

DEMONSTRATION PROJECT PLAN
SWANSEA MALL
262 SWANSEA MALL DRIVE
SWANSEA, MA

DRAFT

DRAFT

Swansea Redevelopment Authority
Town of Swansea
August 2021

Table of Contents

1. Introduction	3
A. Swansea Mall Project	4
B. History	5
2. Project Site	6
A. Site Conditions	7
B. Regional and Neighborhood Context	7
C. Community Engagement and Vision	8
3. Objectives	9
A. Eliminate Blight	9
B. Transformative Development	11
4. Demonstration Project Plan	12
A. Legal Basis for Demonstration Project under Massachusetts Law	12
B. Demonstration Project Phases	15
C. Financial Plan	15
 EXHIBIT A: PROJECT SITE PLAN	 16
 EXHIBIT B: PHOTOS OF SITE	 17
 EXHIBIT C: LISTING OF ECR'S	 18
 EXHIBIT D: VOTE TO ESTABLISH THE SWANSEA REDEVELOPMENT AUTHORITY (THE "SRA"), AND A COPY OF THE SRA ARTICLE AND VOTE	 19
 EXHIBIT E: DECLARATION OF PURPOSE AND POLICY WITH RESPECT TO THE FORMER SWANSEA MALL PROPERTY	 20
 EXHIBIT F: ORDER OF TAKING	 21

1. Introduction

The property is located at 262 Swansea Mall Drive, Swansea, MA (the “Property”), and is a portion of the property formerly owned by the Carlyle Swansea Partners LLC (the “CSP”), who had purchased the larger property in 2001 for \$39,420,000. In 2014, CSP subdivided that property and sold 20 acres to the JMAR Realty, LLC for \$10,675,000, and a Site Plan showing the Property and the Wal-Mart property is attached hereto as Exhibit A.

The purpose of this Demonstration Project Plan (the “Demonstration”) is to implement a plan for the elimination of blight at the Property and the surrounding area pursuant to M.G.L. c.121B s. 46(f), which the Swansea Redevelopment Authority (the “SRA”) will carry out in concert with the Town of Swansea (the “Town”) and the Swansea Board of Selectman (the “Board”), which will demonstrate the extent to which the relatively unintrusive act of removing development restrictions can be leveraged to eliminate urban blight. This approval and implementation of the Demonstration will not only eliminate blight but also enable the Town to meet a public need through the potential siting of a new Town Hall and also provide for economic development as a revitalized mixed use development facility. The Demonstration presents a unique manner of eliminating urban blight through targeted eminent domain takings of certain title easements with covenants and restrictions (the “ECRs”) that have to date posed an obstacle to private redevelopment. The SRA expects that the modification of the ECRs will spur private development of the Property without the need for expensive and intrusive governmental action involving physical takings, clearance and redevelopment. The SRA will report its results, and if successful, the Demonstration can become a model for other urban renewal authorities or other governmental agencies to follow, allowing a more nimble, inexpensive and nonintrusive manner of spurring private economic activity to remove urban blight.

A. Swansea Mall Project

The Demonstration is an appropriate demonstration project as defined under Section 46(f) of Chapter 121B. The project includes the modification of the ECRs as title restrictions over the property to eliminate barriers to commercial activity that has resulted in vacancies and

urban blight in the mall. In addition, the proposed development project potentially includes a new Town Hall integrated into a comprehensive reuse plan, which could provide a useful example for other communities throughout the Commonwealth.

The site is unquestionably blighted and decadent, consisting of an outdated and mostly vacant property improved by non-code compliant buildings and parking lots and roads in dangerous disrepair, and photographs of the Property are attached hereto as Exhibit B. The SRA is authorized to conduct demonstrations designed to eliminate the blighted conditions.

The Demonstration could serve as a test for possible application elsewhere in Town and in other communities throughout the Commonwealth. Boston, Cambridge and Somerville have used the demonstration project approach recently.

The Demonstration involves a different, new and improved manner of eliminating urban blight. The project will focus with surgical precision on the deleterious impact that the ECRs have had on the Property and surrounding area, allowing the SRA to restore productive commercial activity to a large blighted, decadent and substandard area without the need for large scale takings of physical land and associated clearance and redevelopment. This unique approach can set an example for other communities and demonstrate that large scale urban revitalization can occur in some settings without the need for the public authority to incur the expense of acquiring the fee interest in the blighted property or engaging in clearance or redevelopment activities and without physical intrusion into private land ownership associated with fee takings. Other communities could adopt the approach in situations where legal impediments, such as title restrictions in the instant case, have prevented commercial development resulting in urban blight.

Additionally, the Demonstration contemplates the use of a portion of the Property for a new Town Hall. In the Cobble Hill Center case, the Supreme Judicial Court recognized that the Somerville Redevelopment Authority's combination of uses proposed on the site which included the construction of a new public safety building alongside anticipated private commercial development presented a sufficiently unique approach to the elimination of

urban blight to constitute a “demonstration.” The Swansea Mall Project proposes a similar demonstration, in which the new Town Hall will be combined with private redevelopment at the Property, which will require thoughtful collaboration among the SRA, the Board and the Town.

The Town intends to prepare a detailed study and report of the results of this Demonstration, including the efficacy of the removal of the ECR restrictions toward commercial development and elimination of urban blight and the success of the public/private partnership with respect to the redeveloped site and publish the report in order to share the results of this Demonstration with communities throughout the Commonwealth.

B. History

The Swansea Mall originally opened with two anchor stores: Sears and Edgars Department Store and a 4-screen movie theater. A third and fourth anchor, national discount department store Caldor and Rhode Island-based department store Apex, were added as part of a major expansion around 1980. Two out-parcels were located just south of the original Mall, populated by Toys “R” Us and Service Merchandise.

In 2001, a Wal-Mart replaced the previous Caldor location after its purchase in 1999. Apex closed the same year. Wal-Mart moved out of the Mall and into its own building in September, 2013. The previous Wal-Mart wing of the mall was then demolished. As part of the purchase of land from CSP, Wal-Mart secured a 30 year restriction from CSP, which stated that “Buildings in the Shopping Center shall be used for commercial purposes of the type normally found in a retail shopping center including, without limitation, financial institutions, service shops, offices and retail stores.” This restriction along with other covenants and easement restrictions (the “ECR’s”) on the remaining Property precluded a myriad of uses and future build out possibilities without first securing approval from Wal-Mart. Specifically prohibited uses consisted of, but were not limited to, such things as cafeterias, call centers, theatres, bowling alleys, businesses selling or serving alcohol, night clubs or billiard parlors. In addition, Wal-Mart has specific exclusivity restrictions which

restricts and/or prohibits gas stations, pharmacies, dollar stores and grocery stores. (See Exhibit C for a complete listing of ECRs).

In December, 2013, CSP sold off the two southern out-parcel buildings, a Toys “R” Us and Dollar Tree, to Gator Investments, and announced that it was putting the Property up for sale. In January, 2014, the mall cut ties with its management company and announced that it would be bringing those functions in-house.

On December 28, 2016, Sears announced that it would be closing its store at the Property, which left Macy's as its only anchor.

On January 9, 2019, Macy's announced it would be closing its store at the Property on March 31, 2019. Efforts to replace the anchor stores at the Property were unsuccessful. The ECRs have exacerbated the Property's decline by making it impossible to target numerous potential tenants for uses that were be prohibited/restrict by the ECRs, including cafeterias, call centers, theaters, bowling alleys billiard parlors, night clubs or other places of recreation and amusement, gas stations, warehouse clubs, pharmacies, discount stores, dollar stores, grocery stores or any combination of the foregoing uses. On March 31, 2019, the Mall closed for good.

In May 2019, the Property was sold to the present owners, GF Funding Swansea, LLC, Swansea Holdings, LLC, SMI Holdings, LLC and Ocean Investment Holdings, LLC (the “Owners”) for \$4,540,000.

2. Project Site

The project site consists of 63.97 acres of land (Parcel 7-0-1 and Parcel 7-15) and approximately 600,000 square feet of former retail space. It is serviced by water, gas, electric and telecommunications.

As noted earlier, the Property is owned and being developed. The Owner also owns Parcels 7-12 and 7-13 which contain 32.08 acres of land across the street from the

Property, which contains a wastewater treatment plant that services the wastewater needs of the Property and abutting 20 acre Walmart property. Swansea has been concerned about the decline of the Swansea Mall for some time. In late 2018, the Board published a study entitled “Economic Development Strategy-Town of Swansea-The Redevelopment of the Swansea Mall and the Route 6 Corridor.” The economic development strategy was followed by numerous Board and other Town Meetings.

A. Site Conditions

Throughout the last nine years, as result of the decline in Mall tenancy, the physical property has deteriorated substantially and has contributed to decline of the site and neighboring properties. This trend has proven impossible to halt and reverse while the ability to replace lost tenants has been hamstrung by the existence of the ECRs, prohibiting/restricting numerous uses in the Mall. The entrances, ring road around the Mall and parking lots are covered with pot holes and heaving asphalt and are in a dangerous state of disrepair and a detriment to the development of the Property for any type of use. The lack of sustained property maintenance and deferred building maintenance has caused the Property to become blighted and decadent. The Owners refuse to make the necessary repairs and maintenance while the ECRs prevent potential uses of the Property that would make it economically viable.

B. Regional and Neighborhood Context

Historically the Mall has been the Town of Swansea’s largest commercial tax revenue generator. In 2002, Mall tax revenue greatly contributed to the Town’s fiscal health, and the Property’s owners and tenants paid \$1,048,861 in annual tax revenue. By 2021 that amount has reduced to \$62,585.00, with Swansea having lost hundreds of thousands of dollars in annual tax revenue due to the overall decline of the mall. During the same time period, in addition to losing hundreds of jobs associated with retail and service stores at

the Mall, other businesses abutting or located close to the mall also suffered economic decline as a result of less consumer visitation to the Mall.

The impact of this decline is easy to quantify. Whereas, in 2014 prior to the property subdivision for Wal-Mart, the Swansea Mall had an assessed value of \$44,049,000 and the 2021 assessed value of the Mall itself was \$2,189,900.

B. Community Engagement and Vision

For many years, the Town has been frustrated by the ECRs accelerating the downward spiral of the Property into its present blighted condition. In 2018, the Town decided to take action, and the Board published a study entitled “Economic Development Strategy-Town of Swansea-The Redevelopment of the Swansea Mall and the Route 6 Corridor”(the “Economic Development Study”). Following the publication of the Study, the Board held numerous meetings to determine a strategy to remove the ECR’s and return the Property to the economic engine status it once enjoyed. In connection with the same, in May, 2019, the Town Meeting voted to establish the Swansea Redevelopment Authority (the “SRA”), and a copy of the SRA article and vote is attached hereto as Exhibit D. Thereafter, the SRA held numerous meetings, culminating in its August 5, 2020 “Declaration of Purpose and Policy with Respect to the Former Swansea Mall Property” (the “Declaration”), copy of which is attached hereto as Exhibit E. Despite the pandemic, the SRA has continued to meet and pursue the goals outlined in the Declaration. In connection with the same, in October 2019, the SRA hired Attorney Ken Fiola, the former head of the Fall River Redevelopment Authority, to advise it regarding how to take the ECR’s by eminent domain. In connection with the same, in 2019, the SRA hired the law firm of Kopelman and Paige to advise it regarding eminent domain matters and to draft a taking order (the “Taking Order”) to take the ECR’s by eminent domain, and a copy of the Taking Order is attached hereto as Exhibit F. Furthermore, in January 2020, the SRA hired real estate appraiser Donald P. Bouchard to advise it regarding any damages suffered as a result of the Taking Order, and Mr. Bouchard rendered his opinion regarding the damages suffered as a result of the Taking Order on July 1, 2021.

3. OBJECTIVES

A. ELIMINATE BLIGHT

Over the last seven years, the Swansea Mall has precipitously declined across all metrics. While this has in part been in keeping with a national trend for shopping malls; the problem has been exacerbated by the Property owner's inability to respond to the loss of tenancy as a result of the ECRs, which have prevented new businesses from coming in and replacing lost tenants. Since the ECRs have prevented businesses from coming in and filling vacant space, an entire shopping mall is left to decay and transformed into a blighted, decadent site which is detrimental to the safety, health, welfare and sound growth of a community.

The conditions required by Chapter 121B are known as conditions of "blighted open area." The common understanding of blighted open area includes settings such as broken or boarded-up windows, and/or a lack of maintenance, such as peeling paint or unmowed lawns.

Blighted Open Area is defined as a predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop it soundly through the ordinary operations of private enterprise by reason of the existence of ledge, rock, unsuitable soil, or other physical conditions, or by reason of the necessity for unduly expensive excavation, fill or grading, or by reason of the need for unduly expensive foundations, retaining walls or unduly expensive measures for waterproofing structures or for draining the area or for the prevention of the flooding thereof or for the protection of adjacent properties and the water table therein or for unduly expensive measures incident to building around or over rights-of-way through the area, or for otherwise making the area appropriate for sound development, or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, division of the area by rights-of-way, diversity of ownership of plots, or inadequacy of transportation facilities or other utilities, or by reason of tax and special assessment delinquencies, or because there has been a substantial change in

business or economic conditions or practices, or an abandonment or cessation of a previous use or of work on improvements begun but not feasible to complete without the aids provided by this chapter, or by reason of any combination of the foregoing or other condition; or a predominantly open area which by reason of any condition or combination of conditions which are not being remedied by the ordinary operations of private enterprise is of such a character that in essence it is detrimental to the safety, health, morals, welfare or sound growth of the community in which it is situated.”

For the purposes of a demonstration plan, blighted open is defined as those conditions that cannot be addressed by the private market alone – in other words, public action is needed to help address those conditions.

The origins of urban renewal lay in large projects, funded by the federal government, in the 1950s and 1960s. These projects cleared large areas of land, demolishing buildings and relocating people from what were seen as overcrowded and inadequate housing units. In many communities, this type of clearance did not welcome or even involve public input. Instead, municipalities made the planning decisions and undertook the clearance themselves.

Today’s focus is on creating incentives for the private market to invest. These incentives can include changes to the regulatory environment, investments in public infrastructure, elimination of restrictive easements, covenants and restrictions and/or help with financing. The Demonstration can show that in the modern era, large projects involving clearance of large areas, massive demolition and relocation is not necessary to spur significant growth and restoration of economic activity.

The purpose of this Demonstration is to identify the current conditions that prevent such private investment, determine the needs and goals of the project and what impact the incentives may have on the larger on the Town of Swansea as a whole and define those actions that will create incentives for the private market, over time, to address the existing conditions.

The predominant current condition preventing private investment is the presence of the ECRs, preventing any private actor from utilizing the Property in a manner that will relieve its current blighted condition. With a free hand to bring new economic activity to the Property, private actors can restore economic activity to the Property, bring new jobs to the Town, increase its tax base, and replace the vacant, boarded-up Mall with a new, vibrant, bustling center of economic activity. The SRA has determined that in order to achieve this result, it is necessary for the ECR's to be modified to remove the restrictions that are preventing private economic activity from removing the blighted condition.

B. TRANSFORMATIVE DEVELOPMENT

It is unlikely that the entire site will be used for standard retail uses, which are presently the only uses allowed under the ECRs. The Owners have had interest from various potential tenants such as warehouse/distribution facilities, grocery stores, urgent care providers and an apartment complex, all of which would serve varying needs of the Town and the surrounding communities but which are all presently prohibited by the ECRs.

At the July 26, 2021 meeting of the Swansea Redevelopment Authority (SRA), in response to due diligence and review of the April 15, 2021 issued Municipal Town Officers --Property Search Town of Swansea, MA Request for Proposal (RFP), voted to recommend that the Swansea Board of Selectman and the Town of Swansea support the proposal submitted by SM Management LLC to consolidate and locate offices of the Town Hall, the Town Hall Annex and the Council on Aging to 262 Swansea Mall Drive, Swansea, MA.

This recommendation is in keeping with the 2018 "Economic Development Strategy-Town of Swansea-The Redevelopment of the Swansea Mall and the Route 6 Corridor." and the need to revitalize the shuttered and blighted Swansea Mall. In addition to a long standing need to rehabilitate, replicate or replace the Town Hall, the Town Hall Annex and the Council on Aging, the siting of these offices and their associated activities at the

Swansea Mall site will help streamline the efficiency and delivery of governmental services and greatly enhance the overall level of economic activity within the proposed redevelopment of the Swansea Mall.

4. DEMONSTATION PLAN OBJECTIVES

A. LEGAL BASIS FOR DEMONSTRATION PLAN UNDER MASSACHUSETTS LAW

As the urban renewal agency for the Town of Swansea, the Swansea Redevelopment Authority plays an important role in the redevelopment of blighted areas. The SRA exercises powers available to such agencies under Chapter 121B of the Massachusetts General Laws.

The SRA's authority under Chapter 121B includes, among other powers, the power to:

- (i) declare that an area is a substandard, decadent, and/or blighted;
- (ii) prepare plans for the redevelopment of such areas; and
- (iii) to carry out revitalization projects for the "prevention and elimination of slums and urban blight."

Within urban renewal areas, the SRA is authorized to prepare urban renewal plans that call for the undertaking of urban renewal projects aimed at eliminating what the law has defined as decadent, substandard and blighted open areas. The SRA is authorized "to engage in or contract for the construction, reconstruction, alteration, remodeling or repair of any clearance, housing, relocation, urban renewal or other project which it is authorized to undertake or parts thereof." M.G.L. c. 121B §11(f).

Section 46(f) of Chapter 121B provides the SRA with special authority to adopt and develop "demonstration projects" *outside of urban renewal areas*. Section 46(f) reads, in part: "an urban renewal agency shall have all the powers necessary or convenient to carry out and effectuate the purposes of relevant provisions of the General Laws, and

shall have the following powers in addition to those specifically granted in section eleven or elsewhere in this chapter: ... (f) to develop, test and report methods and techniques and carry out demonstrations for the prevention and elimination of slums and urban blight.”

The Massachusetts Supreme Judicial Court has recently affirmed the authority of redevelopment authorities to utilize demonstration plans to accomplish broad redevelopment goals, including through the use of the eminent domain power set out in M.G.L. c. 121 §11(d). Cobble Hill Center LLC v. Somerville Redevelopment Authority, 487 Mass. 249 (2021).

The terms “slums” and “urban blight” are not defined in c. 121B, but §1 does define the related terms “substandard”, “decadent” and “blighted open”:

- ***Blighted open:*** “*a predominantly open area which is detrimental to the safety, health, morals, welfare or sound growth of a community because it is unduly costly to develop it soundly through the ordinary operations of private enterprise by reason of the existence of ledge, rock, unsuitable soil, or other physical conditions, or by reason of the necessity for unduly expensive excavation, fill or grading, or by reason of the need for unduly expensive foundations, retaining walls or unduly expensive measures for waterproofing structures or for draining the area or for the prevention of the flooding thereof or for the protection of adjacent properties and the water table therein or for unduly expensive measures incident to building around or over rights-of-way through the area, or for otherwise making the area appropriate for sound development, or by reason of obsolete, inappropriate or otherwise faulty platting or subdivision, deterioration of site improvements or facilities, division of the area by rights-of-way, diversity of ownership of plots, or inadequacy of transportation facilities or other utilities, or by reason of tax and special assessment delinquencies, or because there has been a substantial change in business or economic conditions or practices, or an abandonment or cessation of a previous use or of work on improvements begun but not feasible to complete without the aids*

provided by this chapter, or by reason of any combination of the foregoing or other condition; or a predominantly open area which by reason of any condition or combination of conditions which are not being remedied by the ordinary operations of private enterprise is of such a character that in essence it is detrimental to the safety, health, morals, welfare or sound growth of the community in which it is situated."

- ***Decadent:*** *"an area which is detrimental to safety, health, morals, welfare or sound growth of a community because of the existence of buildings which are out of repair, physically deteriorated, unfit for human habitation, or obsolete, or in need of major maintenance or repair, or because much of the real estate in recent years has been sold or taken for nonpayment of taxes or upon foreclosure of mortgages, or because buildings have been torn down and not replaced and under existing conditions it is improbable that the buildings will be replaced, or because of a substantial change in business or economic conditions, or because of inadequate light, air, or open space, or because of excessive land coverage or because diversity of ownership, irregular lot sizes or obsolete street patterns make it improbable that the area will be redeveloped by the ordinary operations of private enterprise, or by reason of any combination of the foregoing conditions."*
- ***Substandard:*** *"any area wherein dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities or any combination of these factors, are detrimental to safety, health or morals."*

Further, although the term, "demonstration" is not defined in c. 121B, the Supreme Judicial Court has defined it as follows: "demonstration requires the testing or development of a different, new, or improved means or method of accomplishing a specific statutory purpose. In this context, that purpose is the elimination of blight... The statute in its entirety makes clear that demonstrations under § 46 (f) must be focused on innovative ways to 'prevent[] and eliminat[e] ... slums and urban blight.' Therefore, in

the context of § 46 (f), a demonstration is a test or development of a different, new, or improved means or method of eliminating blight.” Cobble Hill Center, *supra* at 257-261.

C. DEMONSTRATION PROJECT PHASES

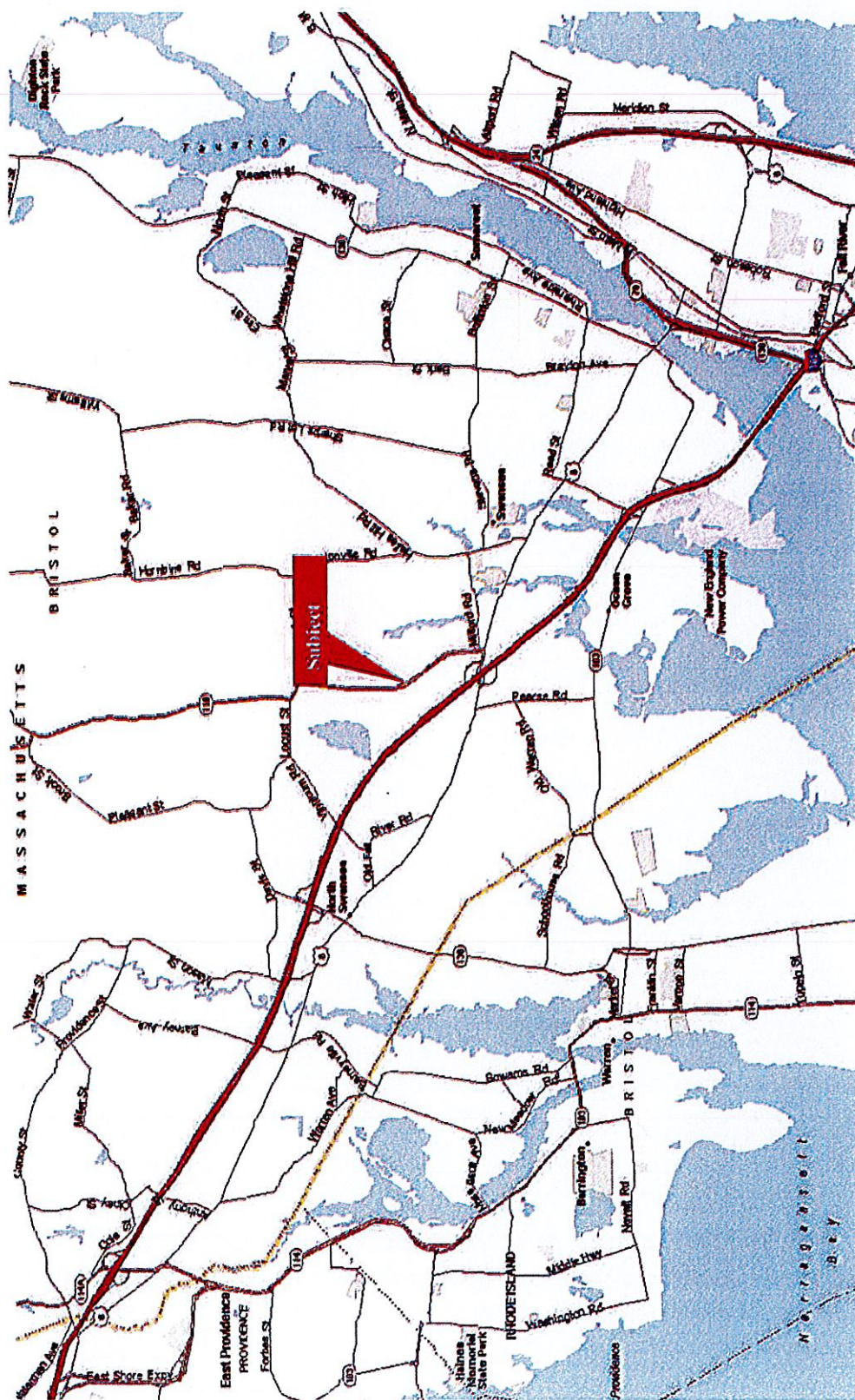
It is anticipated that implementation of the Project will include five phases. Successful implementation will require close coordination between the SRA, the Board, the Town and the Owners. These phases will likely include:

1. Demonstration Project Plan approval.
2. Approval of the Taking Order.
3. Approval of Donald B. Bouchard’s appraisal.
4. Recording of the Taking Order.
5. Project implementation.

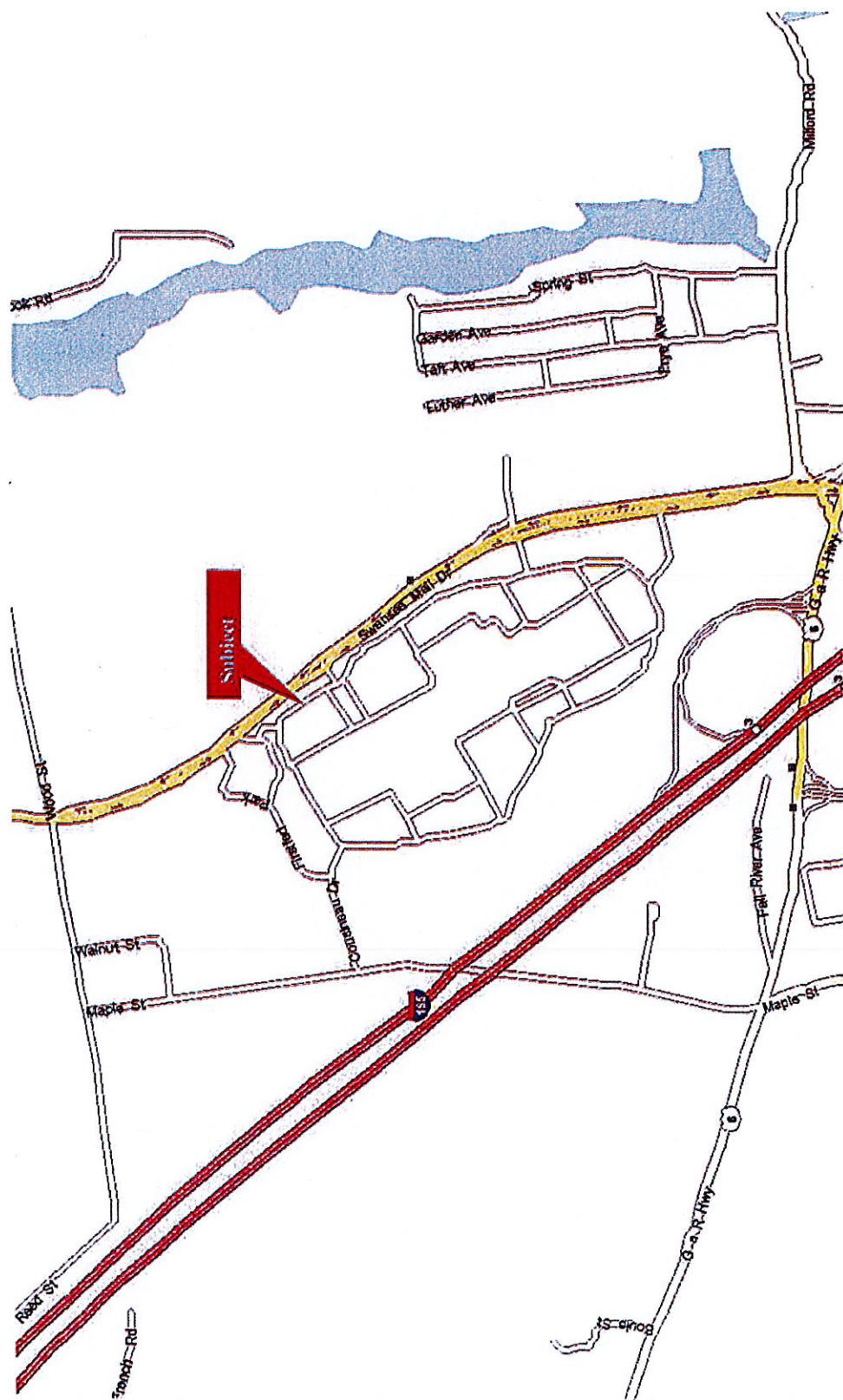
D. FINANCIAL PLAN

The Project may integrate public uses, potentially the Town Hall , along with private uses. As a result, the Project will likely include a mix of funding sources. In addition, the Owners and the Town have signed a Development Agreement pursuant to which the Owners have agreed to indemnify the Town against any and all costs related to the Demonstration Project.

EXHIBIT A
PROJECT SITE PLAN



Location Map

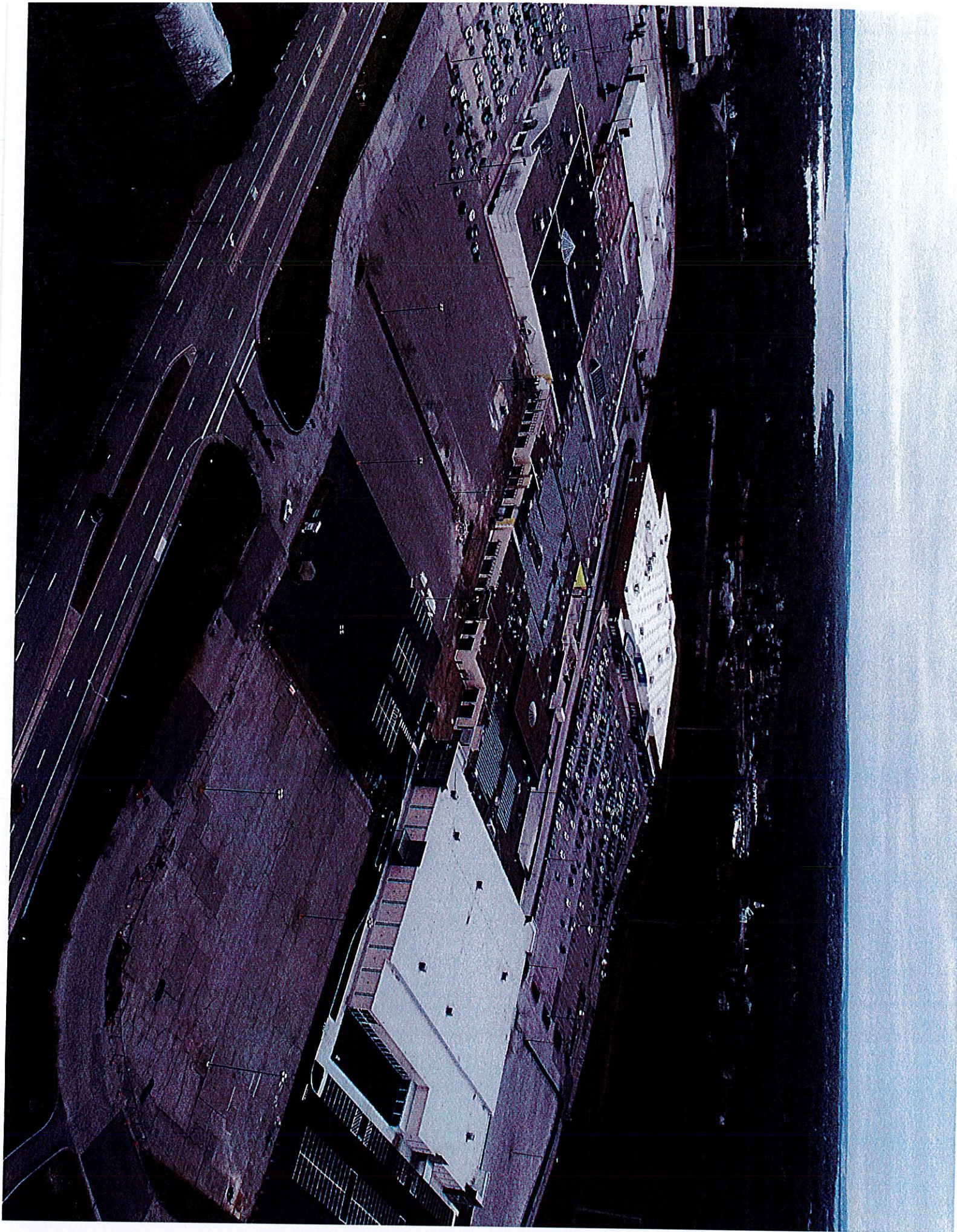


Neighborhood Map

EXHIBIT B
PHOTOS OF SITE

Aerial of Neighborhood





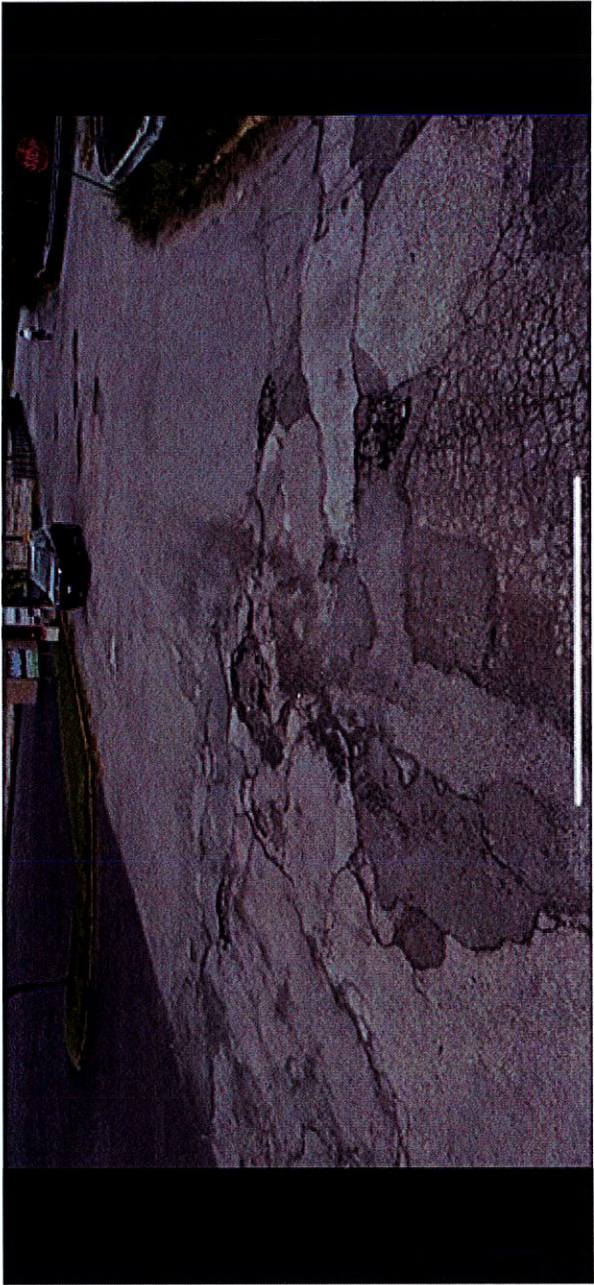




EXHIBIT C
LISTING OF ECR'S

SWANSEA REDEVELOPMENT AUTHORITY

Breakdown of ECRs - Deletions and Changes and Their Potential Impacts

Reference Line	Section of Agreement	Action	Language	Practical Impact on Developer Parcel	Practical Impact on Walmart Tract Parcel	Potential Basis for Damages	Impacts
1	1.1	Deletion in its entirety	Defines Building Area	No Longer required definition with the elimination of Common Areas	No Longer required definition with the elimination of Common Areas	None Noted	De Minimis
2	1.2	Deletion in its entirety	Defines Common Area	Allows owner of each tract to develop additional building area which once would have required consent of the other party	Allows owner of each tract to develop additional building area which once would have required consent of the other party	None Noted	De Minimis
3	1.4	Deletion in its entirety	Converts to Common Area, structures not used or leased	Allows owner of each tract to develop additional building area which once would have required consent of the other party	Allows owner of each tract to develop additional building area which once would have required consent of the other party	None Noted	De Minimis
4	2	Deletion in its entirety	Defines use restrictions	Allows owner of each tract to develop additional building area which once would have required consent of the other party	Allows owner of each tract to develop additional building area which once would have required consent of the other party	None Noted	De Minimis
5	3(a) (i)	Partial Deletions	Deletion of language that prevents the development of a gas station on either parcel by either owner without permission of the other... Continues to prohibit the use of a traditional pharmacy on the developer parcel except for the dispensing of prescriptions to patients at medical facilities that may be built on the site in the future.	Allows both parties the ability to add uses previously prohibited	Walmart has always had the right to construct a gas station via the exclusive use restriction	Allows owner of each tract to develop additional building area which once would have required consent of the other party	De Minimis
6	3 (a) (b)	new Language Addition	Language addition allowing use, installation, repair, maintenance and replacement of utilities for mutual benefit; allow for installation of three new light poles.	Neutral	Neutral	None Noted	De Minimis alteration of the ECRs - each party benefits and is protected
7	4.1	Partial Deletion	Eliminates 30 foot height restriction for new structures	Neutral	Neutral	Allows owner of each tract to develop additional building area which once would have required consent of the other party	De Minimis alteration of the ECRs - each party benefits and is protected
8	4.2	Deletion in its entirety	Restricts new buildings except those which shall be constructed in the building area as defined	Positive and allows expansion on Developer lot in areas formerly defined as Common Area	Positive and allows expansion on Walmart lot in areas formerly defined as Common Area	Allows owner of each tract to develop additional building area which once would have required consent of the other party	De Minimis alteration of the ECRs - each party benefits and is protected

Reference Line	Section of Agreement	Action	Language	Practical Impact on Developer Parcel	Practical Impact on Walmart Tract Parcel	Potential Basis for Damages	Impacts
9	5.1	Deletion in its entirety	Grants non-exclusive cross easements for roadways, walkways, ingress, egress, parking and loading and for use by customers	Confusing	Confusing	Confusing	May possibly require language clarification to insure both parties retain reasonable cross-easement benefits. This should be easily clarified
10	5.2(1)	Deletion in its entirety	Discusses Customer parking	Neutral	Neutral	None Noted	De Minimis
11	5.2(2)	Deletion in its entirety	Discusses Employee parking	Neutral	Neutral	None Noted	De Minimis
12	5.2(3)	Partial Deletion	Deletes contingent use of common areas	Neutral	Neutral	None Noted	Should benefit both
13	5.3	Deletions and additions	Partial Deletion of reference to utility installations	Neutral	Neutral	None Noted	De Minimis
14	5.4	Partial Deletion	Deletes "hereafter"; second sentence redefines cross-easements for both parties allowing for current and future installation, use, maintenance, and replacement of water drainage systems	Neutral	Neutral	None Noted	Does this require a map reference on a site plan?
15	5.5	Deletion in its entirety	Common area tract lighting requirement	Will allow the owner of each tract to optimize site lighting, timing and energy efficiency without the need to obtain approval from the other tract	Neutral	None Noted	De Minimis
16	6.1	Deletion in its entirety	Restricts changes to Common Area	The change cedes control of each tract to its owner without the need to obtain permission as to how the site and common areas are designed or maintained.	The change cedes control of each tract to its owner without the need to obtain permission as to how the site and common areas are designed or maintained.	None Noted	De Minimis
17	6.2	Deletion in its entirety	Eliminates individual tract parking ratios	Will allow the owner of each tract to optimize parking efficiency and overall parcel utilization.	Will allow the owner of each tract to optimize parking efficiency and overall parcel utilization.	None Noted	De Minimis
18	6.3	Deletion in its entirety	Eliminates individual tract parking ratios	Will allow the owner of each tract to optimize parking efficiency and overall parcel utilization.	Will allow the owner of each tract to optimize parking efficiency and overall parcel utilization.	None Noted	De Minimis

Exhibit C

Development Restrictions – Extinguished and Amended

Section of Agreement, as Amended	Terms	Amended or Terminated
Section 1.1.	Restriction on “Building Areas,” as defined therein.	Need an amended definition
Section 1.2.	Definition of “Common Areas”	Need an amended definition
Section 1.4.	Conversion of “Building Areas” as defined therein, to “Common Areas,” as defined therein	Terminated
Section 2.	Prohibition of cafeterias, call centers, theatres, bowling alley, billiard parlor, night club or other place of recreation to amusement, and prohibition on service of alcoholic beverages.	Terminated
Section 2.	Restriction on any activity in the “Common Areas,” as defined therein, other than the primary purpose of that area and the Wastewater Treatment Plant use.	
Section 3(a) (i) and (iii), and the terms “The Gas Station Exclusive” and “The Pharmacy Exclusive” on lines 11 and 12)	Restriction on uses and competing businesses; prohibitions on gas dispensing facilities or pharmacies.	Terminated
Section 3. Subsections (a) and (b)	<p>Easement; amendment to non-exclusive easements granted to both parties allowing the installation, use, maintenance, repair, and replacement of utility services and distribution systems for the benefit of the owner of each “Tract,” as defined therein, across the other owners “Tract” to further restrict the same on the “Wastewater Treatment Plant Lots,” as defined therein; and</p> <p>To include within said non-exclusive easement the powering of three (3) lighting poles and specified locations and any conduit necessary to power the same.</p>	?
Section 4.1. (2nd 3rd and 4th sentences)	Restrictions on the design and construction of buildings; thirty-six foot (36’) height limitation and prohibition on metal exteriors.	Terminated

Section 4.2.	Restriction on buildings outside of the "Building Areas," as defined therein.	Terminated
Section 5.1.	Easement; non-exclusive easements granted to both parties allowing the agents, customers, invitees, licensees, tenants, and employees to pass over, through, and around the "Walmart Tract" and the "Developer Tract," as defined therein.	??? Not sure if this can be deleted
Section 5.2. (1) and (2)	Covenant to use reasonable efforts to ensure customers and employees do not park on "Common Areas" or on the other's Tract, as defined therein.	Terminated
Section 5.2. (3), first sentence	Covenant permitting the use of "Common Areas," as defined therein, for any purpose not specifically permitted so long as said use does not unreasonably interfere with the primary purpose of the "Common Areas."	?
Section 5.3.	Easements; non-exclusive easements granted to both parties allowing the installation, use, maintenance, repair, and replacement of utility services and distribution systems for the benefit of the owner of each "Tract," as defined therein, across the other owners "Tract." Existing services and systems to remain.	Need Amendment
Section 5.3. (3rd sentence)	Restriction on installing utilities within any buildings or structures within the Building Areas on the other Party's Lot.	Terminated
Section 5.4.	Easements; non-exclusive easements granted to both parties allowing the installation, use, maintenance, repair, and replacement of water drainage systems for the benefit of the owner of each "Tract," as defined therein, across the other owners "Tract," along with the right to discharge surface water runoff across portions of either tract. Existing systems to remain.	Need amendment
Section 5.5	Covenant requiring each party to keep the "Common Area," as defined therein, located within its "Tract," as defined therein, illuminated each day from dusk until dawn.	Terminated
Section 5.5 (2nd sentence)	Covenant requiring Tracts to be illuminated regardless of the type of use being made of such Tract.	Terminated
Section 6.1	Prohibition on changing the arrangement of the Common Areas in a manner inconsistent with the provisions of the Agreement.	Terminated (should it be amended instead?)

Section 6.2	Covenant requiring Wal-Mart to maintain a certain "Parking Ratio" on the Wal-Mart Tract.	Terminated
Section 6.3	Covenant requiring Developer to maintain a certain "Parking Ratio" on each Tract in the Developer Tract.	Terminated

H:\SWANSEA MALL\MISC\Swansea-Swansea draft Order_of_Taking_ECRs 6 15 21.doc

EXHIBIT D
VOTE TO ESTABLISH THE SWANSEA
REDEVELOPMENT AUTHORITY (THE “SRA”),
AND A COPY OF THE SRA ARTICLE AND VOTE

EXHIBIT E
DECLARATION OF PURPOSE AND POLICY
WITH RESPECT TO THE FORMER SWANSEA
MALL PROPERTY

SWANSEA REDEVELOPMENT AUTHORITY
DECLARATION OF PURPOSE AND POLICY
WITH RESPECT TO THE FORMER
SWANSEA MALL PROPERTY

The Swansea Redevelopment Authority ("SRA") hereby adopts this declaration of purpose and policy ("Declaration").

WHEREAS, the SRA is a public body politic and corporate authorized to transact business and exercise powers under Chapter 121B of the General Laws, as reflected in the Certificate of Formation issued by the Secretary of the Commonwealth on March 9, 2020 pursuant to G.L. c. 121B, §4; and

WHEREAS, the SRA is charged with redeveloping and improving substandard, decadent, and blighted areas in the Town of Swansea; and

WHEREAS, the SRA may exercise the power of eminent domain pursuant to G.L. c. 121B, §§ 11 and 46; and

WHEREAS, the SRA has identified property in the Town of Swansea ("Town"), located at 262 Swansea Mall Drive, as shown on a plan recorded with the Fall River Registry of Deeds at Book 158, Page 32, and commonly referred to as the Swansea Mall Property (the "Property"), which in its present form is decadent and blighted, and the redevelopment of which would benefit the Town and its residents by increasing the Town's tax base, fostering economic activity, and creating jobs on land currently vacant and/or underutilized; and

WHEREAS, said Property is currently subject to certain restrictions and easements that prevent or substantially hinder the redevelopment and beneficial use of said land.

NOW, THEREFORE, the SRA hereby declares its intention to exercise its powers of eminent domain with respect to such easements consistent with the following procedures:

1. Policy. It shall be the goal of the SRA to encourage, aid, foster, support, incentivize, and facilitate the redevelopment and productive usage of the Property by the most socially and economically beneficial means possible. The SRA shall pursue this goal with certain approved policies in mind and with specific target objectives in mind, including but not limited to:
 - a. Private parties shall be responsible for and bear the primary expense and burden of all redevelopment of the Property;
 - b. Private parties will submit requests to the SRA for support in these efforts, which request shall contain sufficient information and details to allow the SRA to fully deliberate and consider the matter at an open meeting pursuant to G.L. c. 30A, §§18-25, as amended and as further suspended, supplemented, amended or modified by the Executive Order of the Governor of The Commonwealth of

Massachusetts Suspending Certain Provisions of the Open Meeting Law, Chapter 30A, §20 dated March 12, 2020 (the "Executive Order"));

- c. The SRA will identify measures it can take to aid the redevelopment and productive use of the Property proactively,
- d. The SRA will make efficient use of its resources by strategically allocating same in a manner that will obtain the greatest social and economic benefit for the Town with the least expenditure;
- e. The existing rights of all private parties, abutters, and stakeholders shall be preserved to the greatest extent possible;
- f. The diminishment or taking of any interest in land shall only be pursued after public deliberation, a public hearing, input from and negotiation with relevant stakeholders, and consideration of all economic factors;
- g. The SRA shall exercise its powers under Chapter 121B for clearly defined purposes and in pursuit of established objectives, which shall at minimum include an understanding of the type of development or business activities that are reasonably likely to exist as a result of such exercise of the SRA's powers;
- h. Local businesses and employment of local residents will be prioritized in all SRA sponsored or aided redevelopment efforts;
- i. Sound planning practices will be followed with respect to all redevelopment efforts, which shall include, but not be limited to, sustainable development, business and housing diversity, comprehensive planning, smart growth principals, and multi-modal transportation; and
- j. Long-term growth strategies and plans for the Property will be developed and pursued.

The enumeration of any policy or principle herein shall not be construed to limit or constrain the powers of the SRA, but to guide its actions with respect to the Property and to further the goal of enabling the redevelopment and productive use of the Property.

2. Hearings. The SRA will conduct public hearings pertaining to the potential redevelopment of the Property consistent with the requirements of the Open Meeting Meeting Law, G.L. c. 30A, §§18-25, as amended and as further suspended, supplemented, amended or modified by the Executive Order, which hearings will focus on the Property's (1) former use, and the causes that led to the decline or discontinuance of that use; (2) current use and state of repair; (3) future use or uses, and which use or uses would provide the greatest social and economic benefit to the Town, region, and the residents thereof; (4) barriers to the redevelopment of the Property and means of addressing such barriers in the most economic and efficient manner; and (5) other factors, issues, and considerations deemed relevant to the efficient, and successful redevelopment of the Property. The information obtained in such hearings shall form the basis of the SRAs future actions and the SRA's development and approval of a demonstration and/or urban renewal plan.

3. Research/Development. The SRA will study the economic and business environment that exists in the Town, that led to the discontinuance of the former use of the Property, and that may prove successful in the future and use such information to guide its activities in relation to the Property in the future. The SRA will also seek information pertaining to existing restrictions on the use of the Property, including, but not limited to, environmental regulations, zoning requirements, and easements attached thereto, and the need to satisfy, reduce, release, remove, or otherwise alter or accommodate such restrictions to provide for the redevelopment of the Property with the least expense to the SRA and interference with existing rights. Such research will be used to conduct cost-benefit analyses of all SRA actions in relation to the Property, and guide the SRA in its efforts to support redevelopment of the Property.
4. Valuation. The SRA will work with its consultants and consult with Town officials to obtain valuations of the property, interests therein, and other information or records relevant to a comprehensive understanding of the Property and its future prospects. The SRA will also obtain independent assessments of the value of the property and of any and all easements attached to the Property. The SRA will work with all stakeholders to determine which portions of the Property are most valuable and appropriate for development, what barriers exist to the redevelopment of any portion of the Property, and how the SRA can most efficiently aid, foster, or incentivize said redevelopment. The SRA will engage in good faith negotiations with the holders of any and all easements deemed substantial barriers to the redevelopment of the Property and attempt to obtain the friendly transfer of same for fair market value.
5. Negotiation. The SRA will work with the owner(s) of any and all easements to preserve, ensure, or establish new means of ingress and egress to affected properties and structures, and to minimize disruptions to existing and future commercial activities on and around the Property, and will hold public hearings as necessary and appropriate to this end. The SRA will aid and serve abutters to the Property in preserving, maintaining, and improving their properties and business activities to the same extent the SRA aids and serves the private parties involved in the ownership and leasing of the Property. The SRA will exercise all of its powers equitably and for the purpose of providing a public benefit and spurring economic activity, and will not favor any individual property or private party in relation to its efforts to help redevelop the Property.
6. Economic Development. The SRA will obtain development plans and certain redevelopment commitments from the owners of the Property prior to the exercise of any powers or the expenditure of any public funds for the purposes contemplated by this Declaration. Such plans and commitments may include, but shall not be limited to, architectural and consultant engagements, construction plans, condominium declarations, loan or mortgage documents, commitments to create affordable housing

and housing for the elderly or disabled, permit applications and/or approvals, and any other plan or agreement necessary to determine the appropriateness of the SRAs exercise of its powers under Chapter 121B and deemed consistent with the purpose and intent of this Declaration. Where appropriate and feasible, the SRA will obtain written agreements from the private developer involved in the redevelopment of the Property providing for their commitment and intent with respect to any particular course of action.

7. Approval. The exercise of the SRA's powers shall comply fully with the provisions of Chapter 121B, and any and all rules and regulations the SRA may promulgate in the future, including the development of planning documents and quantum of vote requirements. The SRA shall not permanently bind itself to any particular project or course of action, but may set short and long-term planning goals that may be amended and revised from time to time. The approval of any short- or long-term planning goal, this Declaration, or amendments to either, shall follow sufficient deliberation and public hearings to allow the SRA to make a well-informed decision, and shall be approved by a majority of the Board. Meetings and hearings may be conducted without a sufficient number of SRA members to bind the SRA, however, the exercise of the SRA's powers, the adoption of short- or long-term plan, or the firm commitment to any course of action must be approved by a majority of the Board.
8. Support Staff and Service. To the extent appropriate and as resources permit, the SRA may hire clerks, grant-writers, and other administrative and professional staff to help it carry out its core functions, its powers under Chapter 121B, and this Declaration. The SRA may engage consultants, engineers, planners, appraisers, attorneys, and any other professionals it deems necessary and appropriate to achieve the goals of urban renewal, redevelopment, and this Declaration. The SRA shall comply with all provisions of G.L. c. 30B, if and when applicable, to the procurement of such services, and shall not be bound to seeking or accepting the lowest bid or proposal in the procurement of such services.
9. Funding. The SRA will proactively seek all appropriate sources of funding, including but not limited to allocations, grants, awards, borrowing, and the issuance of bonds. The SRA may hire a grant-writer if doing so is deemed economically efficient for the SRA. The issuance of any and all bonds shall be conducted consistent with the provisions of G.L. c. 44. The SRA will seek to leverage existing sources and funds to minimize the need for borrowing.
10. Amendment. This Declaration may be amended, up to and including rescission, by majority vote of the members of the SRA.

Signatures to Follow

Approved, this 10TH day of August, 2020.

Swansea Redevelopment Authority,

By its Members,

Susan Hedar

[Signature]

Sine Weyland

Paul Treloar

EXHIBIT F
ORDER OF TAKING