King Drive Redevelopment Plan.
5. **Anticipated Benefits to the Community:**  
 Rehabilitation of vacant property located in Block 1972, Lots 5.A (15.5 Oak Street).
6. **Cost of Proposed Program, Project, etc. (Indicate the dollar amount of City, State and Federal Funds to be used, as well as match and in-kind contributions.):**  
 Cost of project \$1,452,000  
 Subsidy - N/A
7. **Date Proposed Program or Project will Commence:**  
 Upon adoption of this Ordinance.
8. **Anticipated Completion Date:**  
 Building will be completed in July 2012.
9. **Person Responsible for Coordinating Proposed Program, Project, etc.:**  
 Robert P. Antonicello, Executive Director, JCRA
10. **Additional Comments:**

**I certify that all the Facts Presented Herein are Accurate.**



**Signature of ROBERT P. ANTONICELLO**  
**Executive Director**  
**Jersey City Redevelopment Agency**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature of CARL CZAPLICKI**  
**Director, Department of Housing, Economic**  
**Development and Commerce**

\_\_\_\_\_  
**Date**

100	101	102	103	104	105	106	107	108	109	110
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DR MARTIN

ST.

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165	166	167	168	169	170	171	172	173	174	175

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ST

550

OCEAN

11.02

**TAX MAP**  
**CITY OF JERSEY CITY**  
**HUDSON COUNTY, NEW JERSEY**  
 SCALE: 1"=100'  
 PURCELL & TAYLOR, P.C.  
 CALDWELL, NEW JERSEY

NEW JERSEY DEPARTMENT OF THE TREASURY  
 DIVISION OF LOCAL PROPERTY AND PUBLIC UTILITY BRANCH  
 APPROVED AS A TAX MAP PURSUANT TO THE  
 PROVISIONS OF CHAPTER 126, P.L. 1971, AS  
 AMENDED, FOR THE DISTRICT OF JERSEY CITY  
 BY: [Signature]  
 DATE: OCT 3 1977 MAP NO. 877 CHAP

11.03



# ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 10-119

TITLE:

**AN ORDINANCE AUTHORIZING THE EXECUTION OF A DEVELOPER'S AGREEMENT AND THE TRANSFER OF 34 VAN NOSTRAND AVENUE, 36 VAN NOSTRAND AVENUE, 38 VAN NOSTRAND AVENUE, AND 40 VAN NOSTRAND AVENUE PURSUANT TO N.J.S.A. 40A:12-21(j) TO THE JERSEY CITY EPISCOPAL COMMUNITY DEVELOPMENT CORP., A NONPROFIT HOUSING CORPORATION**

**THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:**

**WHEREAS**, the City of Jersey City (City) is the owner of the following properties:

40 Van Nostrand Ave. a/k/a Block 1464, Lot A  
38 Van Nostrand Ave. a/ka/ Block 1464, Lot B  
36 Van Nostrand Ave. a/k/a Block 1464, Lot C  
34 Van Nostrand Ave. a/k/a Block 1464, Lot 16; and

**WHEREAS**, these properties are vacant land and are not needed for a municipal purpose; and

**WHEREAS**, Jersey City Episcopal Community Development Corporation (JCECDC) is a duly incorporated nonprofit housing corporation of the State of New Jersey, organized for the purpose of constructing housing for low or moderate income persons or families; and

**WHEREAS**, JCECDC has submitted a proposal to construct three (3) two-family homes at 34-40 Van Nostrand for sale to low and moderate income buyers; and

**WHEREAS**, JCECDC agrees to construct the homes in accordance with the Developer's Agreement attached hereto as Exhibit "A"; and

**WHEREAS**, JCECDC has agreed to maintain the homes as affordable housing for a period of thirty (30) years; and

**WHEREAS**, JCECDC has agreed to pay the City the following amounts for the properties:

40 Van Nostrand Ave., \$20,000  
38 Van Nostrand Ave., \$20,000  
36 Van Nostrand Ave., \$20,000  
34 Van Nostrand Ave.: \$20,000; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12-21(j), it is in the best interests of the City to authorize the private sale of these properties to JCECDC on the above terms.

**NOW, THEREFORE, BE IT ORDAINED**, by the Municipal Council of the City of Jersey City that:

1. Subject to such modifications as deemed necessary or appropriate by Corporation Counsel, the Mayor or Business Administrator is authorized to execute the attached Developer's Agreement with JCECDC;

2. The sales to JCECDC of the properties listed below for the amounts listed below are authorized:

- 40 Van Nostrand Ave. a/k/a Block 1464, Lot A; \$20,000
- 38 Van Nostrand Ave. a/ka/ Block 1464, Lot B; \$20,000
- 36 Van Nostrand Ave. a/k/a Block 1464, Lot C; \$20,000
- 34 Van Nostrand Ave. a/k/a Block 1464, Lot 16; \$20,000;

3. The Business Administrator or Mayor is authorized to execute deeds and such other documents as Corporation Counsel deems appropriate and necessary to effectuate the conveyance of these properties to JCECDC; and

4. The deeds shall be in a form approved by Corporation Counsel and shall contain covenants requiring JCECDC to:

(a) to construct three (3) two-family units of housing at 34, 36, 38, and 40 Van Nostrand Avenue under the Home Investment Partnerships Program which shall be affordable housing for a period of thirty (30) years;

(b) Prohibiting the use of the properties for any commercial, business, trade or manufacturing purposes; and

(c) Providing that a violation of these covenants will cause title to automatically revert to the City without and entry or reentry made thereon.

**NOTE:** All material is new; therefore, underlining has been omitted. For purposes of advertising only, new matter is indicated by **bold face** and repealed matter by *italic*.

RR  
9-9-10

APPROVED AS TO LEGAL FORM

APPROVED: \_\_\_\_\_

\_\_\_\_\_  
Corporation Counsel

APPROVED: \_\_\_\_\_  
Business Administrator

Certification Required

Not Required

**DEPARTMENT OF HOUSING, ECONOMIC DEVELOPMENT & COMMERCE**  
**Division of Community Development**



**Inter-Office Memorandum**

**DATE:** September 13, 2010  
**TO:** Council President Peter Brennan and Members of the Municipal Council  
**FROM:** Darice Toon, Director – Division of Community Development  
**SUBJECT:** Ordinance No. 10-119 Conveying 34, 36, 38 & 40 Van Nostrand Avenue to Jersey City Episcopal CDC (JCECDC)

This is to advise you that the above referenced Ordinance was modified to increase the consideration from \$15,000 per property to \$20,000 per property for the conveyance of 34-40 Van Nostrand Avenue. In the past, the City has conveyed properties to non-profit developers for nominal consideration. Given the City's financial constraints, it has become infeasible to continue conveying properties for such small amounts.

As a result, in FY2007, the City conveyed 119 Rutgers Avenue, 94 Wegman Avenue and 21-23 Orient Avenue to the JCECDC for \$60,000 (\$15,000 per home). The acquisition of 34-40 Van Nostrand Avenue was modeled after this transaction. The increase in consideration from \$15,000 per lot for four (4) lots to be conveyed results in a larger gap for the project. However, we will look to fill the gap in a future request to be submitted to the Council.

The above referenced properties were acquired with Affordable Housing Trust Funds (AHTF), therefore, affordable housing units must be developed on these vacant lots.

If you have any questions, please feel free to contact me at extension 5304. Thank you.

cc: Rosemary McFadden, Chief of Staff – City of Jersey City  
John W. Kelly, Business Administrator  
Robert Byrne, City Clerk  
Carl Czaplicki, Director – HEDC

DT:sah

**DEVELOPMENT AGREEMENT**  
**[Property Conveyance]**

**THIS AGREEMENT**, entered into this 17<sup>th</sup> day of August, 2010 (Agreement) between the CITY OF JERSEY CITY, a public body corporate having its principal offices at 280 Grove Street, Jersey City, New Jersey 07302, [City] and Jersey City Episcopal Community Development Corporation, a nonprofit corporation of the State of New Jersey with offices at 514 Newark Avenue, Jersey City, NJ 07306 [Developer].

**WITNESSETH:**

**WHEREAS**, the Developer is a non profit entity organized for the purpose of providing for the rehabilitation and operation of affordable low and moderate income housing within Jersey City and recognized as a non profit entity pursuant to Section 501(c)(3) of the IRC; and

**WHEREAS**, the City of Jersey City, the owner of the following properties:

Block <u>1464</u> Lot <u>A</u> ,	Street Address <u>40 Van Nostrand Ave</u>
Block <u>1464</u> Lot <u>B</u> ,	Street Address <u>38 Van Nostrand Ave</u>
Block <u>1464</u> Lot <u>C</u> ,	Street Address <u>36 Van Nostrand Ave</u>
Block <u>1464</u> Lot <u>16</u>	Street Address <u>34 Van Nostrand Ave</u>

desires to convey title to the Developer to enable the immediate construction of ten (10) units of housing [Property]; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12-21 et seq., the City of Jersey City may authorize the private sale of City property for the construction or rehabilitation of affordable housing, provided the property is occupied by families or persons of low or moderate income at affordable rents; and

**WHEREAS**, Developer has submitted a proposal to the City to rehabilitate Property in accordance with the terms of this Agreement (Project); and

**WHEREAS**, the City has reviewed the proposal and have determined that it is in the City's best interests to select the Developer as the designated Developer for the Project; and

**WHEREAS**, by \_\_\_\_\_ adopted on \_\_\_\_\_, the City approved the conveyance of the Property to the Developer and the execution of this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the parties hereto agree as follows:

**DEFINITIONS**

**Agreement:** This Agreement between the City and the Developer for the rehabilitation of the Property.

Applicable Law: Any and all federal, state and local laws, rules, regulations, statutes and ordinances applicable to the Property or Project.

Certificate of Completion: A certificate acknowledging that the Developer has performed all of its duties and obligations pursuant to this Agreement.

Certificate of Occupancy: Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133 and as defined in the New Jersey Administrative Code.

Construction Plans: All plans, drawings, specifications and related documents, including a construction progress schedule, in sufficient completeness and detail to obtain construction permits and to show that the Improvements to be constructed by Developer on the Property and the construction thereof will be in accordance with this Agreement.

Construction Timetable: That schedule appended hereto as Schedule C which designates the order and deadlines of acquisition, necessary approvals and development of the Project.

Days: Whenever the word "days" is used to denote time, it shall mean calendar days.

Deeds: Any deed of conveyance from the City to the Developer conveying any of the Property pursuant to this Agreement.

Effective Date: The date this Agreement is last executed by the City.

Events of Default: Defined in Section 8.01 herein. Fair Housing Act,

N.J.S.A. 52:27D-301 et seq

Final Site Plan: The plan submitted to and approved by the Planning Board for Final Site Plan Approval and Section 12.08 of this Agreement.

Financial Institution: A bank, savings bank, savings and loan association, mortgage lender or insurance company, pension fund, real estate investment trust, investment bank or similarly recognized reputable source of construction and permanent financing for the Project chartered under the laws of the United States of America, or any State thereof.

Force Majeure: Acts of God, fire, earthquake, explosion, the elements, war, riots, mob violence or civil disturbance, inability to procure or a general shortage of labor, equipment or facilities, energy, materials or supplies in the open market, failure of transportation, strikes, walkouts, actions of labor unions, court orders, laws, rules, regulations or orders of governmental or public agencies, bodies and authorities, or any other similar cause not within the control of the Developer.

Governmental Approvals: Any approvals, authorizations, permits, licenses and certificates needed from governmental authorities having jurisdiction, whether federal, state, county or local, to the extent necessary to implement the Project in accordance with this Agreement.

Impositions: All taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, license fees, peunit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Property conveyed to the Developer or on any of the improvements constructed thereon.

Improvements: More particularly described in Schedule B hereto and all other improvements constructed on or installed upon the Property in accordance with the approved Construction Plans, including all facilities and amenities, shown in such approved Construction Plans and the Final Site Plan approved by the Planning Board as being on the Project and used or to be used in connection with the buildings, including any parking or ancillary facilities. Improvements also comprise any and all facilities, amenities, on and off street parking, landscaping and fencing and enhancements required to be made to the Project and the streets abutting and surrounding the Project as shall be shown on the Final Site Plan approved by the Planning Board and required pursuant to this Agreement.

Insurance Requirements: All requirements set forth in the terms of any insurance policy(ies) covering or applicable to all or any part of the Project or applicable to any Improvements thereon, or with respect to any portion of the Project , all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting all or any portion of the Project , the Improvements thereon or the use or condition thereof

NJDEP: The New Jersey Department of Environmental Protection.

Permitted Exceptions: Defined in Section 9.02 herein.

Planning Board: The City of Jersey City Planning Board and any successor thereto exercising similar functions in accordance with the Municipal Land Use Law. N.J.S.A. 40:55D-1 et seq.

Property: Defined in the recitals of the Agreement and in Schedule A.

Project : Those certain parcels of property more particularly described on Schedule A, which include the City Parcel to be conveyed to Developer.

Survey: Defined in Section 2.05 herein.

Transfer: Any transaction by which a Transferee obtains an interest in the Project , or in this Agreement by means of methods which include, but are not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation,

reorganization, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

Transferee: Any party to whom an interest in the Project , or rights in or under this Agreement is conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, assignment, foreclosure or otherwise, including a trustee in bankruptcy or assignee for the benefit of creditors.

## ARTICLE I SALE & CONVEYANCE OF PROPERTY

1.01. Consideration. For and in consideration of the Price (defined below in Section 1.02), to be paid and satisfied as stipulated herein, and also in consideration of the covenants and agreements herein contained and to be performed by the Developer be and upon satisfaction of the additional contingencies to close title enumerated under Article XI, hereof, the City agrees to convey to the Developer, subject to the terms and provisions of this Agreement, the Project as more particularly defined in Schedule A.

1.02 Price and Payment Terms. The purchase price to be paid by the Developer to the City for conveyance of the Property at the Closing shall be \$60,000.00.

1.03 Deed. Subject to the provisions of this Agreement, title to the Project shall be conveyed to the Developer at the Closing by a Quitclaim Deed (Deed) which shall contain a metes and bounds description provided in accordance with the provisions of Section 2.05 hereof. The Deed shall contain such restrictions, covenants and conditions are required by the Fair Housing Act and this Agreement and the condition of the title so conveyed will be in accordance with the requirements of this Agreement. Rider(s) shall be attached to the Deed enunciating the covenants and restrictions that this Agreement imposes upon the land and the Riders shall be recorded as part of and simultaneously with the recording of the Deed. Developer's signature will be required on the Deed and any Riders thereto in acknowledgment thereof.

1.04 Closing. The closing of title to the Project (Closing) shall take place in accordance with the timetable set forth in Schedule C, attached hereto, subject to the provisions of this Agreement. The Closing shall occur at a mutually agreeable time at the principal offices of the City identified in the recitals of this Agreement or at such other location as shall be mutually agreeable to the City and Developer.

1.05 Impositions. Unless otherwise set forth in this Agreement, Developer shall be responsible for any and all Impositions assessed against the Project , upon from and after the date of closing of title to the Project to Developer.

1.06 Provisions Not Merged with Deed. The City and the Developer acknowledge and agree that none of the provisions of the Agreement are intended to or shall be merged by reason of any Deed(s) transferring title to the Project or portions thereof from the City to the

Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of the Agreement.

1.07 Recordation of Documents. Upon the Closing, Developer shall file this Agreement, the Deed(s) and any other related documents as determined by the City for recordation among the land records of the place in which the Project is situate. The Deed(s) shall be by its terms expressly subject and subordinate to the provisions of this Agreement. The Developer shall pay all costs of such recordation and shall supply evidence of such recordation to the City.

## **ARTICLE II** **DEVELOPER'S RESPONSIBILITIES**

2.01 Developer's Costs. The Developer shall be responsible for all costs incurred by the Developer in implementing the Project, and satisfying its obligations under this Agreement.

2.02 Acquisition Costs. The Developer further agrees to be fully responsible for and obligated to reimburse the City for all of the City's costs, if any, associated with the conveyance of the Property (Acquisition Costs). The Acquisition Costs shall include, without limitation, the following:

(a) legal fees, survey costs, title search and premium fees, appraisal fees (including fees of appraisers arising from their participation in preparation of a fair market disposition appraisal and other expenses related to the acquisition of the City Parcel;

(b) any costs incurred by the City as a result of compliance with any environmental laws or regulations;

(c) costs of the City, if any, relating to any Developer financing of the Project;

and

(d) any additional out-of-pocket third-party costs associated with the Project.

The Developer agrees to reimburse the City for all Acquisition Costs upon fourteen (14) days written notice from the City (complete with the presentation of itemized invoices, if any, and receipts therefore, if any) to the Developer given in accordance with the notice provisions of this Agreement. The City agrees that with respect to the Acquisition Costs referenced herein, in an effort to inform the Developer in advance of such costs the City shall provide to the Developer an estimated budget for contemplated Acquisition Costs and to the extent such costs may exceed the reported budget amounts, the City shall use its best and reasonable efforts to provide the Developer with advance written notification of any change in a reported budget item. As to the reimbursement obligation, the Developer further acknowledges and agrees that the obligation to reimburse the City for all Acquisition Costs shall apply to all such costs incurred, whether prior to or subsequent to the termination of this Agreement, provided that

with respect to such Acquisition Costs incurred after the termination of this Agreement, such costs are incurred in connection with actions undertaken by the City pursuant to this Agreement. The Developer's obligations pursuant to this Section 2.03 shall survive the termination of this Agreement.

2.04 Project Financing. Developer shall obtain and provide the City with written proof of financing and sufficient equity capital necessary to fund the balance of the Project budget as further required by Article IV hereof

2.05 Survey. The Project or smaller parcels thereof shall be conveyed by a metes and bounds description derived from Project boundary and topographic surveys showing Project lines of any properties being conveyed to Developer, existing grades, easements and utilities in and of the Project to be conveyed and in and of the streets surrounding same. The survey(s) shall be ordered by the Developer and prepared at Developer's sole expense by a reputable land surveyor licensed in the State of New Jersey selected by the Developer (Survey). The Survey and the legal descriptions prepared there from shall be certified by the surveyor to the City and Developer and one reproducible and three copies of the Survey shall be delivered to each party hereto within thirty (30) days from the Effective Date of this Agreement.

2.06. Environmental Compliance and Remediation. The Developer agrees that with respect to the Project, the Developer shall conduct such soils analyses, site investigations and other environmental evaluations necessary to determine the condition of the buildings, soils and subsurface conditions and the presence of hazardous wastes or substances (Environmental Due Diligence). Pursuant to and to the extent of its rights under the Law, the City agrees to furnish the Developer, its agents or designees, with access to any portion of the Project , at any time and from time to time during the term of this Agreement for purposes of conducting Environmental Due Diligence should the need arise, provided the Developer furnished the City with reasonable written notice in advance of any such entry setting forth the Developer's intent to enter any portion of the Project and with satisfactory evidence of liability insurance as required pursuant to Section 2.15 herein, insuring the Developer, the City and the City against claims for bodily injury, death and property damage arising from or attributable to such entry. To the extent the Environmental Due Diligence discloses the existence of environmental conditions on the Project which require remediation or any governmental City with jurisdiction over the Project requires or recommends any mitigation or remediation as a condition to the sale or development of the Project , the Developer shall have thirty (30) days from the Effective Date of this Agreement to notify the City in writing of the Developer's intention to provide the required remediation or to terminate this Agreement.

2.07. Remediation of the Project. The Developer shall have the sole obligation of satisfying all legal requirements of any governmental entity having jurisdiction concerning remedial action on the Project and of complying with all regulations and standards regarding the remediation of the Project. Upon acquisition of the Project, Developer will perform the environmental cleanup, remediation and mitigation of the Project at the Developer's sole cost and expense, and will obtain all environmental approvals from the agencies with jurisdiction in accordance with all applicable environmental laws, and will enter into whatever agreements

are necessary to obtain such environmental approvals. The City and Developer understand and agree that the City shall be under no obligation to mitigate any environmental contamination on the Project, which shall be conveyed by the City strictly "AS IS."

2.08. Disposition of Liens The Developer, with the cooperation of the City, shall have the obligation to obtain a full release of any liens or residual liability or obligations, if any, against the Property.

2.09. Professional Services and Administrative Fee. With respect to any legal work required by the City in connection with this Agreement and the Project, Developer agrees that the City shall be entitled to appoint an attorney or attorneys to act as counsel to perform such work for the City and that Developer will reimburse the City in full for the reasonable fees and costs incurred by the City for all services rendered by the City's counsel which are necessary to or associated with the completion of the Project (Professional Services Fee). The Developer agrees to reimburse the City for these legal fees upon fourteen (14) days written notice from the City (complete with the presentation of itemized invoices) to the Developer given in accordance with the notice provisions of this Agreement.

2.10. Governmental Approval Process. The Developer has caused or will cause to be prepared such plans, drawings, documentation, presentations and applications (Governmental Applications) as may be necessary and appropriate for the purpose of obtaining any and all Governmental Approvals for the Improvements on the Project and the construction of the Project. All of the Governmental Applications shall be in conformity with the Law and this Agreement and any and all federal, state, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto. The receipt of the Governmental Approvals by the Developer shall be achieved in sufficient time and manner so as to enable the Developer to conform to the relevant provisions of this Agreement, including but not limited to the construction schedules incorporated herein and set forth in Schedule C. Unless otherwise extended as provided for in this Agreement, the Developer shall obtain all Governmental Approvals needed for construction of all Improvements on the Project, excluding building permits, within sixty (60) days after receiving approval of the City of the Preliminary Site Plan. The City may, in its sole and absolute discretion, extend the dates for performance by the Developer in the event the Developer is denied any of the Governmental Approvals required to commence construction of the Improvement, provided that the Developer has diligently pursued and prosecuted the Governmental Applications necessary to implement the Project.

2.11. Construction of the Project. The construction of the Project and the obtaining by the Developer of all necessary Governmental Approval shall be commenced by the date and in the manner set forth in the attached Schedule C (Construction Timetable), and, except as otherwise provided in this Agreement, all Improvements shall be completed within twenty-four (24) months after the time stated for the start of construction, all as shown in the Construction Timetable. The preparation of all necessary plans and specifications and the timing for approval of the same shall be as more particularly set forth in Article XII herein.

2.12. Covenant to Build. Developer covenants, warrants, represents, and agrees to construct the Improvements on the Project together with all ancillary uses as indicated in and on the Governmental Approvals, the Preliminary Site Plan and the Construction Plans. All Improvements must be constructed in accordance with all restrictions and controls contained in the Law. All Improvements on the Project shall be installed by the Developer at its sole cost and expense as the various stages of construction of the Project require.

2.13. Report on Progress. The Developer shall make, in such detail and at such times as may be reasonably required by the City, a report in writing concerning the actual progress of the Developer with respect to such construction. The work and construction activities of the Developer shall be subject to inspection by the City.

2.14. Suspension of Construction. Subject to the Developer's rights as set forth in Section 16.02 herein, if the Developer shall abandon or suspend construction activities for a period of ninety (90) consecutive days during the aforementioned construction periods and the suspension or abandonment is not cured, ended or remedied within thirty (30) calendar days after written demand by the City to do so, then the City shall have the right to declare the Developer in default under this Agreement and to seek all remedies available to the City under this Agreement or at law or in equity.

2.15. Insurance. At all times during construction of the Project, and until the Project is available for its intended use and a Certificate of Completion is issued in accordance with the provisions of Section 2.17 herein, the Developer shall maintain or cause to be maintained at its own cost and expense, with responsible insurers, the following kinds and the following amounts of insurance with respect to the Project, with such variations as shall reasonably be required to conform to customary insurance practice:

(a) Builder's Risk Insurance for the benefit of Developer and the City, as their interests may appear, during the term of construction which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the insurable value of the Project, including items of labor and materials connected therewith, whether in or adjacent to the structure insured, and materials in place or to be used as part of the pen anent construction.

(b) Comprehensive General Liability Insurance (including coverage for any construction on or about each lot, plot, parcel or part of the Project) against claims for bodily injury, death or property damage occurring on, in or about the Project and the adjoining streets, sidewalks and passageways, in amounts not less than \$2,000,000.00 for each claim with respect to any bodily injury or death, 2,000,000.00 with respect to any one occurrence and \$2,000,000.00 with respect to all claims for property damage relating to any one occurrence;

(c) Worker's compensation insurance coverage in the amount of the full statutory liability of Developer;

(d) Such other insurance, in such amounts and against such risks, as is customarily maintained by Developer with respect to other similar properties owned or leased by it, including automobile insurance.

Prior to being given access to any portion of the Project in accordance with the provisions of Section 2.06 herein, or prior to the commencement of construction of the Project, whichever date is the first to occur, Developer shall submit to City proof of all applicable insurance. Thereafter, upon each anniversary date of this Agreement, Developer shall submit the proofs of insurance, for the succeeding year. The policies of insurance required to be maintained by Developer pursuant to this Section 2.15 shall name as the insured parties (except for worker's compensation insurance) Developer, the City, the City, as their respective interests may appear, and shall be satisfactory to the City.

2.16. Indemnification. The Developer agrees to indemnify and hold harmless the City against, and Developer shall pay any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which the City may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, relating to the Developer's activities in constructing the Project or based upon or arising out of contracts entered into by the Developer which relate to construction of the Project, or arising solely because of the City's ownership of portions of the Project, or out of the acquisition, construction or installation of the Project, including but not limited to any and all claims by workmen, employees and agents of the Developer and unrelated third parties, which claims arise from the construction of the Project, the maintenance and functioning of the Project Improvements, or any other activities of Developer within the Project. It is mutually agreed by Developer and the City that neither the City, the City, nor their directors, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that Developer shall save the City, the City, their directors, officers, agents and employees harmless from any claim or suit in connection with the Developer's obligations under this Agreement, except for any claim or suit arising from the intentional, willful or unlawful acts of the City. The Developer, at its own cost and expense, shall defend any and all such claims, suits and actions, as described in this Section 2.16, which may be brought or asserted against the City or the City, their directors, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Agreement from its obligation to defend Developer, the City and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy. Any cost for reasonable attorneys' fees in situations where it is necessary for the City to engage its own attorneys, experts' testimony costs and all costs to defend the City or any of its directors, officers, agents, servants, or employees shall be reimbursed to it by the Developer in connection with such indemnification claim.

2.17. Certificates of Occupancy and Certificate of Completion. Upon completion of the construction of the Project in accordance with the Governmental Approvals, the Developer shall obtain a Certificate of Occupancy for the Improvements constituting the Project. The Certificate of Occupancy, when issued, shall constitute evidence that the Developer has fully

performed its obligations to construct the Project. In addition, upon completion of the Project and for purposes of releasing the restrictions referenced in this Agreement, the City agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Developer has performed all of its duties and obligations under this Agreement and has completed construction of the Project in accordance with the requirements of this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Law with respect to the Developer's obligation to construct the Project within the dates for the commencement and completion of same. Upon issuance of a Certificate of Completion, the conditions determined to exist at the time the Project was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and improvements constituting the Project and the Project shall no longer be subject to eminent domain. If the City shall fail or refuse to provide the Certificate of Completion within thirty (30) days after written request by the Developer, the City shall provide to the Developer a written statement setting forth in detail the respects in which it believes that the Developer has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in default under this Agreement and what reasonable measures or acts will be necessary in order for the Developer to be entitled to a Certificate of Completion.

### ARTICLE III CITY RESPONSIBILITIES

3.01. Title to the Project. The City shall convey good and marketable title to the Project, insurable at regular rates and without special premium by the title insurer, subject only to the Permitted Exceptions.

3.02. Developer's Loss of Rights. From and after that date upon which this Agreement may be terminated as to the Project, or any part or parcel thereof, pursuant to any applicable provision hereof, the City shall be under no obligation to convey to Developer and the Developer shall have no obligation to take title to the Project, or any such part or parcel thereof, and further the City may convey the Project to any third party.

3.03. Environmental Compliance. With respect to the Project, the City shall not be responsible for any environmental assessment or cleanup costs all of which shall be the responsibility of the Developer.

3.04. Access To Project. Prior to the conveyance of any portion of the Project by the City to the Developer, the City shall permit representatives of the Developer to have access to any part of the Project as to which the City holds title, at all reasonable times for the purpose of obtaining data and making various tests concerning the Project necessary to carry out the provisions of this Agreement. After the conveyance of the Project by the City to the Developer, the Developer shall peg snit the representatives of the City and the City access to the Project at all reasonable times which any of them deems necessary for the purposes of assuring or ascertaining compliance with the terms of this Agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the

Improvements. No compensation shall be payable nor shall any charge be made in any form by the Developer or the City for the access provided for in this Section 3.04.

3.05. Cooperation. The City shall cooperate fully in the preparation and prosecution of any applications for Governmental Approvals required for the Project as well as in the processing of applications to Financial Institutions for financing for the Project.

#### **ARTICLE IV** **PROJECT FINANCING**

4.01. Financing and Equity Capital. The Developer estimates that the construction cost of the Project shall be approximately \$1,448,500.00. The Developer represents that it either has obtained or will use commercially reasonable efforts to obtain financing for the Project, which financing will be a combination of debt financing and an equity contribution of the Developer. This Agreement and any conveyances of Project hereunder are subject to the Developer securing the necessary interim construction and permanent mortgage financing sufficient to undertake the construction of the Project as detailed in the Preliminary Site Plan and the Construction Plans and in the sequences, phases and timetables described in the attached Schedule C. The Developer shall submit to the City evidence of firm commitments for mortgage financing, grant funds and any equity capital necessary to commence the construction of Improvements constituting the Project, not later than three (3) days prior to the date scheduled for the start of any construction of Improvements on the Project in accordance with this Agreement. The City agrees to accept a letter, in form and substance acceptable to the City, from one or more Financial Institution(s) which evidences a firm commitment by same to provide mortgage financing for the construction of the Improvements in such time and manner so as to enable Developer to adhere to the Construction Timetable.

4.02. Early Construction. This Agreement hereby provides that the Developer may begin the necessary site preparation, installation of structural pilings and other foundation and structural support systems before obtaining any final commitments for the financing needed to complete the construction of the Improvements, and providing evidence of same to City as otherwise required by this Agreement. Notwithstanding the preceding sentence, Developer shall submit to the City firm evidence of both equity financing and mortgage financing necessary to complete the construction of Improvements and Project all in accordance with the requirements of Section 4.01 above and the Agreement no later than ninety (90) days from the start of construction.

#### **ARTICLE V** **MORTGAGE FINANCING AND RIGHTS OF MORTGAGEE**

5.01. Notice to City. Prior to the completion of the Project, as certified by the City, neither the Developer nor any successor in interest to the Project or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Project, except for the purpose of obtaining

funds in connection with the Project. The Developer or its successor in interest shall notify the City in advance of any financing, secured by mortgage or other lien instrument, which it proposes to enter into with respect to the Project or any part thereof and, in any event, the Developer shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project, whether by voluntary act of the Developer or otherwise, upon obtaining knowledge or notice of same.

5.02 Completion of Project. Notwithstanding any of the provisions of this Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any such holder who obtains title to the Project or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Project or such part from or through such holder or (b) any purchaser at foreclosure sale other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this Agreement to construct or complete the Project or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder. Except as otherwise provided in Section 5.04 herein, nothing in this Article or any other Article or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted under the Law and this Agreement.

5.03. Notice to Mortgagee. Whenever the City shall deliver any notice or demand to the Developer with respect to any breach or default by the Developer of its obligations or covenants under this Agreement, the City shall at the same time forward a copy of such notice or demand to each holder of any mortgage authorized by this Agreement at the last known address of such holder shown in the records of the City.

5.04. Mortgagee's Right to Cure Default and Assume Developer's Obligations. After any breach or default referred to in Section 5.03 above, each holder shall (insofar as the rights of the City are concerned) have the right, at its option, to cure or remedy such breach or default and to add the cost thereof to the mortgage, provided that, if the breach or default is with respect to construction of the Project, nothing contained in this Article or any other Article of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the holder's security, including the improvements or construction already begun) without first having expressly assumed the obligation to the City, by written agreement satisfactory to the City, to complete, in the manner provided in this Agreement, the Project on the Project or the part thereof to which the lien or title of such holder relates. Any such holder who shall properly complete the Project or applicable part thereof shall be entitled, upon written request made to the City, to receive the individual Certificates of Occupancy for the individual residential units or commercial structures, the overall Certificate of Occupancy for the entire Project and the Certificate of Completion as hereinabove set forth in Article 2.17 hereof.

5.05. City's Option To Pay Mortgage Debt or Purchase Project. In any case, where, subsequent to default or breach by the Developer (or any successor in interest) under the terms of this Agreement, the holder of any mortgage on the Project or part thereof (a) has, but does not exercise, the option to construct or complete the Project relating to the Project or part thereof, covered by its mortgage or to which such holder has obtained title, and such failure continues for a period of sixty (60) days after the holder has been notified or informed of the default or breach; or (b) undertakes construction or, completion of the Project but does not complete such construction within the period as agreed upon by the City and such holder (which period shall in any event be at least as long as the period prescribed for such construction or completion in the Agreement), and such default shall not have been cured within sixty (60) days after written demand by the City so to do, the City shall (and every mortgage instrument made prior to completion of the Project with respect to the Project by the Developer or successor in interest shall so provide) have the option of paying to the holder the amount of the mortgage debt and securing an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Project (or part thereof) has vested in such holder by way of foreclosure or action in lieu thereof, the City shall be entitled, at its option, to a conveyance to the City of the Project or part thereof (as the case may be) upon payment to such holder of an amount equal to the sum of: (i) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals or condominium unit sales and other income received during foreclosure proceedings); (ii) all expenses with respect to the foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by such holder in and as a direct result of the subsequent management of the Project ; (iv) the costs of any Improvements made by such holder; and (v) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence.

5.06. City's Option To Cure Mortgage Default. In the event of a default or breach prior to the completion of the Project by the Developer, or any successor in interest, in or of any of its obligations under, and, to the holder of, any mortgage or other instrument creating an encumbrance or lien upon the Project or part thereof, the City may at its option cure such default or breach, in which case the City shall be entitled, in addition to and without limitation upon any other rights or remedies to which it shall be entitled by the Agreement, operation of law, or otherwise, to reimbursement from the Developer or successor in interest of all costs and expenses incurred by the City in curing such default or breach and to a lien upon the Project (or the part thereof to which the mortgage, encumbrance, or lien relates) for such reimbursement, provided, that any such lien shall be subject always to the lien of (including any lien contemplated, because of advances yet to be made, by) any then existing mortgages on the Project authorized by the Agreement.

## ARTICLE VI COVENANTS AND RESTRICTIONS

6.01. Declaration of Covenants and Restrictions. The Developer agrees for itself, its successors and assigns that the Deed(s) from the City to the Developer shall contain the

covenants set forth in Section 5.02 and Article VI of this Agreement, to be observed by the Developer, its successors and assigns.

6.02. Description of Covenants. The covenants to be imposed upon the Developer, its successors and assigns, and recorded in the Deed(s) shall set forth that the Developer and its successors and assigns shall:

(a) Devote the Project to the uses specified in the Law, specifically, occupancy by families or persons of low and moderate income, at rents affordable to such persons, within the meaning of the Fair Housing Act, as it may be amended, and shall not devote the Project to any other use(s) whatsoever;

(b) Not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status in the sale, lease, rental, use or occupancy of the Project or any buildings or structures erected or to be erected thereon, or any part thereof; and

(c) In the sale, lease or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Project or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status, and the Developer, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or marital status.

6.03. Effect and Term of Covenants. It is intended and agreed, and the Deeds shall so expressly provide, that the agreements and covenants set forth in Section 6.02 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, and any successor in interest to the Project, or any part thereof, against the Developer, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project or any part thereof. It is further intended and agreed that the agreements and covenants set forth in Section 6.02(a) shall remain in effect for a minimum period of 30 years (at which time such agreements and covenants shall cease and terminate) and that the agreements and the covenants provided in Sections 6.02(b) and (c) shall remain in effect without limitation as to time; provided that such agreements and covenants shall be binding on the Developer, each successor in interest to the Project, the Project, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Developer or such successor or party shall have title to, or an interest in, or possession or occupancy of the Project, the buildings and structures thereon or any part thereof.

6.04. Enforcement by the City. In amplification, and not in restriction of the provisions of this Article VI, it is intended and agreed that the City and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 6.02 both for and

in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to cure any such breach of agreement or covenant, to which they or any other beneficiaries of such agreement or covenant may be entitled.

## **ARTICLE VII**

### **PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

7.01. Prohibition Against Speculative Development. of the community and the public aid that have been made available by law for the purpose of making such development possible, the Developer represents and agrees that its acquisition of the Project, and its other undertakings pursuant to this Agreement are, and will be used for the purpose of the redevelopment of the Project as provided herein and not for speculation in land holding.

7.02. Prohibition Against Transfers. The Developer further represents and agrees for itself, its successors and assigns, that except only by way of security for and only for the purpose of obtaining the financing necessary to enable the Developer or any successor in interest to acquire and construct the Project , or any part thereof, to perform its obligations with respect to completing the Project and any other purpose authorized by this Agreement, that the Developer has not made or created, and that it will not, prior to the completion of the Project as evidenced by the issuance of the Certificate of Completion referenced in Section 2.17 herein, make or create, or suffer to be made or created, any sale, conveyance or transfer in any other mode or form of the Project , or any building or structure thereon or any part thereof or any interest therein, without the prior written approval of the City, excepting the transfers identified in Section 7.03 hereof.

7.03. Permitted Transfers. The following transfers are exceptions to the prohibition set forth in Section 7.02 and shall not require prior approval by the City: (a) a public offering statement filing with and approval by the State Department of Community Affairs; (b) utility and other development easements; (c) conveyances and/or leases to the ultimate purchasers/tenants of the individual residential or commercial units within the Project; and (d) any contract or agreement with respect to any of the foregoing exceptions.

7.04. Restraints Against Transfers. The Deeds shall contain a restriction against transfers as set forth in Section 7.02 and, in addition, shall provide that in the event of any attempted transfer in violation of the restriction in Section 7.02, the City shall be entitled to the ex parte issuance of an injunction restraining such transfer, and the recovery of legal fees and related expenses of the City in connection with any such legal action. Upon the recording of the Deeds

in the Office of the Hudson County Register of Mortgages and Deeds, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens. The City acknowledges that upon the issuance of the Certificate of Completion as referenced in Section 2.17 herein, the prohibitions against transfers set forth in this Article VII shall be of no further force and effect with respect to the Project

7.05. Conditions of Transfer. Except as otherwise provided in this Agreement, and except with respect to transfers permitted under Section 7.03, the City shall be entitled to require, as conditions to any such approval of any Transfer provided for in Section 7.02 that:

(a) Any proposed transferee shall have the qualifications and financial - responsibility, as reasonably determined by the City, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Developer; and

(b) Any proposed transferee, by instrument in writing satisfactory to the City and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the City, have expressly assumed all of the obligations of the Developer under this Agreement and agreed to be subject to all the conditions and restrictions to which the Developer is subject; and

(c) All instruments and other legal documents involved in effecting any transfer shall be submitted to the City for review and, if approved by the City, approval shall be indicated to the Developer in writing; and

(d) Any transfer approved by the City shall release the Developer from any further obligation under this Agreement from and after the closing of the approved transfer, except as to any liability or obligation of the Developer incurred prior to such Transfer and except as otherwise provided in this Agreement or in the written approval by the City; and

(e) The Developer and its transferees shall comply with any other reasonable conditions that the City may find necessary in order to achieve and safeguard the purposes of the Law.

## **ARTICLE VIII** **DEFAULT**

8.01. Events of Default. Prior to completion of the Project as certified by the City, each of the following shall constitute an event of default (Event of Default):

(a) If default shall be in the payment of any portion of the Purchase Price or any other sum payable to the City hereunder, when as the same shall become due and payable, and such default shall have continued for a period of ten (10) days after notice specifying such default and demanding that same be remedied shall have been given to the Developer by or on behalf of the City; or

(b) If the Developer fails to take title to the Project at the times required by this Agreement; or

(c) Developer or its successor in interest shall default in or violate its obligations with respect to the construction of the Project in a material respect (including the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work (unless such suspension arises out of a Force Majeure or other sanctioned delay set forth in this Agreement), and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within three (3) months (six (6) months if the default is with respect to the date for completion of the Improvements) after written demand by the City to do so or such longer period if incapable of cure within such three (3) or six (6) month period, provided that Developer has commenced and is diligently prosecuting such cure; or

(d) Developer or its successor in interest shall fail to pay any Impositions when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any material men's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such Imposition shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the City made for such payment, removal, or discharge, within ninety (90) days after written demand by the City to do so; or

(e) There is, in violation of this Agreement, any transfer of the fee title to the Project or a portion thereof and such violation shall not be cured within thirty (30) days after written demand served upon Developer by the City, unless extended in writing; or

(f) If the Developer be dissolved, or shall file a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall suspend payment of its obligations, or shall take any action in furtherance of the foregoing; or if Developer shall consent to the appointment of a receiver, or an answer proposing the adjudication of Developer as a bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, shall be filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within sixty (60) days from entry thereof, or if the Developer shall consent to the filing of such petition or answer; or

(g) If the Developer shall default under or breach any of the terms or conditions of any grant agreements entered into with the City, State or federal government providing subsidies to the Project or should Developer breach the affordability controls placed upon the Project by reason of said grant commitments and agreements, it shall be considered a default and/or breach of this Agreement.

8.02. Initial Remedy Upon Default. Except as otherwise provided in this Agreement, in the event of any default in or breach of this Agreement or any of its terms or conditions by

any party hereto or any successor to such party, such party (or successor) shall, within thirty (30) days of receiving written notice from another, proceed to commence to cure or remedy such default or breach. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within the time periods for cure set forth in this Agreement, or if there is no designated time for cure, within a reasonable time, the aggrieved party may, in addition to such other rights as specified in this Agreement, institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach.

8.03. Remedies in the Event of Termination of the Agreement. In the event that, prior to the conveyance of the Project to the Developer and in violation of this Agreement, the Developer (or any successor in interest) assigns or attempts to assign this Agreement or any rights in the Project or the Project, contrary to the provisions of this Agreement, or does not accept the Deed to the Project upon tender thereof by the City pursuant to this Agreement, and if any default or failure referred to in this Section 8.03 shall not be cured within thirty (30) days after the date of written demand by the City, then this Agreement, and any rights of the Developer or its assignee or transferee in this Agreement, or arising there from with respect to the City or the Project, shall, at the option of the City, be terminated and there shall be no further rights or obligations of the parties, except as expressly set forth in this Article VIII. In the event of such termination, the City shall terminate the Developer's designation as the Developer of the Project. and shall have the right to withdraw, to the extent possible, from a purchase agreement or condemnation proceeding heretofore undertaken. The Developer shall pay over to the City all costs and/or damages (including reasonable counsel fees) incurred by the City on account of the default of the Developer and/or arising out of or resulting from the withdrawal of the City from any purchase agreement and/or condemnation proceeding. The City shall have the right to apply to the aforementioned costs or damages incurred by the City as aforesaid, any funds of the Developer in the hands of the City at the time of such default and termination or returned to the City as the result of the City's termination or withdrawal from any condemnation action or purchase agreement entered into in connection therewith. In the event of a termination of this Agreement pursuant to this Section 8.03, upon the resale of those portions of the Project, the proceeds from the sale of such Project, as well as the consideration, if any, received by the City for those other portions of the Project, shall be applied as follows:

(a) First, to all reasonable costs and expenses incurred by the City, including but not limited to legal fees, salaries of personnel, and related expenses incurred by the City in connection with the acquisition, possession, management and resale of the Project; all taxes, assessments, and water and sewer charges with respect to the Project or any part thereof; any expenditures made or obligations incurred with respect to the acquisition, ownership and sale of the Project or any part thereof; and any amounts otherwise owed to the City by Developer and its successors or transferees in accordance with the terms of this Agreement; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the Developer's payment of the Purchase Price associated with the Project. Any balance remaining after such reimbursements shall be retained by the City as its property.

8.04. City's Remedies. Upon the occurrence of any Event of Default subsequent to the conveyance of the Project to the Developer and prior to the completion of the Project, subject to the rights of any mortgage holder as set forth in Sections 7.04 and 7.05 herein the City shall have the right at its sole and absolute opinion upon ninety (90) days' notice to Developer and any mortgagee of the Developer, to enter and take possession of the uncompleted portions of the Project and the Project (Uncompleted Portion). At the same time that the City enters onto and takes possession of the Uncompleted Portion, Developer shall execute and deliver a deed to the City for the Uncompleted Portion subject to the rights of any mortgage holder as set forth in Article V herein. Upon the occurrence of any such conveyance, this Agreement shall be deemed terminated and there shall be no further rights or obligations of the parties except for those rights reserved to a mortgage holder or as otherwise expressly set forth in this Article VIII. This provision shall be entered in the Deeds. Any vesting of title in the City under this Section 8.04 shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any mortgage permitted by this Agreement for the protection of the holders of such mortgage.

8.05. Resale of Uncompleted Portion. Upon the vesting in the City of the title to the Uncompleted Portion as provided in Section 8.04, the City shall, pursuant to its responsibilities under New Jersey law, use its best efforts to resell the Uncompleted Portion (subject to such permitted mortgage liens as may exist against the Uncompleted Portion): Such sale shall be made, as soon and in such manner as the City shall find feasible and consistent with the objectives of the Law, to a qualified and responsible party or parties, as determined by the City, who will assume the obligation of completing the Project or such other Improvements as shall be satisfactory to the City and in accordance with the uses specified for the Project in this Agreement and the Law. Upon any resale of the Uncompleted Portion, the proceeds thereof shall be applied:

(a) First, to all reasonable costs and expenses incurred by the City, including but not limited to legal fees, salaries of personnel, and related expenses incurred by the City in connection with the possession, management and resale of the Uncompleted Portion; all taxes, assessments, and water and sewer charges with respect to the Uncompleted Portion or any part thereof; any payments made or necessary to be made, to discharge any encumbrances or liens existing on the Uncompleted Portion at the time of the vesting of title thereto in the City or to discharge or prevent from attaching, or being made, any subsequent encumbrances or liens due to obligations, defaults, or acts of Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the completion of the Project or any part thereof on the Uncompleted Portion or any part thereof; and any amounts otherwise owed to the City by Developer and its successors or transferees in accordance with the terms of this Agreement; and

(b) Second, to reimburse the Developer, its successor or transferee, up to the amount equal to the Developer's actual costs associated with the Project, including land acquisition, engineering, planning, site improvement, marketing and other project development

costs, plus the reasonable value of all improvements constructed and paid for by the Developer. Any balance remaining after such reimbursements shall be retained by the City as its property.

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

8.07. Rights and Remedies Cumulative. The rights and remedies of the parties to the Agreement, whether provided by law or by the Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, or any obligation of the other party or any condition to its own obligation under the Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

## ARTICLE IX DUALITY OF TITLE

9.01. Marketable Title. In conveying the title to the Project by Deed to the Developer at the closing, the City shall convey such title as the Title Insurer will approve and insure at its regular premium and without special premium, subject to Permitted Exceptions defined in Section 9.02 herein.

9.02. Permitted Exceptions. The following are not objections to title, but rather, permitted title encumbrances (Permitted Exceptions) with respect to the Project:

(a) Covenants, conditions, building and use restrictions required by this Agreement or as specified in the Law, as they relate to the Project and the Final Site Plan;

(b) Any facts disclosed by the Survey provided the same do not materially or adversely affect the ability of the Developer to construct, operate and maintain the Improvements on the Project as contemplated by the Law;

(c) Title exceptions appearing on the Final Site Plan and according to this Agreement;

(d) Present and future statutes, laws, ordinances, regulations, restrictions, legal requirements and orders of any federal, state, county or municipal government or other public authority relating to the Project or use thereof, provided same do not prohibit the development of the Project in the manner contemplated by the Law;

(e) Statutory liens for real estate taxes not due and payable;

(f) Applicable local building and zoning laws and regulations;

(g) Covenants and restrictions of record and such further title defects not disclosed by an instrument of record as will not materially and adversely affect the ability of the Developer to construct, operate, and maintain the Project as contemplated by the Law;

(h) Surface conditions observable by a visible inspection of the Project and subsurface conditions affecting the Project not visible by inspection;

(i) The conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement;

(j) The provisions of the Law;

(k) Such other title exceptions as may be consented to or approved by Developer, or the Title Insurer in writing;

(l) The rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the parts of the Project next to the street or running to any building, house, structure or other improvement to the Project;

(m) The fact that some or all of the Project does not have access to or adjoin existing public rights-of-way, thoroughfares and/or streets;

(n) The statutory rights of any condemnee formerly holding an interest in and to the Project or any portion thereof; and

(o) Any riparian rights or interest of the State of New Jersey requiring a riparian grant or conveyance of riparian rights to the Project, and any other legal requirements of the State of New Jersey.

**ARTICLE X**  
**REPRESENTATIONS**

10.01. Representations of Developer. Developer represents and warrants to the City that this Agreement has been duly authorized, executed and delivered by Developer and, on the Effective Date will constitute a legal, valid and binding obligation of Developer enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditor's rights generally and subject to the availability of equitable remedies; and the execution and delivery of this Agreement by Developer and consummation of the transactions contemplated hereby does not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which Developer is a party or by which it is bound or the certificate of incorporation, by-laws, certificate of formation, operating agreement or partnership agreement of Developer, or any statute, rule, regulation, ordinance, order or decree in force as of the date hereof. Developer represents and warrants that it has obtained all necessary licenses, certifications and further that it will be qualified to do business in New Jersey on or after the Effective Date.

10.02. Representation of the City: The City represents and warrants to Developer that this Agreement has been duly authorized by virtue of a certain Ordinance, executed and delivered by the City and, on the Effective Date, will constitute a legal, valid and binding obligation of the City enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws affecting creditors' rights and subject to the availability of equitable remedies; and the execution and delivery of this Agreement by the City and consummation of the transactions contemplated hereby does not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which the City is a party or by which it is bound or any statute, rule, regulation, ordinance, order or decree in force as of the date hereof. In the event of a final non-appealable determination of a court of competent jurisdiction preventing the City from conveying the Project, or any portion thereof, to Developer, the Developer's sole remedy is the right of termination.

**ARTICLE XI**  
**ADDITIONAL CONTINGENCIES TO THE OBLIGATIONS TO CLOSE TITLE**

11.01. Conditions to City's Obligation. In addition to those contingencies stated elsewhere in this Agreement, the obligations of the City to convey fee simple title to the Project shall be subject to satisfaction of the following conditions:

(a) Developer shall have delivered to City that portion of the Purchase Price attributable to the conveyance of the Project ;

(b) Developer shall have satisfied the requirements of the Agreement documenting to the City's satisfaction that all financing and/or equity funding required for the construction of the Project has been obtained;

(c) All of the representations and warranties of the Developer contained in this Agreement shall have been true and correct in all material respects when made, and shall be true and correct in all material respects as of the date of the conveyance of the Project as if made at and as of that date;

(d) Developer shall have performed and complied in all material respects with the covenants and agreements required by this Agreement to be performed or complied with prior to the conveyance of the Project;

(e) Developer shall have received the Governmental Approvals required by this Agreement for the construction of the Project;

(g) With respect to any additional funds needed for the City's performance under this Agreement which are not provided by the Developer, the City shall have complied with all legal requirements for the allocation of such funds to the City by appropriate governmental authorities, and it is understood by Developer that the City's obligation to convey the Project is subject to and contingent upon the availability of such funds in accordance with applicable legal requirements; and

(h) There shall not exist at the date of conveyance of the Project any temporary restraining order, preliminary or final injunction, writ, decree, final order, ruling or decision of a court of competent jurisdiction or governmental authority restraining or preventing the consummation of any of the transactions contemplated hereby.

**ARTICLE XII**  
**PREPARATION AND APPROVAL OF**  
**PLANS AND SPECIFICATIONS FOR DEVELOPMENT**

12.01. City Approval of Preliminary Site Plan and Subdivision Plan. Developer, shall at its own cost and expense cause to be prepared by a licensed architect, surveyor and/or engineer of the State of New Jersey and submitted to the City a preliminary site plan for the construction of the Project consistent with the (Preliminary Site Plan) and separate metes and bounds description of the Project. The City will review and approve the Preliminary Site Plan, including the building orientation, architectural style and building materials to be used for the Improvements, and facilities for parking if required, as being in conformity with the Law and this Agreement. If planning or engineering concerns raised by the Developer dictate that revisions be made to the Preliminary Site Plan before submission of the same to the Planning Board, the revised Preliminary Site Plan shall be submitted to the City and the City shall have a period of fifteen (15) days after receipt thereof to approve the revised Preliminary Site Plan or to furnish to Developer in writing notice of any changes or modifications, and the reasons therefore, required to be made in order to render the same in conformity with the Law and this Agreement. If changes or modifications shall be required by the City, Developer shall incorporate such changes and modifications and furnish revisions to the City for approval within thirty (30) days after receipt of written notice thereof. Developer agrees that no site plan or application for subdivision approval, shall be filed with any public authority without the prior written approval of the City, it being agreed that the City has a vested interest therein.

12.02. Filing of Preliminary Site Plan and Subdivision Map. Within fifteen (15) days of the date of this Agreement, or, if applicable, within fifteen (15) days of the date the City has approved in writing any revised Preliminary Site Plan, Developer shall prepare and submit to the Planning Board and/or Jersey City Zoning Board of Adjustment all applications and supporting documents as shall be required to obtain approval of the Preliminary Site Plan (Preliminary Site Plan Approval) and, if necessary, preliminary and final approval of the Subdivision of the Project (the "Major Subdivision Approval" which together with the Preliminary Site Plan Approval shall be collectively referred to as the "Preliminary Site and Final Subdivision Approvals") in accordance with ordinances of the City and the Municipal Land Use Law (N.J.S.A. 40:55D - 1 et seq), as the same may be amended from time to time.

12.03. Failure to Obtain Preliminary Site and Final Subdivision Approvals. In the event that, within seventy-five (75) days from the date of submittal of all applications and documents required by Section 12.02 hereof, Developer has not received from the Planning Board and/or Jersey City Zoning Board of Adjustment the Preliminary Site and Final Subdivision Approvals in accordance with the approved Preliminary Site Plan and Major Subdivision Map, then at either party's election, upon written notice to the other, this Agreement may be terminated. Upon such termination, Developer shall furnish the City, without charge, reproducible copies of such available surveys, engineering and architectural studies, drawings, reports, or other pertinent data prepared by or for Developer with respect to the Project and the Project as Developer is legally entitled to convey.

It is hereby agreed by the parties that any failure to obtain the applicable Governmental Approvals within the time required by this Section 12.03, which is caused by the Planning Board and/or Jersey City Zoning Board of Adjustment or which involves mutual adjournment or extension of the hearing period of the applications for site plan approval or for subdivision approval by both the Developer and the Planning Board and/or Jersey City Zoning Board of Adjustment, shall not be construed as a breach of the performance time requirement of this Section 12.03. Developer's time constraint hereunder for acquiring the applicable Governmental Approvals shall be extended day for day with that agreed to by the Developer, as applicant, and the Planning Board and/or Jersey City Zoning Board of Adjustment only if the application then under consideration is consistent with the requirements of the Law and with all applicable legal requirements, but in no case shall it be extended for more than sixty (60) days beyond the initial mutual adjournment or extension of any such application with the Planning Board and/or Jersey City Zoning Board of Adjustment.

12.04. Approval of Construction Plans. Within one hundred fifty (150) days after receiving Preliminary Site Plan Approval from the Planning Board, Developer shall, at its own cost, cause to be prepared and submitted to the City the final Construction Plans of the Project for construction of the Improvements thereon. The City shall have a period of fifteen (15) days after receipt thereof to review and approve the final Construction Plans as being in conformity with the Law and this Agreement, and as being appropriate, in the City's reasonable exercise of judgment, in terms of building orientations, their placement on the Project and architectural styling and building materials to be used for the Improvements, and facilities for parking and structured parking as well as the locations on the Project, or to furnish to Developer in writing notice of any changes or modifications, and the reasons therefore, required to be made in order

to render the same in conformity with the Law and this Agreement. The City shall, if the final Construction Plans originally submitted conform to the provisions of the Law and this Agreement, approve in writing such Construction Plans, and no further filing by the Developer or approval by the City thereof shall be required except with respect to any change. Such Construction Plans shall, in any event, be deemed approved unless rejection thereof in writing by the City, in whole or in part, setting forth in detail the reasons therefor, shall be sent Developer within thirty (30) days after the date of their receipt by the City. If the City so rejects the final Construction Plans in whole or in part as not being in conformity with the Law or this Agreement, the Developer shall submit new or corrected final Construction Plans which are in conformity with the Law and this Agreement within thirty (30) days after receipt of written notification to the Developer of the rejection. The provisions of this Section 12.04 relating to approval, rejection, and resubmission of corrected Construction Plans hereinabove provided for with respect to the original Construction Plans shall continue to apply until the Construction Plans have been approved by the City; provided, that in any event the Developer shall submit final Construction Plans for the Project which are in conformity with the Law and this Agreement and shall receive the required building permits no later than two hundred fifteen (215) days after receiving Preliminary Site Plan Approval from the Planning Board.

12.05. Other Plans to be Submitted. The Developer shall, to the extent not shown on the Preliminary Site Plan, also submit the following plans to the City for its review and acceptance at the same time as it submits the Preliminary Site Plan and subdivision plan pursuant to Section 12.01 above:

(a) A plan showing the building, the site and site improvements, parking facility(ies), all elevations of the building(s), the exterior treatment of the building including color, type and texture of material(s) to be used, and a sample of the actual construction materials being used on all facades.

(b) A lighting plan demonstrating that all "on site" walkways, parking areas, and other areas accessible to pedestrians during the hours of darkness will be adequately lighted to insure pedestrian safety. Such plan will demonstrate the amount, placement, type and construction of the lighting.

(c) A staging of improvements plan, to the extent applicable, showing the order of proposed construction, including any temporary or interim construction or operating arrangements. This plan shall include the Developer's estimate for the timing any soil or environmental remediations and/or engineering and institutional controls of final site preparations, foundations, construction, landscaping, installation of drives, sidewalks, and completion of construction, and should furnish such information and data necessary to enable the City and the City to schedule any public improvements required.

(d) A plan showing the construction of all on-site roadways and streets and related facilities required by the Law, as amended, this Agreement and the Developer's Preliminary Site Plan as approved by the City and the Planning Board, or by the City in the reasonable exercise of its discretion.

(e) Such other plans as the City may from time to time reasonably require to promote the orderly redevelopment of the Project. The plans and drawings, specifications and proposed construction schedule referred to in this Article XII are hereinafter collectively called Construction Plans.

12.06. Time for Submission of Corrected Construction Plans.

(a). Except as provided in subparagraph (b) of this Section 12.06, the time within which the Developer shall submit any new or corrected Construction Plans shall not be later than thirty (30) days after the date Developer receives written notice from the City of rejection of Construction Plans referred to in the last such notice.

(b) The time within which the Developer shall submit corrected Construction Plans conforming to the City's requirements and stipulations as made by the latter upon its rejection, in whole or in part, of Developer's initial and/or subsequently revised Construction Plans shall be no later than thirty (30) days prior to the planned conveyance date established in Schedule C. The City approved Construction Plans must be on file and approved by the City Division of Buildings Office of the Construction Official or its successor before construction of the improvements by the Developer on the Project or any portion thereof

12.07. Time for City Action in Change in Construction Plans. The time within which the City may decline to approve any change to the Construction Plans proposed by Developer, shall be fifteen (15) days after the date of the City's receipt of notice of such change and a copy of the revised plan or plans.

12.08. Final Site Plan Approval. A Certificate of Occupancy issued by the City Construction Code Official is a prerequisite to the issuance of a Certificate of Completion by the City under this Agreement. Developer is required by the Law and this Agreement to obtain approval of the Final Site Plan from the City and, thereafter, the Planning Board (collectively, the "Final Site Plan Approval") prior to issuance of a Certificate of Occupancy in conformity with the Law, as amended, and ordinances of the City, and Certificate of Completion. Consequently, Developer shall be required to submit site plans for the Project as built that are final in nature and which reflect compliance with the Governmental Approvals and the Developer's Final Site Plan Approvals received from the City and the Planning Board. Any material deviations between the Final Site Plan must have been previously submitted by Developer to the City and received the prior written approval of the City as provided in the Law, as amended, and this Agreement.

12.09. Changes in Improvements to be Constructed. The Developer shall not be permitted to construct any Improvements on the Project other than those set forth as shown on the Preliminary Site Plan and Construction Plans, nor shall the Developer be permitted to make any additions, changes, alterations, substitutions of the Improvements to be constructed, other than field changes authorized by the City's Building Department which do not require further Planning Department approval or notation, without the prior written consent of the City after

review and approval by the City of the revised site and construction plans showing such changes, alterations, substitutions or modifications.

### ARTICLE XIII DEPOSIT

13.01. Amount. The Developer shall prior to or within seven (7) days of approval by the City of the Construction Plans as required by Section 12.04 and 12.06 deliver to the City a good faith deposit of \$ -0 - (Deposit) as security for the performance of the obligations of the Developer to be performed prior to the return of the Deposit to the Developer, or its retention by the City as liquidated damages in the event of a default by Developer, or its application on account of the Acquisition Costs, as the case may be, in accordance with the Agreement. The Deposit shall be deposited in an account of the City in a bank, trust company or other financial institution selected by it.

13.02. Interest. The City shall be under no obligation to pay or earn interest to the benefit of the Developer on the Deposit or on any other sum of money paid to the City pursuant to this Agreement.

13.03. Application to Acquisition Costs. In the event the Developer is not otherwise entitled to return of the Deposit pursuant to Section 13.05, the amount of the Deposit if paid in cash or by certified check may, at the option of the City, be applied on account of the Acquisition Costs.

13.04. Retention by City. Upon termination of the Agreement, the Deposit or the proceeds of the Deposit, if not theretofore returned to the Developer pursuant to Section 13.05, after such termination, shall be retained by the City as provided in this Agreement

13.05. Return to Developer. Upon termination of the Agreement, the Deposit shall be returned to the Developer by the City as provided in this Agreement. In the event this Agreement is not canceled by the Developer, the Deposit shall be returned upon the Developer's receipt of a Certificate of Completion pursuant to this Agreement.

### ARTICLE XIV PROJECT EMPLOYMENT AGREEMENT

14.01. Binding Agreements. The Developer and all agents and contractors associated with same shall enter into contracts with the City and comply with the Project Employment and Contracting Agreement and other Affirmative Action Policies as currently in effect, and as same may be amended from time to time.

### ARTICLE XV NOTICES AND DEMANDS

15.01. Manner of Notice. A notice, demand, or other communication required under this Agreement by either party to the other shall be considered given and delivered if it is

dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally at the addresses listed below for each party.

(a) In the case of the Developer, addressed to

Jersey City Episcopal Community Development Corp.  
514 Newark Avenue  
Jersey City, NJ 07306

(b) In the case of the City, addressed to the

Business Administrator  
City of Jersey City  
280 Grove Street  
Jersey City, New Jersey 07302

with a copy to the Director of Housing, Economic Development and Commerce.

(c) At such other addresses a party may, from time to time, designate in writing and mail to the other as provided herein.

#### ARTICLE XVI MISCELLANEOUS

16.01. City's Right to Engineering and Architectural Data. Upon termination of this Agreement pursuant to any provisions hereof, Developer shall furnish to the City without charge or fee, reproducible copies of all surveys, engineering and architectural studies, drawings, reports including those obtained by Developer through having performed soils testing and analysis in accordance with Section 2.06 hereof, and other data prepared by or for Developer with respect to the Project and the contemplated development thereof.

16.02. Force Majeure. It is agreed that the deadline stated herein for construction may be extended upon the written consent of the City, in its sole discretion and it shall be extended if completion of the construction of the Improvements is prevented by an event of force majeure, as defined hereunder, in which case any unexpired deadline shall be extended for the period of the enforced delay, as reasonably determined by the City provided that the Developer undertaking the improvement who seeks the benefit of this provision on force majeure shall, within ten (10) days after the beginning of any such enforced delay, have notified the City in writing, and of the cause or causes thereof, and has requested an extension for the period of the enforced delay. Compliance with municipal laws regulating land use and construction, any Legal requirements under any applicable environmental laws, as well as known NJDEP clearances, approvals, or permits typical of the development process and referred to in this Agreement, shall not be considered or construed as events of force majeure.

16.03. Right of Entry For Utility Service. The City reserves for itself, the City, and any public utility company, as may be appropriate, the unqualified right to enter upon the Project at any reasonable time for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Project boundary lines.

16.04. Developer Not To Construct Over Utility Easements. The Developer shall not construct any building or other structure or improvement on, over, or within the boundary lines of any easement for public utilities described or referred to in Section 16.03 herein, unless such construction is provided for in such easement or has been approved by City and the City. If approval for such construction is requested by the Developer, the City shall use its best efforts to assure that such approval shall not be withheld unreasonably.

16.05. Maintenance. The Developer shall be responsible for maintenance and security of the Project subject to this Agreement subsequent to the City acquiring title to same until such time as Developer no longer owns or leases the Project on parts thereof

16.06. Neighboring Properties. The Developer shall, within applicable legal requirements, cooperate with the City in rendering adjoining properties compatible with the Project, including but not limited to the laying out, design and construction of all site roadway streets and related facilities in the Project .

16.07. Equal Employment Opportunity. The Developer agrees that during the construction of Improvements:

(a) The Developer will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Developer will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Developer agrees to post in conspicuous places, available to employees and applicants for employment, notices setting for the provisions of this nondiscrimination clause and any such notices provided by the City which are consistent therewith.

(b) The Developer will, in all solicitations or advertisements for employees placed by or on behalf of the Developer, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The Developer will comply with all rules, regulations, and relevant orders of the Secretary of Labor of the State of New Jersey.

(d) Subcontractors and suppliers to the Project shall include qualified and certified minority enterprises.

(e) The obligations in this Section shall be binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by the Developer shall so provide.

16.08. Entire Agreement. This Agreement constitutes the entire Agreement of the parties and supersedes the prior or contemporaneous writings, discussions, or agreements between the parties with respect to the subject matter hereof and may not be modified, or amended except by a written agreement specifically referring to this Agreement signed by all the parties hereto.

16.09 Titles of Articles and Sections/Headings. Any titles of the several Parts and Sections of the Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The Section headings contained in this Agreement are inserted for reference purposes only and shall given no weight in the construction of this Agreement. None of the headings or titles of Articles and Sections are intended to limit or define the contents of the Sections and Articles.

16.10. Counterparts. This Agreement is executed in several counterparts, each of which shall constitute one and the same instrument.

16.11. Severability. If any provision of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, such determination shall not affect the remaining provisions of this Agreement, all of which shall remain in full force and effect.

IN WITNESS WHEREOF, the City has caused this Agreement to be duly executed in its name and behalf by the Chairman of its Board of Commissioners, and its seal to be hereunto duly affixed and attested by its Secretary, and the Developer has caused this Agreement to be duly executed in its name and behalf by its sole member, on or as of the day first above written.

ATTEST:

CITY OF JERSEY CITY

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ROBERT BYRNE  
City Clerk

---

JOHN KELLY  
Business Administrator

ATTEST:

---

Edith Gallimore, Secretary

---

Peter Van Brunt, President

Secretary

STATE OF NEW JERSEY )

) SS:

COUNTY OF HUDSON )

**BE IT REMEMBERED**, that on \_\_\_\_\_ 2010, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared **ROBERT BYRNE**, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the **CITY CLERK** of the City of Jersey City, a body corporate and politic, and the body corporate and politic named in the within instrument; that **JOHN KELLY** is the **BUSINESS ADMINISTRATOR** of said body corporate and politic; that the execution, as well as the making of this instrument, has been duly authorized by a proper ordinance of the Municipal Council of the body corporate and politic; that deponent well knows the seal of the body corporate and polities; and that the seal affixed to said instrument is the proper corporate seal and was thereto affixed and said instrument signed and delivered by **JOHN KELLY**, the Business Administrator, as and for the voluntary act and deed of said body corporate and politic, in presence, who thereupon subscribed his name thereto attest in witness.

ROBERT BYRNE, City Clerk

Sworn and subscribed to  
before me this) \_\_\_\_\_ day  
of \_\_\_\_\_, 2010.

\_\_\_\_\_

Notary Public

STATE OF NEW JERSEY)

) SS:

COUNTY OF HUDSON)

**BE IT REMEMBERED**, that on \_\_\_\_\_, 2010, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared \_\_\_\_\_, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is the Secretary of Jersey City Episcopal CDC, a corporation of the State of New Jersey and the corporation named in the within instrument; that Peter Van Brunt is the President of the corporation; that the execution, as well as the making of this instrument, has been duly authorized by a proper resolution of the Board Directors of the corporation; that deponent well knows the seal of the corporation; and that the seal affixed to the instrument is the proper corporate seal and was thereto affixed and the instrument signed and delivered by \_\_\_\_\_ the President, as and for the voluntary act and deed of the corporation, in presence, who thereupon subscribed his name thereto a attesting witness.

Sworn & Subscribed to before me

This \_\_\_\_\_ day of \_\_\_\_\_ 2010

\_\_\_\_\_  
Notary Public of New Jersey

My Commission Expires:

## SCHEDULE "A"

### Project

### Van Brunt Affordable Housing Development

#### LEGAL DESCRIPTION

**PROPERTY: 34-40 VAN NOSTRAND AVENUE Block 1464, Lots 16, C, B, A**

**BEGINNING** at a point on the easterly sideline of Van Nostrand Avenue, said point being distant 230.46 feet southerly from the corner formed by the intersection of the said easterly sideline of Van Nostrand Avenue and the southerly sideline of Ocean Avenue; thence running

- 1) North 54 degrees 21 minutes 18 seconds East, 107.83 feet to a point, thence
- 2) South 35 degrees 38 minutes 42 seconds East, 75.00 feet to a point, thence
- 3) South 54 degrees 21 minutes 18 seconds West, 107.21 feet to a point on the aforesaid easterly sideline of Van Nostrand Avenue, thence
- 4) Northerly along said sideline, North 36 degrees 07 minutes 00 seconds West, 75.00 feet to the **POINT AND PLACE OF BEGINNING**.

The above description contains 8,064 square feet or 0.185 acres of land.

The above description is written in accordance with a survey prepared by **Pronesti Surveying, Inc.** dated April 6, 2009.

## **SCHEDULE "B"**

### **PROJECT DESCRIPTION**

#### **VAN BRUNT AFFORDABLE HOUSING DEVELOPMENT**

The Van Nostrand Affordable Housing Development project is the Scattered Site Homeownership Initiative. The Jersey City Episcopal CDC plans to construct five Two-Family Homes for sale to low-to moderate-income first time homebuyers with an attached affordable rental unit which will be restricted to low-to-moderate income families. The site locations included in this project are as follows:

- 34 Van Nostrand Avenue
- 36 Van Nostrand Avenue
- 38 Van Nostrand Avenue
- 40 Van Nostrand Avenue

This project received Planning Board Approval in October 2009, was awarded to a contractor in April 2010 and received Building Permits on August 13, 2010. The project is shovel ready.

## SCHEDULE " C "

**Van Brunt Homeownership Project  
34-40 Van Nostrand Avenue**

### CONSTRUCTION TIMETABLE

#### JERSEY CITY EPISCOPAL COMMUNITY DEVELOPMENT CORPORATION

<u>TASK</u>	<u>COMPLETION DATE</u>
1. Survey	April 2010
2. Completion of Environmental Assessment	March 2010
3. Obtain Site Plan/Government Approvals	October 2009
4. Evidence of Mortgage Financing/ Equity commitments to City	October 2010
5. Closing of Title to Property	October 2010
6. Obtain Construction Permits from Bldg Dept	August 2010
7. Commence Construction	October 2010
8. Complete Construction	June 2011

The parties hereto acknowledge that the above timetable are outside dates and shall in no way prohibit the Developer from completing the items set forth prior to the respective deadlines.