

**CITY OF SOUTH AMBOY**

**RESOLUTION**

**WHEREAS**, the City of South Amboy Redevelopment Agency (the "Agency") was created by Ordinance of the Council of the City of South Amboy for the purpose of organizing, directing and monitoring efforts to "redevelop" certain areas to be designated within the boundaries of the City; and

**WHEREAS**, it is necessary for the Agency to hold regularly scheduled meetings at the South Amboy Redevelopment Offices located at 140 North Broadway, South Amboy, New Jersey;

**NOW, THEREFORE, BE IT RESOLVED** by the City of South Amboy Redevelopment Agency on this third day of December, 2020, that the following list of dates and times for the City of South Amboy Redevelopment Agency's 2021 Meetings is hereby approved:

DATE	TIME
Thursday, January, 7 2021	7:30 P.M.
Thursday, February 4, 2021	6:30 P.M.
Thursday, March 4, 2021	6:30 P.M.
Thursday, April 1, 2021	6:30 P.M.
Thursday, May 6, 2021	6:30 P.M.
Thursday, June 3, 2021	6:30 P.M.
Thursday, July 1, 2021	6:30 P.M.
Thursday, August 5, 2021	6:30 P.M.
Thursday, September 2, 2021	6:30 P.M.
Thursday, October 7, 2021	6:30 P.M.
Thursday, November 4, 2021	6:30 P.M.
Thursday, December 2, 2021	6:30 P.M.



Kevin F. Meszaros, Chairman

Attested to:

  
Kelly Wolff, Secretary

Meeting Date: 12/3/2020

Member:	Aye	Nay	Abstain	Absent
Kevin Meszaros				
Anthony Conrad				
Zusette Dato				
Dave Kales				
Camille Tooker				
Tony Gonsalves				
Frank Milatta				

**RESOLUTION OF THE SOUTH AMBOY REDEVELOPMENT AGENCY DESIGNATING AMBOY MAIN STREET INDUSTRIAL URBAN RENEWAL, LLC AS THE REDEVELOPER OF PROPERTY IDENTIFIED ON THE TAX MAPS OF THE CITY OF SOUTH AMBOY AS BLOCK 160, LOT 1.03 AND APPROVING A REDEVELOPMENT AGREEMENT THEREWITH**

**WHEREAS**, the City of South Amboy in the County of Middlesex, New Jersey (the “**City**”) is authorized under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”), to determine whether certain parcels of land within the City constitute an area in need of redevelopment and to adopt redevelopment plans therefor; and

**WHEREAS**, the City previously designated the property identified as Block 160, Lot 1.03 on the City’s tax maps (the “**Project Site**”) as an area in need of redevelopment under the Redevelopment Law and is subject to a redevelopment plan known as the Broadway/Main Street Redevelopment Plan (the “**Redevelopment Plan**”); and

**WHEREAS**, on July 15, 2020, the City adopted Ordinance No. 08-2020 to, among other things, amend the Redevelopment Plan to permit light industrial uses, and to provide associated bulk standards therefor, applicable to the Project Site; and

**WHEREAS**, the Agency is acting as the redevelopment entity for the purpose of implementing the Redevelopment Plan; and

**WHEREAS**, Amboy Main Street Industrial Urban Renewal, LLC (the “**Redeveloper**”) is a joint venture consisting of New South Amboy Development Co., LLC, the owner of the Project Site, and WIP South Amboy, LLC; and

**WHEREAS**, the Redeveloper proposes to redevelop the Project Site by constructing thereon an approximately 152,100 square foot warehouse facility with approximately 45 loading positions and space to store approximately 32 trailers (the “**Project**”); and

**WHEREAS**, the South Amboy Redevelopment Agency (the “**Agency**”) has been designated by the City Council as the “redevelopment entity” responsible for implementing and carrying out the Redevelopment Plan pursuant to the Redevelopment Law, N.J.S.A. 40A:12A-4; and

**WHEREAS**, after consideration of the need of the City to develop the Project on the Project Site, the Agency has determined that the proposal which has been submitted by the Redeveloper best serves the overall interests of the City in terms of financial, social and land use benefits to be derived by the City, within an acceptable timeframe for development and completion of the Project; and

WHEREAS, the Agency has determined that the Redeveloper possesses the proper qualifications, financial resources and capacity to implement and complete the Project in accordance with the Redevelopment Plan and all other applicable laws, ordinances and regulations; and

WHEREAS, in order to effectuate the Project, the Agency has determined to enter into a Redevelopment Agreement with the Redeveloper (the "**Redevelopment Agreement**").

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of the Agency (the "**Board**") that:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Board hereby approves the Redevelopment Agreement attached hereto as **Exhibit A**, and the Chairperson is hereby authorized to execute said agreement in substantially the form attached hereto, subject to such additions, deletions, modifications or amendments deemed necessary by the Chairperson in his discretion in consultation with counsel, which additions, deletions, modifications or amendments do not alter the substantive rights and obligations of the parties thereto, and to take all other necessary and appropriate action to effectuate the foregoing agreements.
3. Upon execution of the Redevelopment Agreement, the Redeveloper shall be designated as the "redeveloper" of the Project Site, pursuant to the Redevelopment Agreement, the Redevelopment Plan and the Redevelopment Law.
4. This resolution shall take effect immediately.

  
\_\_\_\_\_  
Kevin F. Meszaros, Chairman

Attested to:

  
\_\_\_\_\_  
Kelly A. Wolff, Secretary



Meeting Date: November 12, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			✓			
Zusette Dato	✓		✓			
Camille Tooker		✓	✓			
Tony Gonsalves			✓			
Frank Milatta			✓			
Dave Kales			✓			
Anthony Conrad			✓			

## Kelly A. Wolff

---

**From:** Kevin P. McManimon <KMcManimon@MSBNJ.COM>  
**Sent:** Tuesday, November 10, 2020 12:57 PM  
**To:** Kelly A. Wolff  
**Cc:** southamboyredevelopment@gmail.com; CCoughlin@njrcmlaw.com; Business Administrator; Kevin P. McManimon  
**Subject:** FW: SARA - Woodmont  
**Attachments:** SARA - Memo re Woodmont RDA [11-9-20] 4835-1389-4353 v.1.docx; RDA - Ownership Disclosure Exhibit - Amboy Main Street.pdf; Woodmont Project Concept Plan .pdf; South Amboy - Woodmont - Redevelopment Agreement [10-29-20] 4814-4770-1966 v.4.doc

**Sensitivity:** Private

Hi Kelly – please see attached memorandum, along with 2 exhibits that go with the Woodmont Redevelopment Agreement.

- Concept Plan – this will be Exhibit 1 to the Redevelopment Agreement
- Ownership Disclosure Exhibit – this will be Exhibit 5 to the Redevelopment Agreement (note that at the top it read “Exhibit B” – ignore that please; this will also be Exhibit B to the Financial Agreement Application)
- Form of Financial Agreement – this will be Exhibit 6 to the Redevelopment Agreement

Note that Exhibits 2, 3 and 4 are incorporated into the Word version of the Redevelopment Agreement, which is attached here again for your convenience.

Please let me know if you have any questions. Otherwise, please circulate this among the Commissioners.

Please also add that the developer expects the project to create approximately 125 construction jobs at prevailing wage and approximately 50-75 permanent jobs.

Kevin P. McManimon, Esq.

McMANIMON, SCOTLAND & BAUMANN, LLC

75 Livingston Avenue

Roseland, NJ 07068

p (973) 622-4869

f (973) 712-1440

kmcmanimon@msbnj.com

www.msbnj.com

TO: ERIC CHUBENKO

CC: GLENN SKARZYNSKI, BUSINESS ADMINISTRATOR  
CRAIG COUGHLIN, ESQ., SARA GENERAL COUNSEL

FROM: MCMANIMON, SCOTLAND & BAUMANN, LLC

SUBJECT: WOODMONT-JINGOLI PROJECT

DATE: NOVEMBER 9, 2020

---

This memorandum summarizes the terms of the proposed Redevelopment Agreement (the “**Agreement**”) for the Woodmont-Jingoli warehouse project (the “**Project**”):

- Article I - Definitions – this Article defines terms that are used throughout the Agreement.
- Article II – Description of Project – the Project is generally defined in the Whereas clause, but this Article expands on the defined term.
- Article III – Financial Obligations – this Article outlines certain financial obligations, such as Redeveloper’s agreement to fund an escrow account to cover costs incurred by the Agency and the City in connection with the Project. It also sets forth the payment terms of the \$342,225 Redevelopment Fee and it provides that the Redeveloper may apply, to the City, for a PILOT.
- Article IV – Environmental Compliance – this Article provides that the Redeveloper is responsible for complying with applicable Environmental laws and regulations.
- Article V – Construction of Project – this Article sets forth certain specific requirements of the Redeveloper in connection with the construction of the Project, such as construction of the Project in accordance with a particular schedule, construction in accordance with the applicable Redevelopment Plan and site plan approval and the obligation to relocate utilities, if necessary. It also provides that the Redeveloper will use 100% union labor for the construction of the Project.
- Article VI – Project Oversight – this Article gives SARA the right to convene meetings with the Redeveloper to discuss the status of the Project and to demand written progress updates from the Redeveloper.

93230-019 768071-1

- Article VII – General Development Requirements – this Article provides, generally, that the Redeveloper must construct the Project in accordance with certain construction standards and comply with applicable laws relating to materials used in constructing the Project.
- Article VIII – Governmental Approvals – this Article lays out the process by which the Redeveloper must get approvals for the Project and the requirement to include SARA in such process.
- Article IX – Representations and Warranties – in this Article, the Redeveloper and SARA make representations and warranties to each other. This is standard in a contract like this, to give each party comfort that the other party has the right to enter into the Agreement. The Redeveloper will also record, in the Middlesex County Clerk's office, a Declaration of Covenants and Restrictions that limit its ability to sell the property until it completes the Project.
- Article X – Intentionally Omitted - we used another agreement as the foundation document for this Agreement. The foundation Agreement contained an Article that is not relevant to this Project, so we omitted it here.
- Article XI – Certificates of Occupancy and Completion – this Article obligates the Redeveloper to pursue getting Certificate of Occupancy for the Project and requires SARA to issue a Certificate of Completion when the Project is completed. The Certificate of Completion will be a recordable document, which will discharge the Declaration of Covenants and Restrictions described above.
- Article XII – Transfers – this Article limits the Redeveloper's ability, without SARA's consent, to sell or convey its interest in the property or Project, except in certain specific circumstances. For example, the Redeveloper may give a construction lender a mortgage interest in the property to secure a construction loan for the Project.
- Article XIII – Redeveloper Indemnification/Insurance – this Article requires the Redeveloper to indemnify SARA in the event it is sued in connection with the Project. It also requires the Redeveloper to carry certain kinds of insurance during the construction of the Project.
- Article XIV – Mortgage Financing – this Article provides that the Redeveloper may arrange for construction loan financing and secure the loan with a mortgage on the property. This Article also lays out the rights of the mortgage holder in the event the Redeveloper fails to complete the Project.
- Article XV – Events of Default and Remedies – this Article identifies occurrences or circumstances that would constitute a Default by the Redeveloper or the City, as well as the remedies available to each party in

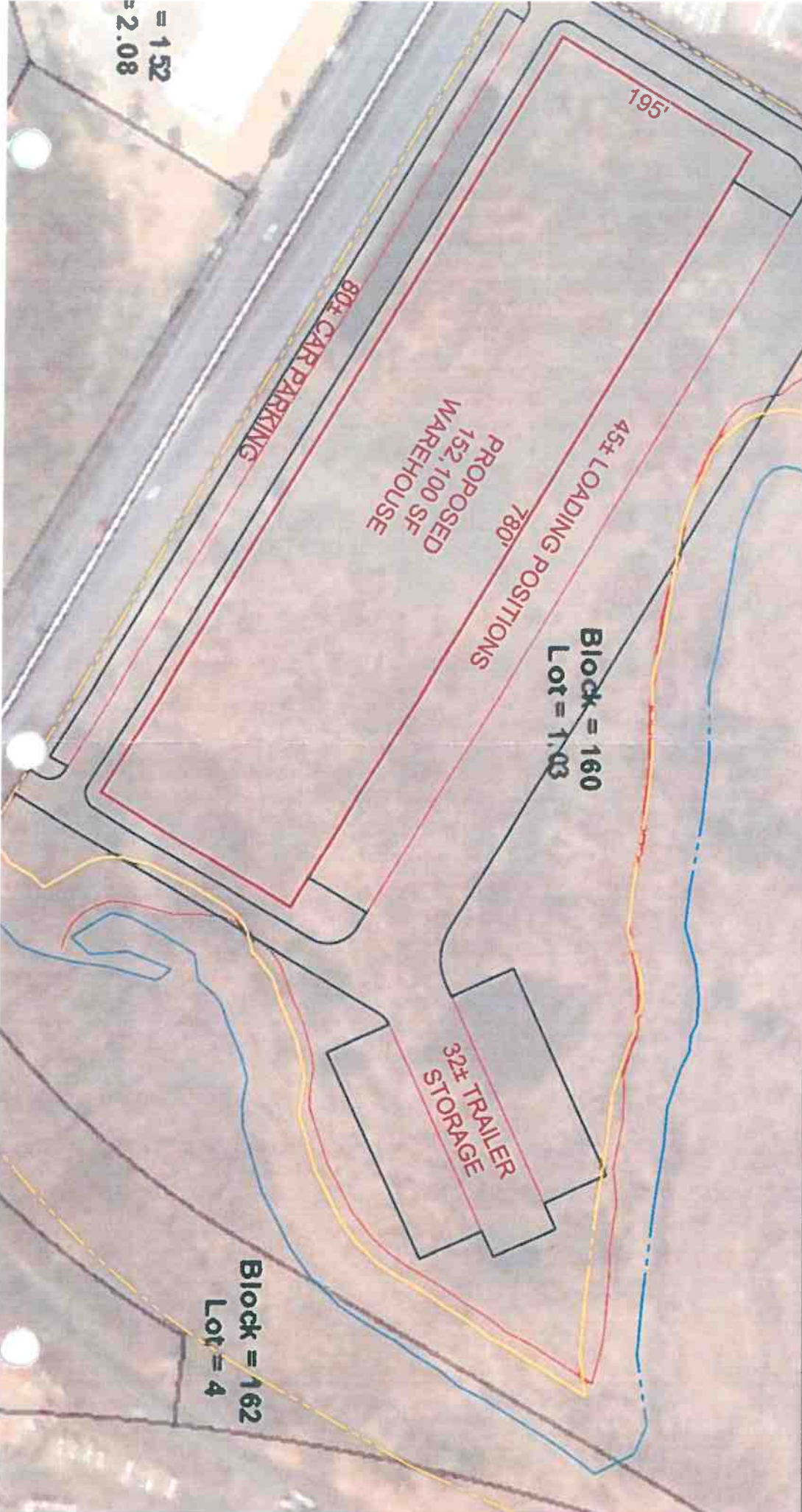
the event the other party Defaults. This Article also identifies certain circumstances under which a delay in performance will be excused (ie, Force Majeure).

- Article XVI – Miscellaneous – this Article includes a series of miscellaneous provisions typically found in a contract like the Agreement, such as provisions outlining how the parties serve notices on each other, noting that the Agreement runs for the benefit of each party's successors and assigns, providing that the Agreement may be executed in counterparts, and providing that the Agreement will be governed by New Jersey Law.
- Exhibits
  - 1 – Concept Plan – generally depicts the Project
  - 2 – Project Schedule – identifies dates by which the Redeveloper is to complete certain important tasks relating to the Project
  - 3 – Form of Declaration of Covenants and Restrictions – upon execution of the Redevelopment Agreement, the Redeveloper will record this Declaration in the Middlesex County Clerk's office
  - 4 - Form of Certificate of Completion – upon the Redeveloper's completion of the Project, SARA will execute a Certificate similar to this form, which will be recorded in the Middlesex County Clerk's office
  - 5 – Outlines the corporate ownership structure of the Redeveloper
  - 6 – Form of Financial Agreement – the Redeveloper will apply to the City for approval of a PILOT, and the City and Redeveloper will execute a Financial Agreement in a form similar to this Exhibit, memorializing the terms of the PILOT

If you have any questions, please contact Kevin McManimon at (973) 622-4869.  
Thank you.



MINIMUM LOT AREA	5 ACRES
MINIMUM LOT FRONTAGE	200 FEET
MINIMUM BUILDING SETBACKS	
FRONT YARD	50 FEET
REAR YARD	50 FEET
SIDE YARD	20 FEET
MINIMUM SETBACK TO PARKING	5 FEET
MAXIMUM BUILDING COVERAGE	25%
MAXIMUM IMPERVIOUS COVERAGE	50%
MAXIMUM BUILDING HEIGHT	50 FEET
PARKING REQUIREMENTS	1 PER 2500 SF 61 SPACES



= 152  
= 2.08







**EXHIBIT A**  
**Redevelopment Agreement**

**REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**SOUTH AMBOY REDEVELOPMENT AGENCY,**

**as the Redevelopment Entity**

**and**

**AMBOY MAIN STREET INDUSTRIAL URBAN RENEWAL, LLC,**

**as the Redeveloper**

**Dated as of \_\_\_\_\_, 2020**

**REDEVELOPMENT AGREEMENT** (the “**Redevelopment Agreement**”), dated as of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and between:

**THE SOUTH AMBOY REDEVELOPMENT AGENCY**, a public body corporate and politic of the State of New Jersey with offices at 140 North Broadway, South Amboy, New Jersey 08879 (the “**Agency**”), acting in the capacity of a redevelopment entity pursuant to the provisions of the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* as amended and supplemented (the “**Redevelopment Law**”),

and

**AMBOY MAIN STREET INDUSTRIAL URBAN RENEWAL, LLC**, a limited liability company formed under the laws of the State of New Jersey with offices at 100 Passaic Avenue, Suite 240, Fairfield, New Jersey 07004 (the “**Redeveloper**” and, together with the Agency, the “**Parties**”).

**W-I-T-N-E-S-S-E-T-H:**

**WHEREAS**, the City of South Amboy in the County of Middlesex, New Jersey (the “**City**”) is authorized under the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), to determine whether certain parcels of land within the City constitute an area in need of redevelopment and to adopt redevelopment plans therefor; and

**WHEREAS**, the City previously designated the property identified as Block 160, Lot 1.03 on the City’s tax maps (the “**Project Site**”) as an area in need of redevelopment under the Redevelopment Law and is subject to a redevelopment plan known as the Broadway/Main Street Redevelopment Plan (the “**Redevelopment Plan**”); and

**WHEREAS**, on July 15, 2020, the City adopted Ordinance No. 08-2020 to, among other things, amend the Redevelopment Plan to permit light industrial uses, and to provide associated bulk standards therefor, applicable to the Project Site; and

**WHEREAS**, the Agency is acting as the redevelopment entity for the purpose of implementing the Redevelopment Plan; and

**WHEREAS**, the Redeveloper is a joint venture comprising New South Amboy Development Co., LLC, the owner of the Project Site, and WIP South Amboy, LLC; and

**WHEREAS**, the Redeveloper proposes to redevelop the Project Site by constructing thereon an approximately 152,100 square foot warehouse facility with approximately 45 loading positions and space to store approximately 32 trailers (the “**Project**”), as more particularly described in the Concept Plan attached hereto as **Exhibit 1** (the “**Concept Plan**”); and

**WHEREAS**, in order to set forth the terms and conditions under which the Parties will carry out their respective obligations with respect to the construction of the Project on the Project Site in accordance with the Redevelopment Plan, the Parties have determined to execute this Redevelopment Agreement; and

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind its successors and assigns, do mutually promise, covenant and agree as follows:

## ARTICLE I DEFINITIONS AND INTERPRETATIONS

**SECTION 1.01. Definitions.** In this Redevelopment Agreement, words that are capitalized, and which are not the first word of a sentence, are defined terms. The terms defined in the preambles hereto shall have the meanings assigned to such terms. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Redevelopment Agreement shall mean:

**“Affiliate”** means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with such Person. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

**“Appeal Period”** shall mean the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval, and includes the period for filing an appeal to an appellate court after entry of a judgment or decision by a lower court or administrative agency.

**“Applicable Law”** means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Redevelopment Area, the Project Improvements, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement, including without limitation, the Municipal Land Use Law, the Redevelopment Law and the Long Term Tax Exemption Law.

**“Agency Costs”** is defined in Section 3.03.

**“Agency Event of Default”** means, with respect to the Agency, an Event of Default, as such term is defined in Section 15.01 hereof.

**“Agency Indemnified Parties”** means the Agency and its officers, elected officials, agents, employees, contractors and consultants.

**“Certificate of Completion”** means a certificate issued by the Agency upon Completion of the Project pursuant to Section 11.02 hereof in the form attached as **Exhibit 4**.

**“Certificate of Occupancy”** means a Certificate of Occupancy (temporary or permanent), as such term is defined in the New Jersey Administrative Code, issued with respect to the Project or any portion thereof.

**“Commence[ment of] Construction”** means the undertaking by Redeveloper of any actual physical construction of any portion of the Project on the Project Site, including construction of new structures or construction or upgrading of infrastructure, including work conducted with cranes, earth movers, rollers and similar equipment.

**“Comple[t]e, [ed] or [ion]”** means with respect to the Project, or any portion thereof, that (a) all work related to the Project, or a portion thereof, or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with this Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project, or any portion thereof that has been completed, as the case may be, may, in all respects, be used and operated under the applicable provisions of this Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed, (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Project, or any portion thereof that have been completed, or such other work or action to which such term is applied are in full force and effect, and (c) such “Completion” has been evidenced by a written notice provided by the Redeveloper (with respect to the Project, or any portion thereof) in the form of Exhibit 1 to the form of Certificate of Completion attached hereto as **Exhibit 4**.

**“Completion Date”** means the date that the Certificate of Completion is issued.

**“Concept Plan”** is defined in the Recitals.

**“Control”** (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to the Redeveloper, the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

**“Declaration”** is defined in Section 9.06 hereof and the form of which is attached hereto as **Exhibit 3**.

**“Effective Date”** is defined in the Preamble.

**“Engineering Controls”** means any mechanism to contain or stabilize contamination or to ensure the effectiveness of a Remediation. Engineering Controls may include, without limitation, caps, covers, dikes, trenches, leachate control systems, signs, fences and physical access barriers.

**“Environmental Laws”** means all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes and administrative orders or decrees, directives or judgments relating to environmental contamination or damage to or protection of the environment, including, but not limited to, the *Comprehensive Environmental Response, Compensation and Liability Act* (“CERCLA”) (42 U.S.C. §§ 9601-9675); the *Resource Conservation and Recovery Act of 1976* (“RCRA”) (42 U.S.C. §§ 6901, et seq.); the *Clean Water*

*Act (33 U.S.C. §§ 1251, et seq.); the New Jersey Spill Compensation and Control Act (the “Spill Act”) (N.J.S.A. 58:10-23.11, et seq.); ISRA; the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.); the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et seq.); and the rules and regulations promulgated thereunder.*

“**Escrow Account**” is defined in Section 3.04.

“**Estoppel Certificate**” is defined in Section 5.08.

“**Event of Default**” means the occurrence of any Redeveloper Event of Default or Agency Event of Default, as the case may be, and as further defined in Section 15.01 hereof.

“**Exhibit(s)**” means any exhibit attached hereto which shall be deemed to be a part of this Redevelopment Agreement as if set forth in full in the text hereof.

“**Financial Agreement**” means an agreement to be executed by the City and the Redeveloper (or an Urban Renewal Entity created thereby) pursuant to the Long Term Tax Exemption Law, in substantially the same form as that attached hereto as **Exhibit 6** setting forth, among other things, the obligation of the Redeveloper (or an Urban Renewal Entity created thereby) to pay an Annual Service Charge (as that term is defined and used in the Long Term Tax Exemption Law) to the City.

“**Force Majeure**” is defined in Section 15.02.

“**Foreclosure**” is defined in Section 14.03(b).

“**Governmental Approvals**” means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity required to be obtained in order to construct the Project.

“**Governmental Authority**” means the federal government, the State, any state or other political subdivision thereof, including the Agency and the City, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority or jurisdiction over any part of the permitting, Remediation, construction or operation of the Project or the Project Site, or pursuant to Environmental Laws including without limitation, the Planning Board and the NJDEP.

“**Hazardous Substance**” means any element, compound, material, mixture, substance, chemical or waste that is listed as hazardous or toxic, or a pollutant or contaminant, in any Environmental Law.

“**Holder(s)**” is defined in Section 14.01(a).

“**Institutional Controls**” means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of a Remediation over time, when contaminants remain at the contaminated site in levels or concentrations above the applicable remediation standard that would allow unrestricted use of the site. Institutional Controls may include,



without limitation, structure, land and natural resource use restrictions, classification exception areas, well restrictions areas and deed notices.

“**ISRA**” means the Industrial Site Recovery Act, as amended (*N.J.S.A. 13:1K-6 et seq.*).

“**Long Term Tax Exemption Law**” means *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented.

“**Municipal Land Use Law**” means *N.J.S.A. 40:55D-1 et seq.*, as amended and supplemented.

“**Natural Resource Damages**” means the loss, liability or damages owed to any natural resource trustee, including, without limitation, a state, the federal government or Indian tribe, to compensate for the loss or injury to natural resources.

“**NJDEP**” means the New Jersey Department of Environmental Protection.

“**Off-Site Improvements**” means any improvements outside the Project Site, made necessary by the On-Site Improvements, that are to be constructed and maintained by the Agency (on behalf of, and paid for by, the Redeveloper) and/or by the Redeveloper in order that the Redeveloper may satisfy the requirements of any applicable Governmental Approvals, as more particularly shown on the Site Plans.

“**On-Site Improvements**” means all buildings, structures, improvements, site preparation work and amenities comprising the Project and located within the Project Site, as more specifically shown on the Concept Plan.

“**Party**” or “**Parties**” is defined in the Preamble.

“**Permitted Transfers**” is defined in Section 12.03.

“**Person**” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, Urban Renewal Entity, institution, or any other entity.

“**Planning Board**” means the Planning Board of the City of South Amboy.

“**Progress Meetings**” is defined in Section 6.01.

“**Progress Report**” is defined in Section 6.02.

“**Project**” is defined in the Recitals and is depicted in **Exhibit 1**.

“**Project Costs**” means the costs of designing, permitting and constructing the Project.

“**Project Improvements**” means, collectively, the Off-site Improvements and the On-site Improvements as shown on the Site Plans. This term is used interchangeably herein with the term “Project”.



**“Project Schedule”** means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in **Exhibit 2** hereto.

**“Project Site”** is defined in the Recitals.

**“Redeveloper”** is defined in the Preamble.

**“Redeveloper Covenants”** is defined in Section 9.05.

**“Redeveloper Event of Default”** means, with respect to the Redeveloper, an Event of Default as defined in Section 15.01.

**“Redevelopment Agreement”** or **“Agreement”** means this agreement.

**“Redevelopment Area”** is defined in the Recitals.

**“Redevelopment Fee”** is defined in Section 3.06.

**“Redevelopment Law”** is defined in the Preamble.

**“Redevelopment Plan”** is defined in the Recitals.

**“Remediat[e], [ed], [ing] or [ion]”** means the investigation, study, planning, design, clean-up, removal, containment, disposal, dispersal, treatment (including, but not limited to, in-situ and ex-situ treatment), management, remediation (including, but not limited to, the use of Engineering Controls and Institutional Controls, stabilization, neutralization of Hazardous Substances required by Governmental Authority and/or pursuant to Environmental Laws which allows for the Project, including, but not limited to any operations, maintenance, and monitoring activities that may be required after completion of the foregoing.

**“Section”** means a section or subsection of this Redevelopment Agreement.

**“Scheduled Completion Date”** means the anticipated Completion Date as set forth in the Project Schedule attached hereto as **Exhibit 2**, subject to any extensions granted in accordance with this Redevelopment Agreement.

**“Site Plan”** means the plan to be submitted to, and approved by, the Planning Board in accordance with the Municipal Land Use Law.

**“State”** means the State of New Jersey.

**“Substantial Completion”** or **“Substantially Completed”** means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of “Completion” have been satisfied with respect to the Project, with the exception of certain immaterial portions of the work relating to the Project that remain to be Completed, as long as (a) the Redeveloper, with respect to the Project, has prepared and delivered to the Agency a “punch list” of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Redevelopment Agreement, (b) “punch list” items have been reasonably agreed to by the

Agency, and (c) such "punch list" items are capable of being Completed within ninety (90) days of the date that Completion of the Project is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion; and provided further however, that all such "punch list" items shall be Completed, under all circumstances, but subject to Force Majeure events, within (i) one hundred eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) three hundred sixty-five (365) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings. "Substantial Completion" shall be evidenced by issuance of a temporary Certificate of Occupancy for the Project, or any portion thereof that has been Substantially Completed.

**"Term"** means that period of time from the Effective Date of this Redevelopment Agreement until the earlier of (i) the Agency's issuance of a Certificate of Completion for the Project or (ii) this Redevelopment Agreement is terminated in accordance with the terms of this Agreement or pursuant to Applicable Law.

**"Transfer"** is defined in Section 12.02.

**"Urban Renewal Entity"** shall have the meaning defined in *N.J.S.A. 40A:20-3* of the Long Term Tax Exemption Law.

**"Utilities"** means municipal water, sanitary sewer and storm water facilities and natural gas, electricity, and voice and data transmission facilities.

**SECTION 1.02. Interpretation and Construction.** In this Redevelopment Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Redevelopment Agreement, refer to this Redevelopment Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Redevelopment Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Redevelopment Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Redevelopment Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) Each right of the Agency to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the Agency official(s) with legal authority to conduct such review or grant such approvals. Any review contemplated by this Redevelopment Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Agency shall inform the Redeveloper of all officials with the required authority.

(g) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(h) Unless otherwise indicated, any “fees and expenses” shall be required to be actual, out of pocket, customary and reasonable.

**[END OF ARTICLE I]**

**ARTICLE II**  
**DESCRIPTION OF PROJECT SITE**  
**AND THE PROJECT**

**SECTION 2.01. Project Site.** The Project Site consists of the surface, subsurface and airspace above the real property described in the definition thereof and upon which the Project Improvements will be constructed.

**SECTION 2.02. Proposed Development; Project.** The overall development of the Project Site will include the Project to be constructed by the Redeveloper as further described in the Site Plan to be approved by the Planning Board, pursuant to this Redevelopment Agreement, the Redevelopment Plan, the Redevelopment Law and the Municipal Land Use Law.

**SECTION 2.03. Green Technology.** Redeveloper shall use commercially reasonable efforts to incorporate green design features within the Project, which will conserve the natural environment.

**[END OF ARTICLE II]**

## ARTICLE III FINANCIAL OBLIGATIONS

**SECTION 3.01. The Redeveloper's Financial Commitment.** The Redeveloper represents and warrants that to the best of its knowledge and belief, and subject to the terms of Section 14.01(d), it has obtained or can obtain and intends to commit the requisite equity and debt financing in an amount necessary to implement and complete the Project.

**SECTION 3.02. Project Costs.** All costs of implementing this Redevelopment Agreement and completing the Project, including Agency Costs as specified in Section 3.03 hereof, and the costs incurred by the Redeveloper will be borne by the Redeveloper.

**SECTION 3.03. Agency Costs.** In addition to the Redeveloper's estimated costs for the Project, the Redeveloper agrees to provide funding to the Agency for all reasonable out-of-pocket costs incurred by the Agency and/or the City in connection with the redevelopment of the Project Site ("**Agency Costs**"). Agency Costs shall include, but not be limited to, any fees and costs of any professional consultant, contractor or vendor retained by the Agency in connection with the Project, including attorneys, technical consultants, planners, financial consultants and appraisers, among others, and all out-of-pocket costs and expenses of the Agency.

**SECTION 3.04. Payment of Agency Costs.** The Redeveloper shall reimburse the Agency or the City, as applicable, for all Agency Costs in accordance with the terms hereof. The Redeveloper has established a non-interest bearing escrow account (the "**Escrow Account**"), having an initial balance of Twenty Thousand Dollars (\$20,000.00). The Redeveloper agrees that it will replenish the Escrow Account in the event that the balance drops below Five Thousand Dollars (\$5,000.00). Funds in the Escrow Account will be applied to the payment or reimbursement of the Agency Costs as provided in this Redevelopment Agreement, including costs that were incurred prior to the date hereof in accordance with the terms of this Section 3.04. At least ten (10) days prior to making any disbursement from the Escrow Account, written notice of the proposed disbursement shall be mailed or emailed to the Redeveloper, setting forth: (a) the amount of the disbursement; (b) the name of the person, company or entity designated to receive payment; and (c) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Redevelopment Agreement (including hours worked and billing rates). If the Redeveloper does not object to such disbursement within ten (10) days of receipt of such notice, the Redeveloper will be deemed to have acquiesced to the same. As of the Completion Date, as evidenced by the issuance of the Certificate of Completion, or upon termination of this Redevelopment Agreement, except in the event of a termination caused by an Event of Default by the Redeveloper, any money remaining in the Escrow Account shall be disbursed to the Redeveloper within sixty (60) days after issuance of the Certificate of Completion or the termination of this Redevelopment Agreement and the terms of this Section 3.04 shall survive the issuance of the Certificate of Completion or termination of this Redevelopment Agreement for such sixty (60) day period. The Agency shall prepare and send to Redeveloper a statement, on a quarterly basis, which shall include an accounting of funds listing all deposits, interest earnings, disbursements, and the cumulative balance of the escrow account.

**SECTION 3.05. Governmental Approval Fees.** The Redeveloper will pay all fees for all Governmental Approvals required by any Governmental Authority for the construction and development of the Project.

**SECTION 3.06. Redevelopment Fee.** In addition to Agency Costs and the Governmental Approval Fees set forth in Section 3.05, above, the Redeveloper agrees to pay to the Agency a non-refundable redevelopment fee for the Project in the amount equal to \$2.25 per square foot of space constructed, which amount is currently estimated to be THREE HUNDRED FORTY TWO THOUSAND TWO HUNDRED TWENTY FIVE DOLLARS (\$342,225) (the "Redevelopment Fee") (\$2.25 x 152,100 sq ft). The Redevelopment Fee is due and payable as follows: (i) \$50,000 upon the adoption, by the City Council, of an ordinance approving the execution of the Financial Agreement (with the appeal period for any such ordinance having expired without an appeal being taken, but in no event later than December 31, 2020); (ii) \$146,113 of the Redevelopment Fee due immediately upon the issuance, by the City, of a building permit for construction on site; and (ii) \$146,112 due upon the issuance, by the City, of a Certificate of Occupancy in connection with the Project.

**SECTION 3.07. Application for Tax Exemption.** Following the Effective Date, the Redeveloper [or an Urban Renewal Entity created by the Redeveloper] may submit to the City an application for tax exemption in accordance with the Long Term Tax Exemption Law and the terms of the Financial Agreement, which shall provide, *inter alia*, that the Redeveloper shall construct the Project and shall make annual payments to the City in lieu of taxes. The Redeveloper shall have the right to terminate this Agreement upon written notice to the Agency if the City and the Redeveloper have not duly executed and delivered the Financial Agreement within one hundred and twenty (120) days after the Effective Date. If this Agreement is terminated pursuant to the terms of this Section 3.07 then, except as expressly set forth herein to the contrary and upon full payment of all Agency Costs accruing until the date of such termination, this Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

**[END OF ARTICLE III]**



## ARTICLE IV ENVIRONMENTAL MATTERS

**SECTION 4.01. Environmental Compliance in General.** The Parties acknowledge that there may be present Hazardous Substances on, under or migrating to or from the Project Site that may require Remediation. The Redeveloper agrees and specifically assumes any and all responsibility, liability and costs for any such Remediation of the Project Site or anything affected off-site, as required by applicable Environmental Laws and Governmental Authorities, except to the extent that the prior owner(s) of the Project Site retain such responsibility or liability. The Redeveloper, as principal responsible party for the Project Site, will prepare and submit all applications and documentation necessary to comply with the requirements of all Environmental Laws, including but not limited to ISRA if such is applicable. The Redeveloper also agrees that it shall obtain all requisite approvals from the appropriate Governmental Authority (or Licensed Site Remediation Professional) for the Remediation of the Project Site. The Parties acknowledge and agree that, subject to compliance with Environmental Laws, the Project Site may be Remediated, in Redeveloper's sole discretion, for industrial use, including, but not limited to the use of Engineering Controls and Institutional Controls.

**SECTION 4.02. Redeveloper Indemnification of Agency.** In conjunction with the Indemnification provisions of Article XIII hereof, the Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Agency Indemnified Parties harmless from and against all liability, losses, damages (including, without limitation, Natural Resource Damages), demands, costs, claims, lawsuits, administrative proceedings, fines, penalties and expenses (including attorneys' fees and court costs) of every kind, character and nature arising from or associated with (i) the performance or any failure or delay of performance by the Redeveloper of its responsibilities and obligations to Remediate the Project Site or anything affected off-site, as required by applicable Environmental Laws and Governmental Authorities; and (ii) the presence of Hazardous Substances, whether known or unknown, on, under or migrating from the Project Site, but excluding damage, liability, costs and expenses to the extent that same result from the negligence or willful misconduct of the Agency or Agency Indemnified Parties.

**SECTION 4.03. Agency Cooperation and Environmental Reports.** Should off-site disposal of either Hazardous Substances or non-Hazardous Substances be required as part of the Remediation of the Project Site or the construction of the Project, the Agency will not be required to sign any manifests relating to such disposal. The Agency will provide to the Redeveloper and its engineering consultants any and all copies of environmental reports that the Agency obtains or has possession of in connection with the Project Site. The Redeveloper will provide to the Agency and its engineering consultants copies of any and all environmental reports that Redeveloper submits to NJDEP.

[END OF ARTICLE IV]



## ARTICLE V CONSTRUCTION OF PROJECT

### SECTION 5.01. Construction of Project.

(a) Project. Subject to the terms of this Agreement, (i) the Project shall be implemented in accordance with the Project Schedule, including obtaining all Governmental Approvals, and (ii) Redeveloper shall commence physical work on the Project in accordance with the Project Schedule, and Complete the Project on or prior to the Scheduled Completion Date for the Project, as set forth on **Exhibit 2** hereto. The Redeveloper will construct, or cause to be constructed, the Project Improvements at its sole cost and expense.

(b) Modification of Project Schedule. In the event that the Redeveloper is unable, for reasonable cause, to comply with any time frame set forth on the Project Schedule, the Redeveloper shall provide written notice to the Agency, setting forth in reasonable detail (a) the reason for the failure to satisfy the required tasks necessary to comply with the Project Schedule, (b) the Redeveloper's proposed actions to remedy any delay, and (c) the Redeveloper's proposal for revising the Project Schedule. In such event the Project Schedule shall be modified accordingly, subject to the Agency's consent, which shall not be unreasonably withheld, conditioned or delayed. The Agency's approval of any such extension shall not limit in any manner the rights of the Agency or diminish the obligations of the Redeveloper with respect to the Project under this Redevelopment Agreement.

### **SECTION 5.02. Construction of Project in Compliance with Redevelopment Plan and Municipal Land Use Law Approvals; Government Approvals.**

(a) The Project shall be designed and constructed by the Redeveloper in accordance with the Redevelopment Plan. Any applications made for Governmental Approvals shall be in accordance with the Redevelopment Plan.

(b) At least thirty (30) days prior to the date that the Redeveloper reasonably expects to Commence Construction on the Project, the Redeveloper shall provide the Agency with written notice setting forth, at a minimum, (i) the current status of the submittal, review and/or issuance of the Governmental Approvals and (ii) an estimate of the date on which each Governmental Approval is expected to be received (which shall be prior to the date on which the Redeveloper expects to Commence Construction, to the extent that such Governmental Approvals are required to be obtained prior to, or as a condition precedent, to the Commencement of Construction). The Redeveloper shall also provide such supporting documentation as the Redeveloper reasonably believes will be necessary or beneficial to the Agency for the Agency's review of such notice. Notwithstanding the provisions of this subsection, the Agency may waive such notice requirement for purposes of groundbreaking ceremonies, or for other reasons including, but not limited to early commencement of earth activities prior to actual construction. No notice shall be required in connection with the Remediation of the Project Site.

**SECTION 5.03. Relocation of Utilities.** The Redeveloper acknowledges that providers of Utilities may have certain rights with respect to the Project Site and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these Utilities and improvements and easements therefore, in order to complete construction of the Project, as provided by this Redevelopment Agreement. To the extent reasonably requested by the Redeveloper, the Agency shall cooperate in facilitating the installation and/or relocation of any such affected Utilities.

**SECTION 5.04. Union Labor.** The Redeveloper agrees to utilize 100% union labor for the construction of the Project.

**SECTION 5.05. Nondiscrimination During Construction; Equal Opportunity.** The Redeveloper for itself and its successors and assigns agrees that in the construction of the Project:

(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender. The Redeveloper will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, or gender. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, ancestry, physical handicap age, marital status, affectional preference or gender.

(c) The Redeveloper will cause the foregoing provisions to be inserted in all contracts for any work covered by this Redevelopment Agreement so that such provisions will be binding upon each contractor and subcontractor.

**SECTION 5.06. Maintenance of Project Site.** Following commencement of physical construction of the Project, the Redeveloper will maintain all areas of the Project Site including the buildings, parking areas, landscaping, streetscaping, sidewalks including curbing and traffic calming devices (but not the paved roadway, unless disturbed by the Redeveloper), trash collection and receptacles, and all such issues identified in Chapters 198 (Property Maintenance Code) and 222 (Streets and Sidewalks) of the Agency Code.

**SECTION 5.07. No Warranty.** The Agency specifically acknowledges that, except as otherwise specifically set forth herein, the Redeveloper makes no representation or warranty, expressed, implied or otherwise, as to the fitness of the Project or the Project Site for use for any particular purpose, condition or durability thereof, or that it will be suitable for the Redeveloper's

purposes. No representations are made herein as to the requirements of any other agency or governmental entity other than the Agency.

**SECTION 5.08. Estoppel Certificates.** Within fourteen (14) days following written request therefore by a Party hereto, or of any Holder, purchaser, tenant or other party **having** an interest in the Project Site, the other party shall issue a signed certificate (“**Estoppel Certificate**”) stating that (i) this Redevelopment Agreement is in full force and effect, (ii) there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Redevelopment Agreement), or stating the nature of the default or breach or event, if any, and (iii) any other matter reasonably requested. In the event the Estoppel Certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than two (2) Estoppel Certificates may be requested per year unless requested in connection with the financing of the Project.

**SECTION 5.09. Cooperation.** The Parties shall fully cooperate with each other as necessary to effectuate the Project, including entering into additional agreements that may be required; provided however, that such actions and/or agreements shall not result in a material increase or decrease in the Agency’s and the Redeveloper’s respective rights, obligations and liabilities hereunder.

**[END OF ARTICLE V]**

## ARTICLE VI PROJECT OVERSIGHT

**SECTION 6.01. Progress Meetings.** The Parties agree to participate in progress meetings (“**Progress Meetings**”), at the request of the Agency, to report on the status of the Project and review the progress under the Project Schedule. The Agency shall give the Redeveloper ten (10) days advance written notice of any meetings. The Progress Meetings shall be held in the Agency Hall.

The agenda for the Progress Meetings shall include a status report regarding (a) Governmental Approval submissions and approvals, (b) financial commitments, (c) construction of the Project, and (d) compliance with the Redevelopment Plan. The Agency will evaluate this information to determine compliance with the terms of this Redevelopment Agreement and the Project Schedule. The Agency shall have the right at reasonable times to inspect the construction contracts, financing commitments and agreements, books and records pertinent to the construction contracts, insurance policies, and such other Redeveloper agreements that are pertinent to this Redevelopment Agreement to ensure Completion of the Project in accordance with the Project Schedule, provided, however, Redeveloper shall have the right to withhold from the Agency’s review materials that Redeveloper deems confidential and proprietary in nature.

**SECTION 6.02. Progress Reports.** At the Agency’s request, the Redeveloper shall submit to the Agency a written progress report (“**Progress Report**”) which shall include a description of activities completed, activities to be undertaken, the status of Governmental Approvals, an explanation of any activity causing delay or anticipated to cause delay, a description of problem areas, and an explanation of corrective action taken or proposed. The written progress report shall also contain the most current Estoppel Certificate, if requested by either party.

**SECTION 6.03. Access to Property.** The Agency and its authorized representatives shall have the right to enter the Project Site in accordance with Applicable Law to inspect the Project and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement. In no event shall the Agency’s inspection of the Project (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Agency has under this Redevelopment Agreement. The Agency acknowledges hereby that the Project Site will be an active construction site and that the Redeveloper shall not be liable or responsible to the Agency, its employees or agents for injury to person or property sustained in connection with any such inspection, except to the extent that the Redeveloper willfully or negligently violates its standard of due care owed to invitees.

**SECTION 6.04. Submissions.** The Redeveloper shall be required to provide the Agency with a copy of each and every application for Governmental Approvals submitted to Governmental Authorities at the same time the Redeveloper submits those applications to such Governmental Authorities.

[END OF ARTICLE VI]

## ARTICLE VII GENERAL DEVELOPMENT REQUIREMENTS

**SECTION 7.01. Scope of Undertaking.** Except as expressly provided herein, the services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, and construction of the Project, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project and all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper.

**SECTION 7.02. Standards of Construction.** Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with the materials called for under the Governmental Approvals being of such quality as is required by such approvals.

**SECTION 7.03. Compliance With Applicable Law.** The Project and all materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Applicable Laws, subject to any waivers, variances, deviations, exceptions or similar approval granted in accordance with Applicable Law.

**SECTION 7.04. Payment of Project Costs.** The Redeveloper shall pay (or cause to be paid) when due, all costs and expenses, including, without limitation, all contractors' requisitions and the cost of materials and equipment incurred in connection with work on the Project and all fees and expenses of any consultants and professionals and like providers acting for (or on behalf of) the Redeveloper; provided, however, nothing herein shall be construed to prohibit Redeveloper from withholding any payments if, for any reason, in Redeveloper's reasonable business judgment, Redeveloper disputes the amount alleged to be owed.

**[END OF ARTICLE VII]**



**ARTICLE VIII**  
**APPROVAL OF APPLICATIONS FOR GOVERNMENTAL APPROVALS**

**SECTION 8.01. Applications for Governmental Approvals.** (a) The Redeveloper (at its sole cost and expense) shall apply for and obtain all Governmental Approvals necessary to construct and use the Project. The Redeveloper shall provide the Agency with a copy of each application for Governmental Approvals at such time as such applications are submitted.

To the extent that application is made to the Agency, acting in its capacity as a Governmental Authority, the Agency agrees to process such applications in a timely and expeditious manner, in light of the circumstances related to such application.

The Redeveloper shall provide the Agency with a copy of each Governmental Approval received by the Redeveloper with respect to the Project.

(b) To the extent reasonably requested by the Redeveloper, and to the extent applicable, the Agency shall provide assistance and support to the Redeveloper in connection with any applications for any Governmental Approvals required to be obtained for or with respect to the Project.

(c) In the event that all necessary Governmental Approvals for the Project are not obtained from the required Governmental Authorities prior to the one hundred eightieth (180<sup>th</sup>) day after the Effective Date, on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions reasonably acceptable to Redeveloper, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Agency. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Agreement is terminated pursuant to the terms of this Section 8.01(c), then, except as expressly set forth herein to the contrary, this Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

**SECTION 8.02. Agency Cooperation.** To the extent reasonably requested by the Redeveloper and, to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Agency shall provide its support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate City board, body or department, as applicable.

**[END OF ARTICLE VIII]**

**ARTICLE IX**  
**REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS**

**SECTION 9.01. Representations and Warranties by the Redeveloper.** The Redeveloper hereby represents and warrants the following to the Agency for the purpose of inducing the Agency to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company organized under the laws of the State is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

(b) The Redeveloper will own the Project Site.

(c) The Redeveloper has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(d) This Redevelopment Agreement has been duly authorized, executed and delivered by the Redeveloper; and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery thereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

(e) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

(f) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

(g) No indictment has been returned against any member of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Redevelopment Agreement or otherwise.

(h) There are no suits, other proceedings or investigations pending or, to the best of the Redeveloper's knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(i) All materials and documentation submitted by the Redeveloper and its agents to the Agency and its agents were, to the best of Redeveloper's knowledge, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall continue to inform the Agency of any material and adverse changes in the documentation submitted. The



Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Agency to enter into this Redevelopment Agreement.

(j) Subject to obtaining construction financing, the Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project.

(k) The cost and financing of the Project is the responsibility of the Redeveloper, pursuant to the Redevelopment Plan and this Redevelopment Agreement. The Agency shall not be responsible for any cost whatsoever in respect to same.

(l) The ownership structure of the Redeveloper is set forth in **Exhibit 5**. The Redeveloper shall, at such times as the Agency may reasonably request, furnish the Agency with a complete statement subscribed and sworn to by the managing member of the Redeveloper, setting forth all ownership interests in the Redeveloper greater than ten percent (10%), or other owners of equity interests of the Redeveloper greater than ten percent (10%) and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Redeveloper greater than ten percent (10%), their names and the extent of such interest.

If reasonably requested by the Agency, the Redeveloper shall, from time to time, reaffirm the representations and warranties set forth in this Section 9.01.

**SECTION 9.02. Representations and Warranties by the Agency.** The Agency hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Agency has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Agency is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Redevelopment Agreement has been duly authorized, executed and delivered by the Agency and is valid and legally binding upon the Agency and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Agency is a party.

(c) There is no pending or, to the best of the Agency's knowledge, threatened litigation that would in any way (i) contest or seek to invalidate the Redeveloper's ability to commence performance of its obligations under the Redevelopment Agreement, or (ii) prevent the Agency from performing its duties and obligations hereunder.

(d) There are no suits, other proceedings or investigations pending or, to the best of the Agency's knowledge, threatened against the Agency that would have a material adverse effect on the Agency's financial condition.

**SECTION 9.03. INTENTIONALLY OMITTED.**

**SECTION 9.04. Mutual Representations.** (a) The Agency and the Redeveloper agree that the Project will be governed by this Redevelopment Agreement, the Redevelopment Plan and all Applicable Law.

(b) In the event that any contractual provisions that are required by Applicable Law have been omitted, then the Agency and the Redeveloper agree that this Redevelopment Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Redevelopment Agreement.

**SECTION 9.05. Redeveloper Covenants.** Redeveloper covenants and agrees that, subject to the terms hereof, and except as explicitly provided herein, including Section 9.07 below (collectively, "**Redeveloper Covenants**"):

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project. The Redeveloper shall construct, improve, operate and maintain the Project in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws.

(b) The Redeveloper shall use commercially reasonable efforts to (i) obtain financing for the Project, (ii) construct and develop the Project with due diligence and (iii) commence and Complete each item in the Project Schedule on or prior to the applicable date set forth in the Project Schedule and, for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period. All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project.

(c) The Redeveloper shall construct the Project in accordance with this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law and, in the event that the Redeveloper wishes to materially change or modify the Project, notwithstanding the fact that such material change or modification is authorized by the Redevelopment Plan, the Agency's written approval (which shall not be unreasonably withheld, conditioned or delayed) must be secured prior to proceeding with any activities relating to such proposed material modifications. The Redeveloper acknowledges that the Agency has relied on the Project Schedule in entering into its obligations under this Redevelopment Agreement.

(d) The Redeveloper shall fulfill its material obligations under any and all agreements it enters into with third parties with respect to the acquisition, construction, leasing, financing and other matters relating to the Project; provided, however, that this covenant is not intended to prevent the Redeveloper from contesting the scope or nature of such obligations as and to the extent provided in such agreements.

(e) The Redeveloper shall use commercially reasonable efforts to complete the Project or cause same to be completed, on or prior to the date set forth in the Project Schedule at

its sole cost and expense; provided, however, that the Parties acknowledge that moneys may be made available towards the completion of same from other outside sources. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs necessary to complete the Project, the Redeveloper shall not be entitled to any funds from the Agency.

(f) Upon completion of the development and construction of the Project or a portion thereof, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated hereby.

(g) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project.

(h) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(i) The Redeveloper shall immediately notify the Agency of any material change in its financial condition from the information provided to the Agency by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project in furtherance of the Agency's consideration in designating the Redeveloper as the redeveloper of the Project Site.

(j) The Redeveloper shall not use the Project Site, Project Improvements, or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(k) The Redeveloper shall not use the Project Site, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

**SECTION 9.06. Declaration of Redeveloper Covenants and Restrictions.** The Redeveloper shall execute and record one or more declaration(s) of project covenant(s) in form of **Exhibit 3** attached hereto (the "**Declaration**") imposing on the Redeveloper's interest in the Project and the Project Site, the Redeveloper Covenants set forth in Section 9.05 (as may be limited by the terms of this Agreement, including Section 9.07 hereof), and those other matters indicated in this Redevelopment Agreement to be included in the Declaration.

**SECTION 9.07. Effect and Duration of the Redeveloper Covenants.** It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in Section 9.05 hereof and those elsewhere in this Redevelopment Agreement designated for inclusion in the Declaration shall be covenants running with the land until the Project is



Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, and any successor in interest to the Project, or any part thereof, the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project, or any part thereof provided, however, that such covenants shall not be binding on any Mortgagee except in accordance with the terms of Article XIV hereof. Such agreements and covenants, however, shall be binding on the Redeveloper itself, each successor in interest to the Redeveloper and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall be in possession or occupancy of the Project Site, the buildings and structures thereon, or any part thereof. For purposes of this section, "Completed" shall mean the issuance of a Certificate of Occupancy or a Temporary Certificate of Occupancy by the municipality.

**SECTION 9.08. Enforcement of Redeveloper Covenants by the Agency.** In amplification, and not in restriction of the provisions of this Article IX, it is intended and agreed that the Agency and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, 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 have been provided. Such agreements and covenants shall run in favor of the Agency for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Agency has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Agency shall have the right, in the event of any breach of any such agreement or covenant, to terminate this Agreement in accordance with the terms of Section 15.03 hereof. This Section is not intended to confer standing to sue on any party other than the Agency. Upon redevelopment of the Project Site and Completion of the Project (as evidenced by the Agency's issuance of a Certificate of Completion), the conditions that were found and determined to exist at the time the Project Site was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project.

**SECTION 9.09. Agency Covenants.** The Agency hereby covenants and agrees that:

(a) The Agency shall fully cooperate with the Redeveloper to ensure that all Governmental Approvals are obtained for the Project at no additional cost and expense to the Agency. Furthermore, the Agency agrees to support any applications for Governmental Approvals (including Redeveloper's Application for a Long Term Tax Exemption) that are consistent with the terms of the Redevelopment Plan and this Agreement, and to otherwise cooperate with the Redeveloper with respect to the Governmental Approvals; provided that nothing contained in this Section 9.09(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any Governmental Authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. Without limiting the generality of the foregoing, the Agency shall (A) request that all agencies of the Agency

having jurisdiction over any of the Governmental Approvals expedite the processing of all applications for Governmental Approvals, (B) schedule, convene and conclude all required public hearings in an expeditious manner consistent with Applicable Laws, and (C) cause all of the planners, engineers and other consultants engaged by the Agency to review and comment on all submittals by Redeveloper in an expeditious manner and request that all planners, engineers and other consultants engaged by the Agency or any of its agencies review and comment on all submittals by Redeveloper in an expeditious manner.

(b) The Agency shall undertake and complete, with due diligence, all of its obligations under this Agreement.

(c) The Agency shall not amend the Redevelopment Plan with respect to the Project Site, without the prior written consent of the Redeveloper, which consent shall not be unreasonably delayed or conditioned.

(d) The Redeveloper has been designated as the exclusive redeveloper of the Project Site and shall have the exclusive right and obligation to redevelop the Project Site and implement the Project in accordance with the terms and conditions of this Agreement.

(e) The Agency shall not exercise its power of eminent domain to condemn the Project Site during the Term.

(f) The Agency shall secure and provide the Redeveloper an executed Termination of License and/or Lease from the City, in recordable form, promptly upon receiving said form of document from the Redeveloper, for any interest it may have in the Project Site pursuant to an existing license and/or lease or otherwise to use the Project Site as a sanitary landfill, as referenced in deeds found in the records of the Clerk of Middlesex County, New Jersey in Book 2880 at Page 725, Book 2925 at Page 917 and Book 2925 at Page 964. The Agency shall request that the City take and the City shall take all necessary actions authorizing said Termination.

(g) The Agency hereby approves of the conveyance of the Project Site to the redeveloper. Additionally, the Agency, together with the City, shall execute a Termination of Redeveloper Obligations and Project Restrictions, in recordable form, promptly upon receiving said form of document from the Redeveloper, terminating all of the restrictions affecting and obligations imposed upon the Redeveloper in the deed between the Agency and New South Amboy Development Co., LLC dated August 26, 2003 and recorded in the records of the Middlesex County Clerk on August 28, 2003 in Book 05220P at Page 162 et seq. The Agency shall request that the City take and the City shall take all necessary actions authorizing said Termination.

**[END OF ARTICLE IX]**



**ARTICLE X**  
**INTENTIONALLY OMITTED**

**[END OF ARTICLE X]**

**ARTICLE XI**  
**CERTIFICATES OF OCCUPANCY AND COMPLETION**

**SECTION 11.01. Certificate of Occupancy.** The Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for any building constructed as part of the Project. The Redeveloper shall take all actions required for issuance of a Certificate of Occupancy.

**SECTION 11.02. Certificate of Completion.** The Agency shall, within thirty (30) days after Completion or Substantial Completion of the Project as evidenced by the issuance of a Certificate of Occupancy or a Temporary Certificate of Occupancy as the case may be, and receipt of a written request from the Redeveloper, issue a Certificate of Completion, provided there is not then an existing Redeveloper Event of Default. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction (in accordance with the terms of this Agreement, the Redevelopment Plan and Applicable Law) and termination of this Agreement, and of all of Redeveloper's agreements and covenants in this Agreement and shall discharge and release the lien of this Redevelopment Agreement and the Declaration from the Project Site or portion thereof, as the case may be. If the Agency determines that the Redeveloper is not entitled to a Certificate of Completion, the Agency shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the Agency refused or failed to furnish a Certificate of Completion. Notwithstanding the foregoing, if the Project is Substantially Complete, the Agency will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by the Redeveloper with the Agency in an amount representing one hundred twenty-five percent (125%) of the value of the work not yet completed less the amount of any completion guaranty posted for such work in accordance with the Municipal Land Use Law.

**[END OF ARTICLE XI]**

## ARTICLE XII TRANSFERS

**SECTION 12.01. Prohibition Against Speculative Development.** The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Project Site and not for speculation in land holding.

**SECTION 12.02. Prohibition Against Transfers.** The Redeveloper recognizes the importance of the redevelopment to the general welfare of the community and the public assistance to be made available by law and by the Agency on the conditions stated herein for the purpose of making such redevelopment possible. The Parties acknowledge and agree that a change in Control of the Redeveloper is for practical purposes a transfer or disposition of the property interest then owned by the Redeveloper, and that, therefore, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Agency.

In light of the foregoing, except for Permitted Transfers, during the Term of this Redevelopment Agreement, the Redeveloper shall not, without the prior written consent of the Agency, which shall not be unreasonably withheld, conditioned or delayed: (a) effect or permit any change, directly or indirectly, in the Control of the Redeveloper prior to the issuance of the final Certificate of Completion for the Project or any portion thereof, (b) assign or attempt to assign this Redevelopment Agreement or any rights herein, or (c) make any total or partial sale, transfer or conveyance of the whole or any part of the Project Site or Project Improvements (individually and collectively, a "**Transfer**").

**SECTION 12.03. Permitted Transfers.** (a) The Redeveloper, without violating the provisions of Section 12.02 or Section 12.03 hereof, may effectuate the following Transfers during the Term of this Redevelopment Agreement, to which the Agency hereby consents upon receipt of notice thereof, without the necessity of further action by the Agency ("**Permitted Transfers**"):

(i) security for, and only for, the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement with respect to completing the Project and any other purpose authorized by this Redevelopment Agreement;

(ii) the Declaration;

(iii) a mortgage or mortgages and other liens and encumbrances (but not including mechanic's liens) for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project;

(iv) utility and other development easements;

(v) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval;

(vi) a lease, rental agreement or other similar agreement with any end user of the Project;

(vii) an assignment, in whole or in part, of the Redeveloper's interest in the Project Site to an Affiliate, or a Transfer among partners of the Redeveloper and/or trustees for their benefit and/or to family members;

(viii) an assignment of this Redevelopment Agreement to an Affiliate of the Redeveloper;

(ix) a Transfer to a new limited partnership or limited liability company as long as (i) Redeveloper or an Affiliate or an partner as of the date hereof has an economic interest in such entity or Redeveloper or an Affiliate or any partner as of the date hereof is engaged as manager of the Project; and (ii) Redeveloper or an Affiliate or any partner as of the date hereof is either (x) a general partner or co-general partner of such entity, or (y) a managing member or co-managing member of such entity, or (z) otherwise responsible for the day to day affairs of such entity (other than typical "major decisions" requiring the consent of other parties), even if a third party is the sole general partner or managing member of such entity;

(x) a Transfer pursuant to a foreclosure or deed in lieu of foreclosure and any Transfer by any Holder or any Holder's successor and/or assigns after foreclosure; and

(xi) any contract or agreement with respect to any of the foregoing exceptions.

**SECTION 12.04. Notice of Permitted Transfers.** With respect to any Permitted Transfers (except for a Permitted Transfer pursuant to Section 12.03 (v) or (vi)), the Redeveloper shall provide to the Agency written notice at least ten (10) days prior to such Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. The Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Agency in order to assure that the transferee has assumed all of the Redeveloper's obligations under this Redevelopment Agreement and the Declaration as to the Project (if the Redeveloper's right, title and interest in the Project is being transferred) or any portion thereof (if the Redeveloper's right, title and interest in a portion of the Project is being transferred).

**SECTION 12.05. Transfers Void.** Any transfer of the Redeveloper's interest in violation of this Redevelopment Agreement shall be a Redeveloper Event of Default and shall be null and void *ab initio*. Such default shall entitle the Agency to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by the Agency, or a deemed approval in accordance with the terms hereof, no such sale, transfer, conveyance or assignment or approval thereof by the Agency, shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. The Declaration shall contain a restriction against transfers as set forth in this Article and, in addition, shall provide that in the event of any attempted transfer in violation of the restrictions in this Article, the Agency shall be entitled to the *ex parte* issuance of an injunction restraining such transfer, and the award of legal fees and related expenses of the Agency in connection with any such legal action. Upon recording of the final Certificate of Completion, the provisions of the Declaration set forth in this Article as to the Project shall be deemed terminated, and the Declaration shall so state.

**SECTION 12.06. Approval of Transfer.** Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Agency's consent pursuant to the terms of this Article XII, the Agency shall not unreasonably withhold, condition or delay its consent to such Transfer. The Agency shall notify the Redeveloper in writing whether the Agency consents to a Transfer within thirty (30) days after the Redeveloper's written request to the Agency for such consent. If the Agency does not deliver a written response to the Redeveloper's request within said thirty (30) day period, then the Redeveloper may deliver a second written request to the Agency for consent to the Transfer and the Agency shall be deemed to have consented to such requested Transfer if the Agency does not deliver a written response to the Redeveloper within ten (10) days after the Redeveloper's second request to the Agency for such consent.

**[END OF ARTICLE XII]**



## ARTICLE XIII INDEMNIFICATION; INSURANCE

### SECTION 13.01. Redeveloper Indemnification.

(a) The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Agency Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Project, including but not limited to any lawsuit or proceeding relating to the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Project Site and which results from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from the negligence or willful misconduct of the Agency, its employees, representatives or agents.

(b) The Redeveloper shall defend, indemnify and hold harmless the Agency Indemnified Parties and its officers, agents, employees, contractors, and consultants from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorney's fees and disbursements which result, wholly or partially, from (i) the performance or any failure or delay of performance by the Redeveloper of its obligations under the Redevelopment Agreement; or (ii) any bodily injury or property damage that may occur in the Project Site during the term of the Redevelopment Agreement; provided, however, that such indemnity shall not include the actions or inactions of third-parties over whom the Redeveloper does not exercise control, as long as the Redeveloper maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions.

(c) In any situation in which a Agency Indemnified Party is entitled to receive and desires indemnification by the Redeveloper, the Agency Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Agency Indemnified Party, unless such failure to give prompt notice materially impairs the Redeveloper's ability to defend such party or impairs Redeveloper's ability to have any claim covered by an applicable policy of insurance. Upon receipt of such notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Agency Indemnified Party, including the employment of counsel reasonably acceptable to the Agency Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the Agency Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such Agency Indemnified Party. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Agency Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the Agency Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the Agency Indemnified Party is

entitled to indemnification hereunder. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that a full release of the Agency Indemnified Party is obtained and no admission of liability by the Agency Indemnified Party is required. In the event the Agency refuses to provide a release of such action, and a final judgment is rendered against the Redeveloper, the Agency shall be responsible for the Redeveloper's counsel fees and costs incurred subsequent to the Agency's refusal to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

(d) The Redeveloper's indemnity provided under this Section 13.01 shall survive the termination of this Redevelopment Agreement and shall run with the land and be referenced in the Declaration.

**SECTION 13.02. Insurance Required.** (a) Prior to the Commencement of Construction of the Project, the Redeveloper shall furnish or shall cause to be furnished, to the Agency, a certificate of insurance evidencing a policy of commercial general liability insurance, insuring the Agency against losses, costs, liabilities, claims, causes of action and damages for bodily injury and property damage on all property in the Project Site or related to the construction thereon, in the amount of at least Five Million Dollars (\$5,000,000) combined single limit coverage. Such insurance shall include blanket contractual liability coverage. Redeveloper may carry any of its insurance under "umbrella policies", "blanket policies", and or "excess policies" covering the Project Site and other locations it or any affiliate of Redeveloper owns or leases. All such policies shall be endorsed to add the Agency as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by the Agency shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Agency if such a waiver is available.

(b) Redeveloper shall also provide a certificate of insurance evidencing a policy of Builder's Risk Insurance for the benefit of the Redeveloper (subject to the interests of any Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the Project, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(c) The Redeveloper shall also furnish or cause to be furnished to the Agency evidence reasonably satisfactory to the Agency that any contractor with whom it has contracted for the construction of the Project carries (i) workers' compensation insurance as required by law, (ii) employer's liability insurance in the amount of Five Hundred Thousand Dollars (\$500,000.00) bodily injury each accident, Five Hundred Thousand Dollars (\$500,000.00) bodily injury each employee and Five Hundred Thousand Dollars (\$500,000.00) bodily injury policy limit, and (iii) commercial general liability insurance in the amount One Million Dollars (\$1,000,000.00) each occurrence, Two Million Dollars (\$2,000,000.00) general aggregate.

(d) All insurance policies required by this Section shall be obtained from insurance companies licensed in the State and rated at least A VII in Best's Insurance Guide or such lesser

rated provider that is proposed by the Redeveloper and is reasonably acceptable to the Agency. All insurance policies required hereunder shall be kept in force until a Certificate of Completion is issued.

(e) All insurance policies required by this Section shall be nonassessable and shall contain language to the effect that (a) the policies are primary and noncontributing with any insurance that may be carried by the Agency, (b) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Agency, and (c) the Agency shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to the Agency and shall contain cross liability endorsements.

(f) The Redeveloper's obligation to maintain insurance in this Section 13.02 shall terminate upon issuance of the final Certificate of Completion with respect to the Project.

**[END OF ARTICLE XIII]**

**ARTICLE XIV**  
**MORTGAGE FINANCING; NOTICE OF DEFAULT**  
**TO MORTGAGEE; RIGHT TO CURE**

**SECTION 14.01. Mortgage Financing.** (a) Neither the Redeveloper 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 (other than liens for governmental impositions) to be made or attach to the Project, in excess of ninety percent (90%) of Project Costs, except as may be approved by the Agency (which approval shall not be unreasonably withheld, conditioned or delayed) for the purpose of obtaining funds in connection with the construction of the Project; provided, however, that upon the issuance of a Certificate of Completion for the Project, or any portion thereof, such prohibition shall no longer apply with respect to the corresponding parcel of land and improvements. The Redeveloper, or its successor in interest, shall notify the Agency in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project, or any part thereof (the mortgagee thereunder, a “**Holder**”) and, in any event, the Redeveloper shall promptly notify the Agency of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Project, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same.

(b) If the Holder reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Agency shall reasonably cooperate with the Holder and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and adversely alter or modify the rights and obligations of the Redeveloper or the Agency, as provided in this Redevelopment Agreement.

(c) To the extent reasonably requested by the Redeveloper, the Agency shall execute such other agreements and/or documents (to the extent same are in form and content reasonably acceptable to the Agency) as may be requested or required by any Holder (or any equity participant of the Redeveloper); provided, however, that any such agreement or document shall not materially and adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Agency under this Redevelopment Agreement.

(d) In the event that the Redeveloper is unable to obtain financing for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that financing for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Agency.

(e) If this Agreement is terminated pursuant to the terms of this Section 14.01 then, except as expressly set forth herein to the contrary and upon full payment of all Agency Costs accruing until the date of such termination, this Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.



**SECTION 14.02. Notice of Default to the Redeveloper and Right to Cure.** (a)

Whenever the Agency shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Agency shall at the same time deliver to each Holder a copy of such notice or demand; provided that the Redeveloper has delivered to the Agency a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of such notice (and the expiration of all applicable cure periods), to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. The Agency shall not seek to enforce any of its remedies under this Agreement during the period in which any such Holder is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If possession of the Project Site is necessary to cure any default or breach, any Holder will be allowed to complete any proceedings required to obtain possession of the Project Site.

**SECTION 14.03. No Guarantee of Construction or Completion by Holder.** (a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder 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 made) without the Holder or an Affiliate of Holder first having expressly assumed the Redeveloper's obligations to the Agency with respect to the Project by written agreement reasonably satisfactory to the Agency.

(b) If a Holder forecloses its mortgage secured by the Project Site, or takes title (in its name or the name of an Affiliate) to the Project Site by deed in lieu of foreclosure or similar transaction (collectively, a "**Foreclosure**"), the Holder or its Affiliate shall have the option to either (i) sell the Project Site, as applicable, to a responsible Person reasonably acceptable to the Agency, which Person shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) itself, or its Affiliate, assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Agency shall not seek to enforce against the Holder or such purchaser any of the remedies available to the Agency pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of the Project Schedule, and shall submit evidence reasonably satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or other entity assuming such obligations of the Redeveloper, properly completing the Project shall be entitled, upon written request made to the Agency, to Certificates of Completion. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of the Redeveloper, to devote the Project Site, or any part thereof, to any uses, or to construct any



improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Holder or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Project Site or Project in accordance herewith.

**[END OF ARTICLE XIV]**

## ARTICLE XV EVENTS OF DEFAULT AND REMEDIES

**SECTION 15.01. Events of Default.** Any one or more of the following shall constitute an event of default hereunder (“**Event of Default**”), subject to the occurrence of an event of Force Majeure (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Agency to observe and perform any covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without the consent of the Redeveloper; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstated and in effect for any period of ninety (90) consecutive days; or (ix) the Redeveloper shall have suspended the transaction of its usual business.

(c) The Redeveloper shall materially default in or violate its obligations with respect to the design, development and/or construction of the Project in accordance with this Redevelopment Agreement (including, but not limited to, the Project Schedule) and the Site Plan approved by the Planning Board, or shall abandon or substantially suspend construction work (unless such suspension arises out of an event of Force Majeure), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Agency to do so; provided however, that if the default or violation is one which cannot be completely remedied within the ninety (90) days after such written notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding with due diligence to remedy the same as soon as practicable, but in no event later than one hundred twenty (120) days after such written notice.

(d) The Redeveloper or its successor in interest (except for third parties to which a portion of the Project has been conveyed, assigned or subleased in the ordinary course of

business) shall fail to pay any real estate taxes or assessments on any real property or any part thereof owned by it in the Agency when due, or shall place thereon any encumbrance or lien unauthorized by this Redevelopment Agreement, or shall suffer any levy or attachment to be made, or any materialman's, mechanics' or construction lien, or any other unauthorized encumbrance or lien to attach and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Agency made for such payment, removal, or discharge, within sixty (60) days after written demand by the Agency to do so.

(e) There is, in violation of this Redevelopment Agreement, any Transfer.

**SECTION 15.02. Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or failure to perform are the result of events or conditions beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Redevelopment Agreement, including, without limitation, the following (a "Force Majeure"):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, pandemic (including Covid-19), sabotage or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project Site, other than those set forth above (such events being required to physically affect a Party's ability to fulfill its obligations hereunder; and the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure event);

(b) A landslide, fire, explosion, flood, release of nuclear radiation, damage to or theft of any part of the Project Improvements, or any casualty not created by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure;

(c) The order, judgment, action or inaction and/or determination of any Governmental Authority (other than the Agency when acting in conformance with this Redevelopment Agreement) excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers; provided, however, that such order, judgment, action or inaction and/or determination shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such order, judgments, action or inaction and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party;

(d) The suspension, termination, interruption, denial, or failure of or delay in renewal or issuance of any Governmental Approval (including due to any appeal), provided, however, that such suspension, termination, interruption, denial, or failure of or delay in renewal or issuance shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from the

Redeveloper's failure to make an administratively complete submission for a Governmental Approval in accordance with Applicable Law shall not be an event of Force Majeure;

(e) An inability to procure goods or services for any reason not caused by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure, including, without limitation, the limited manufacturing capacity of any suppliers; a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market; failure of transportation, strikes, lockouts, slowdowns or similar labor action by trade unions or any of their members, equipment manufacturers, suppliers of material and/or transporters of same; or any other economic condition that may adversely affect the Project, the Redevelopment Area or the real estate markets; or

(f) Acts or omissions of the other Party, except in conformance with this Redevelopment agreement or Applicable Law, or as to the Redeveloper, acts or omissions of the Agency.

Any event of Force Majeure affecting any counterparty to an agreement with either or both of the Parties hereto shall be considered an event of Force Majeure hereunder. Notice by the Party claiming such extension shall be sent to the other Party within thirty (30) calendar days of the commencement of the cause. During any Force Majeure event that affects part of the Project, to the extent reasonably practicable, the Redeveloper shall continue to perform its obligations for the rest of the Project. The existence of an event of Force Majeure shall not prevent a Party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure event; provided that the event that is the basis of the Event of Default is not a result of the Force Majeure event. Except for an event or events of Force Majeure resulting from acts or omissions of the Agency, any event or events of Force Majeure will be deemed to have ceased to exist as of a date twenty four (24) months from its initial occurrence.

**SECTION 15.03. Remedies Upon Events of Default by the Redeveloper.** In the event that an Event of Default by the Redeveloper occurs and the Redeveloper fails to cure such Event of Default within the applicable cure period, the Agency may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper, as applicable, under this Redevelopment Agreement or the Agency may, in its sole and absolute discretion, terminate this Redevelopment Agreement and the Redeveloper's designation as the Redeveloper of the Project.

**SECTION 15.04. Remedies Upon Events of Default by the Agency.** In the event that an Event of Default by the Agency occurs, then the Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Agency, as applicable, under this Redevelopment Agreement, including an action for specific performance and/or damages. Further, but subject to any cure provisions afforded the Agency hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, to terminate this Redevelopment Agreement.

**SECTION 15.05. Failure or Delay.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party in asserting any of its rights or



remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**SECTION 15.06. Remedies Cumulative.** No remedy in favor of Redeveloper conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by Redeveloper shall not constitute a waiver of the right to pursue other available remedies.

**SECTION 15.07. Continuance of Obligations.** The occurrence of an Event of Default shall not relieve the defaulting party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

**SECTION 15.08. Mitigation.** The parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder; provided, however, that the costs of any mitigation efforts shall be at the sole cost of the defaulting Party.

**SECTION 15.09. Documents to be Delivered Upon Termination.** In the event this Redevelopment Agreement is terminated for any reason, except as a result of the default of the Agency, the Redeveloper shall deliver to the Agency, within ten (10) days after such termination, copies of all reports, studies, data, plans, surveys, title reports, subdivision maps and specifications prepared by the Redeveloper and third parties with respect to the Project Site and all documents, reports, permits and approvals obtained by the Redeveloper relating to the Project provided, however, Redeveloper shall not be obligated to deliver any materials to the Agency that Redeveloper deems to be confidential and proprietary in nature.

**SECTION 15.10. Agreement Not to Develop Upon Termination.** Subject to the rights of any Holders, in the event this Redevelopment Agreement is terminated as a result of a Redeveloper Event of Default, then the Redeveloper agrees that, for a period of six (6) months following such termination, in the event that the Redeveloper still owns or controls the Project Site (or any part thereof), it shall take no further steps to construct the Project or to develop the Project Site, except as may be agreed to by the Agency, in its sole discretion, notwithstanding the fact that the Redeveloper may be in possession of Governmental Approvals required for such development.

**[END OF ARTICLE XV]**



**ARTICLE XVIII  
MISCELLANEOUS**

**SECTION 16.01. Notices.** Formal notices, demands and communications between the Agency and the Redeveloper shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

Copies of all notices, demands and communications shall be sent as follows:

**If to the Agency:**

South Amboy Redevelopment Agency  
140 North Broadway  
South Amboy, New Jersey 08879  
Attn: Executive Director

**with copies to:**

Craig J. Coughlin, Esq.  
Rainone, Coughlin Minchello  
550 Route One South, Suite 440  
Iselin, New Jersey 08830

and

Kevin P. McManimon, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2<sup>nd</sup> Floor  
Roseland, New Jersey 07068

**If to the Redeveloper:**

NAME  
ADDRESS

**with a copy to:**

NAME  
ADDRESS

**SECTION 16.02. Conflict of Interest.** No member, official or employee of the Agency shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to this Redevelopment Agreement which is prohibited by law.

**SECTION 16.03. No Consideration For Redevelopment Agreement.** The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any

money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Agency, any money or other consideration for or in connection with this Redevelopment Agreement.

**SECTION 16.04. Lender Changes.** If the Redeveloper's lender requires a change in the terms of this Redevelopment Agreement, the Agency shall reasonably cooperate with the Redeveloper in approving such change, so long as such change, if any, does not modify or change the substantial rights or obligations of the Parties as set forth in this Redevelopment Agreement. In addition, the Agency agrees to enter into such agreements as the Redeveloper's lender (or its equity participants) may reasonably require provided that such agreement shall not be inconsistent with the terms of this Redevelopment Agreement (i.e. shall not increase the Agency's responsibilities or decrease its benefits hereunder).

**SECTION 16.05. Non-Liability of Officials and Employees of the Agency.** No member, official or employee of the Agency shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Agency, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**SECTION 16.06. Non-Liability of Officials and Employee of Redeveloper.** No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Agency, or any successor in interest, in the event of any default or breach by the Redeveloper, or for any amount which may become due to the Agency, or their successors, or on any obligation under the terms of this Redevelopment Agreement.

**SECTION 16.07. Time for Performance.** If the date for performance of an obligation is on a Saturday, Sunday or federal holiday, the date for performance shall be extended to the next business day.

**SECTION 16.08. No Brokerage Commissions.** The Agency and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Agency or the Redeveloper, and the Agency and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

**SECTION 16.09. Provisions Not Merged With Deeds.** To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Project Site from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

**SECTION 16.10. Successors and Assigns.** This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

**SECTION 16.11. Severability.** If any term or provision of this Redevelopment Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

**SECTION 16.12. Modification of Redevelopment Agreement.** No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

**SECTION 16.13. Execution of Counterparts.** This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile) and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

**SECTION 16.14. Prior Agreements Superseded.** This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

**SECTION 16.15. Waivers and Amendments in Writing.** All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Agency and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Redeveloper.

**SECTION 16.16. Governing Law.** This Redevelopment Agreement shall be governed by and construed in accordance with the Applicable Laws of the State, and any disputes arising hereunder shall be resolved in the Superior Court, State of New Jersey, Middlesex County Vicinage.

**[END OF ARTICLE XVI]**

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.  
SIGNATURES APPEAR ON THE FOLLOWING PAGE].**

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

ATTEST:

\_\_\_\_\_

REDEVELOPER:

AMBOY MAIN STREET URBAN  
RENEWAL, LLC

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

Name:

Title:

ATTEST:

\_\_\_\_\_

SOUTH AMBOY REDEVELOPMENT  
AGENCY

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

Kevin Meszaros, Chairman

**EXHIBIT 1**  
**CONCEPT PLAN**



## EXHIBIT 2 PROJECT SCHEDULE

1	The Agency and the Redeveloper Execute and Deliver the Redevelopment Agreement	Effective Date
2	The Agency and the Redeveloper Execute and Deliver the Financial Agreement	Within 90 days after the Effective Date
3	Redeveloper obtains all Governmental Approvals required for Commencement of Construction	Within 26 months after the Effective Date
4	Redeveloper closes on financing	Within 90 days after full approvals
5	Commencement of Construction	Within 30 days after financing
6	Completion of Construction	Within 20 months after full approvals

**EXHIBIT 3**  
**FORM OF DECLARATION OF PROJECT COVENANTS**  
**REDEVELOPMENT PROJECT COVENANT**

Record and Return to:

Kevin P. McManimon, Esq.  
McManimon, Scotland & Baumann, LLC  
75 Livingston Avenue, 2<sup>nd</sup> Floor  
Roseland, New Jersey 07068

**THIS REDEVELOPMENT PROJECT COVENANT** (the “**Project Covenant**”) is made this [\_\_\_\_] day of [\_\_\_\_\_, \_\_\_\_\_], by [NAME], a limited liability company formed under the laws of the State of New Jersey with offices at [ADDRESS] and its successors and assigns (the “**Redeveloper**”).

**W-I-T-N-E-S-S-E-T-H:**

**WHEREAS**, the City of South Amboy in the County of Middlesex, New Jersey (the “**City**”) is authorized under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**Redevelopment Law**”), to determine whether certain parcels of land within the City constitute an area in need of redevelopment and to adopt redevelopment plans therefor; and

**WHEREAS**, the City previously designated the property identified as Block 160, Lot 1.03 on the City’s tax maps (the “**Project Site**”) as an area in need of redevelopment under the Redevelopment Law and is subject to a redevelopment plan known as the Broadway/Main Street Redevelopment Plan (the “**Redevelopment Plan**”); and

**WHEREAS**, on July 15, 2020, the City adopted Ordinance No. 08-2020 to, among other things, amend the Redevelopment Plan to permit light industrial uses, and to provide associated bulk standards therefor, applicable to the Project Site; and

**WHEREAS**, the South Amboy Redevelopment Agency (the “**Agency**”) is acting as the redevelopment entity for the purpose of implementing the Redevelopment Plan; and

**WHEREAS**, the Redeveloper is a joint venture comprising \_\_\_\_\_, the owner of the Project Site, and [WOODMONT]; and

**WHEREAS**, the Redeveloper proposes to redevelop the Project Site by constructing thereon an approximately 152,100 square foot warehouse facility with approximately 45 loading positions and space to store approximately 32 trailers (the “**Project Improvements**”); and

**WHEREAS**, on [\_\_\_\_\_, \_\_\_\_\_], 2020, the Agency and the Redeveloper executed that certain Redevelopment Agreement (the “**Redevelopment Agreement**”) setting forth the terms and conditions under which the Redeveloper will construct the Project Improvements on the Project Site; and

**WHEREAS**, at such time as the Project Improvements are completed in accordance with the terms of the Redevelopment Plan and the Redevelopment Agreement, this Project Covenant and the existing conditions which rendered the Project Site an area in need of redevelopment, will no longer exist.

**NOW, THEREFORE**, the Redeveloper, intending to be legally bound hereby and to bind its successors and assigns, does promise, covenant and declare as follows:

The Redeveloper hereby declares and covenants that the Project Site shall be used only for the uses allowed under the Redevelopment Plan, and subject to and in accordance with the covenants and restrictions herein, which covenants and restrictions shall, subject to the terms hereof, run with the Project Site and shall be binding upon the Redeveloper, and its successors and assigns and, to the extent applicable, to all future lessees and occupants of all or any portion of the Project Site including, without limitation, the rights or easements appurtenant thereto.

1. **Terms and Definitions.** Capitalized terms used but not defined herein shall be afforded the meanings provided in the Redevelopment Agreement.

2. **Applicable Laws.** The Redeveloper's development, construction, use, operation and maintenance of the Project Site and all improvements thereon and thereto, as provided in the Redevelopment Plan and the Redevelopment Agreement shall be undertaken and carried out in accordance with all Applicable Laws, including without limitation, the Redevelopment Plan, as it may be amended from time to time by the agreement of the Redeveloper and the Agency.

3. **Redeveloper Covenants.**

3.1. The Redeveloper covenants and agrees as follows, provided, however that all such covenants and agreements shall be subject to the terms of the Redevelopment Agreement and that in case of a conflict between the Redevelopment Agreement and this Project Covenant, the terms of the Redevelopment Agreement shall control:

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project Improvements. The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws.

(b) The Redeveloper shall use commercially reasonable efforts to (i) obtain financing for the Project Improvements, (ii) construct and develop the Project Improvements with due diligence and (iii) commence and Complete each item in the Project Schedule on or prior to the applicable date set forth in the Project Schedule and, for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period. All activities performed under the Redevelopment Agreement shall be

performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project.

(c) The Redeveloper shall construct the Project Improvements in accordance with the Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law and, in the event that the Redeveloper wishes to materially change or modify the Project Improvements, notwithstanding the fact that such material change or modification is authorized by the Redevelopment Plan, the Agency's written approval (which shall not be unreasonably withheld, conditioned or delayed) must be secured prior to proceeding with any activities relating to such proposed material modifications. The Redeveloper acknowledges that the Agency has relied on the proposed Project Schedule in entering into its obligations under the Redevelopment Agreement.

(d) The Redeveloper shall fulfill its material obligations under any and all agreements it enters into with third parties with respect to the acquisition, construction, leasing, financing and other matters relating to the Project Improvements; provided, however, that this covenant is not intended to prevent the Redeveloper from contesting the scope or nature of such obligations as and to the extent provided in such agreements.

(e) The Redeveloper shall use commercially reasonable efforts to complete the Project Improvements or cause same to be completed, on or prior to the date set forth in the Project Schedule at its sole cost and expense; provided, however, that the Parties acknowledge that moneys may be made available towards the completion of same from other outside sources. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs necessary to complete the Project Improvements, the Redeveloper shall not be entitled to any funds from the Agency.

(f) Upon completion of the development and construction of the Project Improvements, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(g) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, assignment, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.

(h) The Redeveloper shall not restrict the sale, assignment, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(i) The Redeveloper shall immediately notify the Agency of any material change in its financial condition from the information provided to the Agency by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project in furtherance of the Agency's consideration in designating the Redeveloper as the redeveloper of the Project Site.

(j) The Redeveloper shall not use the Project Site, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(k) The Redeveloper shall not use the Project Site, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

3.2. **Effect and Duration of the Redeveloper Covenants.** The covenants set forth in Section 3.1 hereof shall be covenants running with the Project Site until the Project Improvements are Completed, all in accordance with the Redevelopment Agreement, and they shall, and except only as otherwise specifically provided in the Redevelopment Agreement, be binding to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, and any successor in interest to the Project Improvements, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein; provided, however, that such covenants shall not be binding on any Mortgagee except in accordance with the terms of Article XIV of the Redevelopment Agreement. Such agreements and covenants, however, shall be binding on the Redeveloper itself, and each successor in interest to the Redeveloper, respectively, only for such period as the Redeveloper or such successor shall be in possession or occupancy of the Project Site, the buildings and structures thereon, or any part thereof.

3.3. **Enforcement of the Covenants.** The Agency and its successors and assigns shall be deemed beneficiaries of the agreements and covenants contained in this Project Covenant, both for and in their own right, and 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 have been provided. Such agreements and covenants shall run in favor of the Agency for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Agency has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Agency shall have the right, in the event of any breach of any such agreement or covenant, to terminate the Redevelopment Agreement in accordance with Section 15.03 thereof.

3.4. **Completion of Project Improvements.** Upon redevelopment of the Project Site and completion of the Project Improvements, the conditions that were found and determined to exist at the time the Project Site was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Project Improvements or any applicable portion thereof. The covenants contained herein shall terminate and this Project Covenant will



be discharged of record upon Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 11.02 thereof for the Project Improvements; provided, however, that the Redeveloper's indemnity provided under Section 13.01 of the Redevelopment Agreement shall survive the termination of the Redevelopment Agreement.

**[Signature page follows.]**

[REDEVELOPER NAME]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## ACKNOWLEDGMENT

STATE OF NEW JERSEY :  
 : SS  
COUNTY OF :

Notary Public of New Jersey

C

**Exhibit 1**  
**LEGAL DESCRIPTION**

**EXHIBIT 4**  
**FORM OF CERTIFICATE OF COMPLETION**

Record and Return to:  
NAME  
ADDRESS

**CERTIFICATE OF COMPLETION**

Pursuant to Section 11.02 of the Redevelopment Agreement by and between the South Amboy Redevelopment Agency (the “Agency”) and [REDEVELOPER NAME] (the “Redeveloper”), dated as of \_\_\_\_\_, 2020, (the “Redevelopment Agreement”), the undersigned, as of the date hereof, certifies that (all undefined capitalized terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of [\_\_\_\_\_], in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for the Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) such Completion has been further evidenced by a written certificate of the Redeveloper and a certificate of the Redeveloper’s engineer evidencing completion of the Project, which certificates are attached hereto as **Exhibit 1**:

(iv) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws; and

(v) a copy of any Certificate of Occupancy issued with respect to any portion or portions of the Project for which a Certificate of Occupancy is required is attached hereto as **Exhibit 2**.

The conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment no longer exist with respect to the Project Site. The Project Site shall no longer be subject to (i) any covenant running with the land covered by this Certificate of Completion for the benefit of the Agency, and (ii) eminent domain for purposes of redevelopment as a result of those determinations.

The Declaration recorded in the office of the Middlesex County clerk on [\_\_\_\_\_] in deed book [\_\_\_\_], page [\_\_\_\_] is hereby discharged of record and is void and of no further force and effect.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

**IN WITNESS WHEREOF**, the undersigned has caused this Certificate of Completion of Project to be executed as of the [\_\_\_\_] day of [\_\_\_\_\_].

WITNESS OR ATTEST:

**SOUTH AMBOY REDEVELOPER AGENCY**

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

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

**Acknowledgment**

STATE OF NEW JERSEY :

:SS

COUNTY OF MIDDLESEX :

On this [\_\_\_\_] day of [\_\_\_\_\_] before me, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the South Amboy Redevelopment Agency, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey , who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the corporation and that s/he was authorized to execute the foregoing instrument on behalf of the corporation.

\_\_\_\_\_



**Exhibit 1**  
**REDEVELOPER'S CERTIFICATE**

Pursuant to Section 11.02 of the Redevelopment Agreement by and between the South Amboy Redevelopment Agency (the “**Agency**”) and [REDEVELOPER NAME] (the “**Redeveloper**”), dated as of \_\_\_\_\_, 2020, (the “**Redevelopment Agreement**”), the Redeveloper certifies as follows to the best of its knowledge information and belief (capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of [\_\_\_\_\_], in accordance with the City of South Amboy building and construction code, the Redevelopment Agreement, the Redevelopment Plan and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to the Project;

(iv) attached hereto is a certificate of [\_\_\_\_\_], Redeveloper’s engineer, evidencing completion and certification of the Project; and

(v) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws.

**[REDEVELOPER NAME]**

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit 2**  
**CERTIFICATE OF OCCUPANCY**

**EXHIBIT 5**  
**REDEVELOPER OWNERSHIP STRUCTURE**

**EXHIBIT B**

**OWNERSHIP DISCLOSURE STATEMENT**

**AMBOY MAIN STREET INDUSTRIAL URBAN RENEWAL, LLC**

<b><u>NAME</u></b>	<b><u>ADDRESS</u></b>	<b><u>PERCENTAGE OWNED</u></b>
<b>WIP South Amboy, LLC</b>		<b>50%</b>
Eric Witmond	100 Passaic Ave., Fairfield, NJ 07004	75%
Marc Lebovitz	822 South Ave. W., Westfield, NJ 07090	25%
<b>New South Amboy Development Co, LLC</b>		<b>50%</b>
Michael D. Jingoli	100 Lenox Drive, Lawrenceville, NJ 08648	50%
Joseph R. Jingoli	100 Lenox Drive, Lawrenceville, NJ 08648	50%

I certify that the above represents the names and addresses of all entities who own a 10% or greater interest in Amboy Main Street Industrial Urban Renewal, LLC

I further certify that no officer or employee of the City of South Amboy has any interest, direct or indirect, in the above entity.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

**AMBOY MAIN STREET URBAN RENEWAL, LLC**

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

Name: Stephen A. Santola, General Counsel

**EXHIBIT 6**  
**FORM OF FINANCIAL AGREEMENT**



M: 08-06-2020 :04

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING PAYMENT OF INVOICES TO MCMANIMON, SCOTLAND & BAUMANN FOR  
THE GENON/NRG SITE**

**WHEREAS**, the South Amboy Redevelopment Agency "SARA" will remit payment for the invoices as follows;

Invoice 170858	\$3,623.60
Invoice 170162	\$1,886.00
Invoice 169303	\$1,999.39
Invoice 168696	\$287.00
Invoice 167609	\$104.55
Invoice 167237	\$689.00
Invoice 166243	\$260.00
Invoice 165065	\$266.50
Invoice 164515	\$842.50
Invoice 163477	\$2,020.96
Invoice 162712	\$574.00
Invoice 162442	\$1,128.10
Invoice 160676	\$451.00
Invoice 159833	\$943.00
Invoice 159171	\$1,066.00
Invoice 158472	\$328.00
Total:	\$16,469.60

**NOW, THEREFORE, BE AND IT HEREBY IS RESOLVED** by the South Amboy Redevelopment Agency, that the Agency authorizes the payment to McManimon, Scotland & Baumann

  
\_\_\_\_\_  
Kevin F. Meszaros, Chairman

Attested to:

  
\_\_\_\_\_  
Kelly Wolff, Secretary

Meeting Date: August 6, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker		✓				
Tony Gonsalves						✓
Frank Milatta			✓			
Anthony Conrad	✓		✓			
Dave Kales						✓

M: 08-06-2020 :03

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**REFUNDING BALANCE OF ESCROW to BAKER DEVELOPMENT**

**WHEREAS**, the South Amboy Redevelopment Agency "SARA" will refund the balance of remaining escrow to Baker Development in the amount of \$4,501.56 (#5012) for Beacon Point and \$5,141.53 for Harbor Village (#5034).

**NOW, THEREFORE, BE AND IT HEREBY IS RESOLVED** by the South Amboy Redevelopment Agency, that the Agency authorizes the refund to Baker Development

  
\_\_\_\_\_  
Kevin F. Meszaros, Chairman

Attested to:

  
\_\_\_\_\_  
Kelly Wolff, Secretary

Meeting Date: August 6, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker		✓				
Tony Gonsalves						✓
Frank Milatta			✓			
Anthony Conrad	✓		✓			
Dave Kales						✓

M: 06-04-20 :01

**SOUTH AMBOY REDEVELOPMENT AGENCY**


**RESOLUTION**

**APPOINTING A CHAIRMAN**


**BE IT RESOLVED** by the South Amboy Redevelopment Agency that Kevin Meszaros is hereby appointed as the Chairman for the year July 1, 2020 through June 30, 2021.

**BE IT FURTHER RESOLVED**, that the Chairman shall have all the responsibility and authority set forth in the Agency By-Laws and New Jersey statutes.

**BE IT FURTHER RESOLVED**, that this Resolution shall take effect immediately.

  
\_\_\_\_\_  
Chairman

Attested to:

  
\_\_\_\_\_  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker			<input checked="" type="checkbox"/>			
Tony Gonsalves			<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 06-04-20 :02

**SOUTH AMBOY REDEVELOPMENT AGENCY**


**RESOLUTION**

**APPOINTING A VICE-CHAIRMAN**


**BE IT RESOLVED** by the South Amboy Redevelopment Agency that Camille Tooker is hereby appointed as the Vice-Chairman for the year July 1, 2020 to June 30, 2021.

**BE IT FURTHER RESOLVED**, that the Vice-Chairman shall have all the responsibility and authority set forth in the Agency By-Laws and New Jersey statutes.

**BE IT FURTHER RESOLVED**, that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves			<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			



M: 06-04-20 :06

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**DESIGNATING OFFICIAL BANK**

**WHEREAS**, the South Amboy Redevelopment Agency (the "Agency") pursuant to N.J.S.A. 40A: 12A- 1 *et seq.* is a validly created municipal entity in the State of New Jersey; and


**WHEREAS**, the Agency has been charged by the South Amboy City Council with the responsibility of redeveloping the City's waterfront and related properties; and

**NOW, THEREFORE, IT IS RESOLVED**, by the South Amboy Redevelopment Agency that the following banks are designated as the Agency's official depositories of funds for the fiscal year July 1, 2020-June 30, 2021:

- 1) Amboy National Bank
- 2) The Provident Bank

**BE IT FURTHER RESOLVED**, that this resolution shall be effective immediately.

**BE IT FURTHER RESOLVED**, that an executed copy of this Resolution shall be filed with the minutes of the meeting at which this Resolution was approved and a separate copy shall be placed on file by the Secretary as evidence of the Agency's action in this regard.

  
\_\_\_\_\_  
Chairman

M: 06-04-20 :07

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**DESIGNATING OFFICIAL NEWSPAPERS**

**BE IT RESOLVED** by the South Amboy Redevelopment Agency that the following newspapers are hereby designated the official newspapers of the Agency for the fiscal year July 1, 2020-June 30, 2021:

- (1) The Home News and Tribune
- (2) The Star Ledger

**BE, IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**


**AUTHORIZING SALARIES FOR THE REDEVELOPMENT AGENCY**

**EMPLOYEES TO BE REIMBURSED BY THE AGENCY  
TO THE CITY OF SOUTH AMBOY**


**WHEREAS**, the City of South Amboy utilizes its payroll system to advance payment of the salaries of certain employees of the South Amboy Redevelopment Agency (the "Agency"), with the understanding that the Agency will reimburse said salaries.

**NOW, THEREFORE, BE AND IT HEREBY IS RESOLVED** by the South Amboy Redevelopment Agency, that the Agency authorizes the reimbursement to the City of the following employees' salaries plus fringe (i.e., applicable federal taxes):

- |                     |             |
|---------------------|-------------|
| 1) Eric Chubenko    | \$27,061.00 |
| 2) Kelly Wolff      | \$ 7,269.00 |
| 3) Daniel Balka     | \$ 5,412.00 |
| 4) Kathleen O'Grady | \$ 4,320.00 |

  
Chairman

Attested to:

  
Kelly Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker						✓
Tony Gonsalves						
Frank Milatta						✓
Dave Kales			✓			
Anthony Conrad	✓		✓			

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**ADOPTING CASH MANAGEMENT AND CHECK WRITING POLICY**

**WHEREAS**, the South Amboy Redevelopment Agency desires to adopt a formal cash management and check writing policy;

**NOW THEREFORE BE AND IT HEREBY IS RESOLVED**, by the South Amboy Redevelopment Agency that the following CASH MANAGEMENT AND CHECK WRITING POLICY is hereby adopted:

**Policy:**

The South Amboy Redevelopment Agency hereby establishes a cash management and check writing policy that outlines internal controls over our financial matters, specifically for receipts and deposits, and identifies the individuals who are authorized to sign checks on its behalf. This will be utilized to maintain appropriate internal controls as well as to offer instructions to depositories so that there is a clear understanding regarding this matter.

An approved Corporate Authorization Resolution shall be maintained at each designated financial institution bearing authorized check writing signatures and the number of signatures required. All deposits are required to be 100% secured and collateralized regardless of type (i.e. checking, savings, CD, etc.) as required by State and Federal Law. The Agency adheres to the practice of maintaining its deposits in only permitted investments, with the highest possible yield and the greatest liquidity.

**Check Writing:**

A check register shall be maintained at all times indicating the date, payee and amount of each check issued as well as a copy of each check voucher accompanied by full back up documentation such as authorized purchase orders, invoices, receipts, etc.

All checks shall bear two signatures, which may be the Executive Director, Treasurer, Chairman or Vice Chairman. The supporting data for each check shall be available for the signer to review at the time of signing.

The Board of Commissioners shall review the bill list each month and shall approve by verbal resolution their concurrence with the payment of such bills.

The South Amboy Redevelopment Agency may establish procedures for automated signatures.

**Receipts and Deposits:**

The South Amboy Redevelopment Agency will receive all payments pertaining to the Agency both over the counter and through the mail. No cash is allowed to be received without authorization of the Executive Director. The Agency bookkeeping staff will then endorse all checks and money orders with the Authority's designated bank deposit account number and deposit as soon as possible thereafter. The Agency bookkeeping staff will apply the receipts to the receipts ledger. A copy of the deposit tickets and payments are then filed in the Agency bookkeeping staff office and maintained in the receipts ledger. The bookkeeper will reconcile the receipts ledger against the bank statement.

This policy rescinds all previous authorization policies and shall become effective upon its adoption.










**BE IT FURTHER RESOLVED**, this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros						
Zusette Dato						
Camille Tooker						
Tony Gonsalves						
Frank Milatta						
Dave Kales						
Anthony Conrad						



M: 06-04-20 :10

SOUTH AMBOY REDEVELOPMENT AGENCY

RESOLUTION

**AWARDING OF A PROFESSIONAL SERVICES  
CONTRACT PURSUANT TO A FAIR AND OPEN PROCESS**

**WHEREAS**, N.J.S.A. 19-44a-20.4 et seq., The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS**, the South Amboy Redevelopment Agency (the "Agency") is in need of certain legal services to assist the Agency in connection with various legal matters; and

**WHEREAS**, the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS**, the Agency has reviewed the submission of the candidate(s), and determined in accordance with established criteria that Rainone Coughlin Minchello ("RCM") is the best qualified candidate for the position; and

**WHEREAS**, RCM has proposed to provide the services, described in the attached proposal for a sum not to exceed \$30,600.00 (exclusive of separate specific engagements for special matters as determined by the Agency from time to time); and

**WHEREAS**, in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to retain RCM to provide the services set forth in the proposal annexed hereto and incorporated herein; and

**WHEREAS**, as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any services specified herein, the Agency Treasurer shall certify in writing the availability of the sum of \$ 30,600.00 therefore and a copy of said certification shall be attached to this resolution.

NOW, THEREFORE, BE IT RESOLVED by the SOUTH AMBOY REDEVELOPMENT AGENCY that Rainone Coughlin Minchello shall be and is hereby retained to represent the Agency in the capacity of General Counsel for the period July 1, 2020 through June 30, 2021, and to perform the duties set forth in the attached proposal, at the rate of \$2,500.00 per month and limited in aggregate to an amount not to exceed \$ 30,600.00, (exclusive of separate specific engagements for special matters as determined by the Agency from time to time); SUBJECT TO the attachment to this Resolution of the certification of the Agency Treasurer as to the availability and source of the funds as required by N.J.A.C. 5:34-5.5 et seq.

BE IT FURTHER RESOLVED, that, subject to the attachment of the certifications referred to above, the Chairman and the Agency Secretary are hereby authorized to execute the attached Agreement.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 06-04-20 :11

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**AWARDING OF A PROFESSIONAL SERVICES-AUDITING  
CONTRACT PURSUANT TO A FAIR AND OPEN PROCESS**

**WHEREAS, N.J.S.A. 19-44a-20.4 et seq.,** The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS,** the South Amboy Redevelopment Agency (the "Agency") is in need of auditing; and accounting services to the Agency in connection with the annual budget and various matters; and

**WHEREAS,** the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS,** the Agency has reviewed the submission of the candidate, and determined in accordance with established criteria that Lerch, Vinci and Higgins is the best qualified candidate for the position; and

**WHEREAS,** Lerch, Vinci and Higgins has proposed to provide the auditing services, described in the attached agreement for a sum not to exceed \$ 9,200.00; and accounting support services on an individual engagement basis, in accordance with the rate schedule included in the proposal

**WHEREAS,** in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to retain Lerch, Vinci and Higgins to provide the services set forth in the proposal annexed hereto and incorporated herein; and

**WHEREAS**, as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any services specified herein, the Agency Treasurer shall certify in writing the availability of the sum of \$ 9,200.00 therefore and a copy of said certification shall be attached to this resolution.

**NOW, THEREFORE, BE IT RESOLVED** by the SOUTH AMBOY REDEVELOPMENT AGENCY that Lerch, Vinci and Higgins shall be and is hereby retained to perform auditing services, and accounting support services, for the Agency for the period July 1, 2020 through June 30, 2021, and to perform the duties set forth in the attached engagement letter and limited in aggregate to an amount not to exceed \$ 9,200.00, SUBJECT TO the attachment to this Resolution of the certification of the Agency Treasurer as to the availability and source of the funds as required by N.J.A.C. 5:34-5.5 et seq.

**BE IT FURTHER RESOLVED**, that Lerch, Vinci and Higgins shall perform budget preparation services in accordance with the attached proposal.

**BE IT FURTHER RESOLVED**, that subject to the attachment of the certifications referred to above, the Chairman and the Agency Secretary are hereby authorized to execute the attached Agreement.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.



Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker						✓
Tony Gonsalves		✓	✓			
Frank Milatta			✓			
Dave Kales			✓			
Anthony Conrad	✓		✓			



M: 06-04-20 :12

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION  
AWARDING A CONSULTING AGREEMENT**

**WHEREAS**, the South Amboy Redevelopment Agency (the "AGENCY") has the need for consulting services to assist the Agency in various aspects of the redevelopment process and in the negotiations, management and oversight of the Agency's various redevelopment agreements; and

**WHEREAS**, the consulting to be provided by Center State Engineering, Monroe, New Jersey, Beacon Planning and Consulting Services, LLC, Colts Neck, New Jersey, NW Financial Group LLC, Hoboken, New Jersey and CME Associates, Parlin, New Jersey ("The FIRM") are being obtained through a fair and open process; and

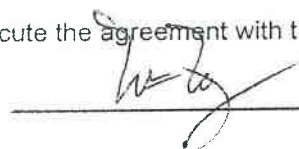
**WHEREAS**, the Qualified Firms have each proposed to provide the services, described in the attached proposals, at the rates set forth therein; and

**WHEREAS**, in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to appoint the Qualified Firms as consultants to provide special services set forth in the proposal annexed hereto and incorporated herein; and

**BE IT FURTHER RESOLVED**, that the Agency Executive Director and Agency Secretary on behalf of the Agency are authorized to execute the agreement with the Firm.

Attested to:

  
Kelly A. Wolff, Secretary

  
Chairman

Meeting Date: June 04, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 06-04-20 :13

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING QUALIFIED RESPONDANTS TO PERFORM PROFESSIONAL  
SERVICES-ENVIRONMENTAL ENGINEERING PURSUANT TO A FAIR AND  
OPEN PROCESS**

**WHEREAS**, N.J.S.A. 19-44a-20.4 et seq., The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS**, the South Amboy Redevelopment Agency (the "Agency") is in need of environmental engineering services from time to time to assist the Agency in connection with various redevelopment and other projects; and

**WHEREAS**, the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS**, the Agency has reviewed the submission of the candidates, and determined in accordance with established criteria that the firms of Potomac Hudson Environmental, Inc., South Amboy, New Jersey, French and Parrello Associates Inc., Wall, New Jersey, TRC Environmental Corporation, New Providence, New Jersey, Prestige Environmental, Somerset, New Jersey, Paulus Sokowski and Sartor LLC, Warren New Jersey and CME Associates, Monmouth Junction, New Jersey are qualified candidate for the position of environmental engineer, (the "Qualified Firms"); and

**WHEREAS**, the Qualified Firms have each proposed to provide the services, described in the attached proposals, at the rates set forth therein; and

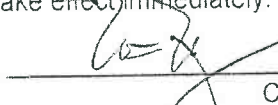
**WHEREAS**, in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to approve the Qualified

Firms as environmental engineers to provide the services set forth in their respective proposals annexed hereto and incorporated herein; and

**WHEREAS**, as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any services specified herein, a letter of engagement specifying the exact services and the not to exceed amount shall be authorized by the Agency, and the Agency Treasurer shall certify in writing the availability of the funds.

**NOW, THEREFORE, BE IT RESOLVED** by the SOUTH AMBOY REDEVELOPMENT AGENCY that Potomac Hudson Environmental, Inc, French and Parrello Associates Inc., TRC Environmental Corporation, Prestige Environmental, Paulus Sokowski and Sartor LLC and CME Associates shall be and are hereby approved to represent the Agency in the capacity of Environmental Engineer for the period July 1, 2020 through June 30, 2021, and to perform the duties as determined by the Agency in separately determined amounts.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 06-04-20 :14

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING QUALIFIED RESPONDANTS TO PERFORM SERVICES AS A  
FINANCIAL ADVISOR-PURSUANT TO A FAIR AND OPEN PROCESS**

**WHEREAS, N.J.S.A. 19-44a-20.4 et seq.,** The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS,** the South Amboy Redevelopment Agency (the "Agency") is in need of financial advisory services from time to time to assist the Agency in connection with various redevelopment and other projects; and

**WHEREAS,** the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS,** the Agency has reviewed the submission of the candidates, and determined in accordance with established criteria that the firm of Acacia Financial Group, Inc, Marlton, New Jersey and NW Financial Group LLC, Hoboken, New Jersey are qualified for the position, (the "Qualified Firm"); and

**WHEREAS,** the Qualified Firm has proposed to provide the services, described in the attached proposals, at the rate set forth therein; and

**WHEREAS,** in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to designate the Qualified Firm to provide the services set forth in their proposal annexed hereto and incorporated herein from time to time, as required; and

**WHEREAS,** as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any

services specified herein, a letter of engagement specifying the exact services and the not to exceed amount shall be authorized by the Agency, and the Agency Treasurer shall certify in writing the availability of the funds.

**NOW, THEREFORE, BE IT RESOLVED** by the SOUTH AMBOY REDEVELOPMENT AGENCY that, Acacia Financial Group, Inc and N W Financial Group shall be and are hereby approved to represent the Agency in the capacity of financial advisors for the period July 1, 2020 through June 30, 2021, and to perform the duties as determined by the Agency in separately determined amounts.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker						✓
Tony Gonsalves		✓	✓			
Frank Milatta			✓			
Dave Kales			✓			
Anthony Conrad	✓		✓			



M: 06-04-20 :15

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING QUALIFIED RESPONDANTS TO PERFORM PROFESSIONAL  
SERVICES-SPECIAL LEGAL COUNSEL PURSUANT TO A FAIR AND OPEN  
PROCESS**

**WHEREAS, N.J.S.A. 19-44a-20.4 et seq.,** The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS,** the South Amboy Redevelopment Agency (the "Agency") is in need of certain Special Legal Counsel services to assist the Agency in connection with specialized areas of the law including but not limited to financing in connection with redevelopment projects, litigation, and bonding; and

**WHEREAS,** the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS,** the Agency has reviewed the submission of the candidates, and determined in accordance with established criteria that the Firm of McManimon, Scotland, and Baumann Roseland, New Jersey is a qualified candidate for the position, (the "Qualified Firm"); and

**WHEREAS,** the Qualified Firm has proposed to provide the services, described in the attached proposals, at the rates set forth therein; and

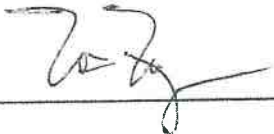
**WHEREAS,** in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to approve the Qualified Firm as special counsel to provide the services set forth in the proposal annexed hereto and incorporated herein; and

**WHEREAS,** as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any


services specified herein, a letter of engagement specifying the exact services and the not to exceed amount shall be authorized by the Agency, and the Agency Treasurer shall certify in writing the availability of the funds.

**NOW, THEREFORE, BE IT RESOLVED** by the SOUTH AMBOY REDEVELOPMENT AGENCY that the Firm of McManimon, Scotland and Baumann is hereby retained to represent the Agency in the capacity of Special Counsel for the period July 1, 2020 through June 30, 2021, and to perform the duties as determined by the Agency from time to time, at separately determined amounts.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 06-04-20 :16

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING QUALIFIED RESPONDANTS TO PERFORM PLANNING  
SERVICES-PURSUANT TO A FAIR AND OPEN PROCESS**

**WHEREAS**, N.J.S.A. 19-44a-20.4 et seq., The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS**, the South Amboy Redevelopment Agency (the "Agency") is in need of planning services from time to time to assist the Agency in connection with various redevelopment and other projects; and

**WHEREAS**, the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS**, the Agency has reviewed the submission of the candidates, and determined in accordance with established criteria that the firms of CME Associates, Howell, New Jersey, Center State Engineering, Monroe, New Jersey and Beacon Planning and Consulting services, L.L.C., Colts Neck, New Jersey; (the "Qualified Firms"); are qualified to provide the services; and

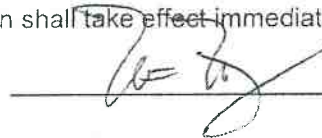
**WHEREAS**, the Qualified Firms has proposed to provide the services, described in the attached proposals, schedule 1, at the rates set forth therein; and

**WHEREAS**, in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to designate the Qualified Firms as planners to provide the services set forth in the proposal annexed hereto and incorporated herein from time to time, as required; and

**WHEREAS**, as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any services specified herein, a letter of engagement specifying the exact services and the not to exceed amount shall be authorized by the Agency, and the Agency Treasurer shall certify in writing the availability of the funds.

**NOW, THEREFORE, BE IT RESOLVED** by the SOUTH AMBOY REDEVELOPMENT AGENCY that CME Associates, Center State Engineering and Beacon Planning and Consulting Services shall be and are hereby approved to represent the Agency in the capacity of Planner for the period July 1, 2020 through June 30, 2021, and to perform the duties as determined by the Agency in separately determined amounts.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 06-04-20 :17

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING QUALIFIED RESPONDANTS TO PERFORM VALUATION  
AND CONSULTING SERVICES-PURSUANT TO A FAIR AND OPEN PROCESS**

**WHEREAS**, N.J.S.A. 19-44a-20.4 et seq., The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS**, the South Amboy Redevelopment Agency (the "Agency") is in need of valuation and assessing services from time to time to assist the Agency in connection with various redevelopment and other projects; and

**WHEREAS**, the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS**, the Agency has reviewed the submission of the candidates, and determined in accordance with established criteria that the firms of Sterling, DiSanto & Associates, LLC., Somerville, New Jersey and New Jersey Realty Advisory Group, LLC, Woodbridge, New Jersey are qualified for the position, (the "Qualified Firms"); and

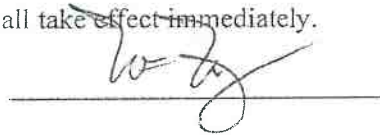
**WHEREAS**, the Qualified Firms have proposed to provide the services, described in the attached proposals, at the rate set forth therein; and

**WHEREAS**, in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to designate the Qualified Firms to provide the services set forth in their proposals annexed hereto and incorporated herein from time to time, as required; and

WHEREAS, as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any services specified herein, a letter of engagement specifying the exact services and the not to exceed amount shall be authorized by the Agency, and the Agency Treasurer shall certify in writing the availability of the funds.

NOW, THEREFORE, BE IT RESOLVED by the SOUTH AMBOY REDEVELOPMENT AGENCY that Sterling, DiSanto & Associates, LLC and New Jersey Realty Advisory Group, LLC shall be and is hereby approved to represent the Agency in the capacity of assessor and valuation consultants for the period July 1, 2020 through June 30, 2021, and to perform the duties as determined by the Agency in separately determined amounts.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves			<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			



M: 06-04-20 :18

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING QUALIFIED RESPONDANTS TO PERFORM PROFESSIONAL  
SERVICES- SPECIAL ENGINEERING SERVICES PURSUANT TO A FAIR AND  
OPEN PROCESS**

**WHEREAS**, N.J.S.A. 19-44a-20.4 et seq., The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS**, the South Amboy Redevelopment Agency (the "Agency") is in need of special engineering services from time to time to assist the Agency in connection with various redevelopment and other projects; and

**WHEREAS**, the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS**, the Agency has reviewed the submission of the candidates, and determined in accordance with established criteria that the firms of French and Parrello Associates, Wall, New Jersey, Center State Engineering Associates, Monroe Township, New Jersey, CME Associates, Parlin, New Jersey and Harbor Consultants, Cranford, New Jersey are qualified candidate for the position, together (the "Qualified Firms"); and

**WHEREAS**, the Qualified Firms have each proposed to provide the services, described in the attached proposals, at the rates set forth therein; and

**WHEREAS**, in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to appoint the Qualified Firms as engineers to provide special services engineering services set forth in the proposal annexed hereto and incorporated herein; and

**WHEREAS**, as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any

services specified herein, a letter of engagement specifying the exact services and the not to exceed amount shall be authorized by the Agency, and the Agency Treasurer shall certify in writing the availability of the funds.

**NOW, THEREFORE, BE IT RESOLVED** by the SOUTH AMBOY REDEVELOPMENT AGENCY that French and Parrello Associates, Center State Engineering Associates, CME Associates and Harbor Consultants are hereby qualified to represent the Agency in the capacity of Special Services Engineer for the period July 1, 2020 through June 30, 2021, and to perform the duties as determined by the Agency from time to time, in separately determined amounts.

**BE IT FURTHER RESOLVED** that this Resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker						✓
Tony Gonsalves		✓	✓			
Frank Milatta			✓			
Dave Kales			✓			
Anthony Conrad	✓		✓			

M: 06-04-20 :19

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**APPROVING QUALIFIED RESPONDANTS TO PERFORM ARCHITECTURAL  
ARCHITECTURAL SERVICES-PURSUANT TO A FAIR AND OPEN PROCESS**

**WHEREAS**, N.J.S.A. 19-44a-20.4 et seq., The "New Jersey Local Pay-to Play" Law (the "Statute") establishes certain requirements for retaining professional services; and

**WHEREAS**, the South Amboy Redevelopment Agency (the "Agency") is in need of architectural services from time to time to assist the Agency in connection with various redevelopment and other projects; and

**WHEREAS**, the Agency has undertaken a fair and open process as defined in the Statute to obtain candidates to provide said services; and

**WHEREAS**, the Agency has reviewed the submission of the candidates, and determined in accordance with established criteria that the firm of USA Architects, Somerville, New Jersey, Paulus Sokowski and Sartor Engineering LLC, Warren, New Jersey and Michael V. Testa, Manalapan, New Jersey are qualified for the position, (the "Qualified Firms"); and

**WHEREAS**, the Qualified Firms has proposed to provide the services, described in the attached proposals, Schedule 1, at the rates set forth therein; and

**WHEREAS**, in accordance with the Local Public Contracts Law and the Regulations promulgated thereunder, N.J.A.C. 5:34-1 et seq., the Agency desires to designate the Qualified Firms as architects to provide the services set forth in the proposal annexed hereto and incorporated herein from time to time, as required; and

WHEREAS, as required by N.J.A.C. 5:34-5.5 et seq., prior to the undertaking of any services specified herein, a letter of engagement specifying the exact services and the not to exceed amount shall be authorized by the Agency, and the Agency Treasurer shall certify in writing the availability of the funds.

NOW, THEREFORE, BE IT RESOLVED by the SOUTH AMBOY REDEVELOPMENT AGENCY that USA Architects, Paulus Sokowski and Sartor Engineering LLC and Michael V. Testa, Architect; shall be and are hereby approved to represent the Agency in the capacity of Architect for the period July 1, 2020 through June 30, 2021, and to perform the duties as determined by the Agency in separately determined amounts.

BE IT FURTHER RESOLVED that this Resolution shall ~~take effect~~ immediately.

  
Chairman

Attested to:

  
Kelly Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker			<input checked="" type="checkbox"/>			<input checked="" type="checkbox"/>
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 06-04-20 :20

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

**CONFIRMING VERBAL AUTHORIZATION TO FUND THE  
"PAINT AND PROMOTE GRANT PROGRAM"**

**WHEREAS**, at the meeting of the South Amboy Redevelopment Agency (the "Agency") held on March 5, 2020 the Agency Commissioners by voice resolution authorized a "Paint and Promote Grant Program", in an amount not to exceed \$7,500.00, for business owners to apply for grants up to \$1,500.00, and;

**WHEREAS**, the Agency wishes to create a written record of said action.

**WHEREAS**, under this program, business owners or property owners of locations where a business is housed, may apply for grants up to \$1,500. To paint their business facades.

**NOW THEREFORE BE IT RESOLVED**, by the South Amboy Redevelopment Agency that the here in above described action taken by the Agency at the meeting of March 5, 2020 is hereby confirmed.

**BE IT FURTHER RESOLVED**, that this resolution shall take effect immediately.

  
Chairman

Attested to:

  
Kelly A. Wolff, Secretary

Meeting Date: June 04, 2020

Member:	Moved	Seconded	Ayes	Nays	Abstain	Absent
Kevin Meszaros			<input checked="" type="checkbox"/>			
Zusette Dato			<input checked="" type="checkbox"/>			
Camille Tooker						<input checked="" type="checkbox"/>
Tony Gonsalves		<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>			
Frank Milatta			<input checked="" type="checkbox"/>			
Dave Kales			<input checked="" type="checkbox"/>			
Anthony Conrad	<input checked="" type="checkbox"/>		<input checked="" type="checkbox"/>			

M: 03-05-2020 :01

**SOUTH AMBOY REDEVELOPMENT AGENCY**

**RESOLUTION**

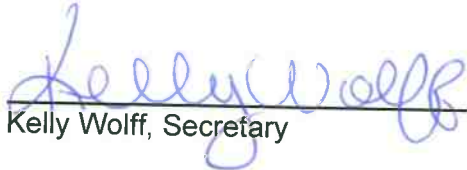
**REFUNDING BALANCE OF ESCROW to DEVIMY EQUITIES, LLC**

**WHEREAS**, the South Amboy Redevelopment Agency "SARA" will refund the balance of remaining escrow to DeVimy Equities, LLC in the amount of \$2,552.00 for Block 62, Lots 10, 11 & 12.

**NOW, THEREFORE, BE AND IT HEREBY IS RESOLVED** by the South Amboy Redevelopment Agency, that the Agency authorizes the refund to DeVimy Equities, LLC

  
\_\_\_\_\_  
Kevin F. Meszaros, Chairman

Attested to:

  
\_\_\_\_\_  
Kelly Wolff, Secretary

Meeting Date: March 5, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker	✓	✓	✓			
Tony Gonsalves						✓
Frank Milatta						✓
Anthony Conrad	✓		✓			
Dave Kales			✓			



# WILENTZ

—ATTORNEYS AT LAW—

**DONNA M. JENNINGS, ESQ.**

T: 732.855.6039  
F: 732.726.6560  
djennings@wilentz.com

90 Woodbridge Center Drive  
Suite 900 Box 10  
Woodbridge, NJ 07095-0958  
732.636.8000

February 18, 2020

**Via UPS Overnight**

Ms. Kelly Wolff, Secretary  
South Amboy Redevelopment Agency  
140 North Broadway  
South Amboy, NJ 08879

**Re: DeVimy Equities, LLC  
Block 62, Lots 10, 11 & 12  
City of South Amboy**

Dear Ms. Wolff:

Our firm represents DeVimy Equities, LLC in this matter. On December 10, 2019 I wrote to you requesting a refund of the \$5,000.00 escrow being held on account in the above-referenced matter (copy attached as Exhibit "1"). It has been brought to my attention that Mr. Valetutto's invoice in the amount of \$2,448 has been paid, but I have not received the balance which was to be forwarded to my office.

Would you kindly forward the balance of the escrow remaining on account (\$2,552.00), by check payable to "Wilentz, Goldman & Spitzer, P.A.", at your earliest convenience.

Thank you for your assistance in this matter. If you have any questions, please feel free to contact me.

Very truly yours,

  
DONNA M. JENNINGS

DMJ:mb  
enc.

cc: via email:  
Mr. Robert Indig  
Craig Coughlin, Esq.  
James Stahl, Esq.  
Angelo Valetutto, P.E., P.P.

**RESOLUTION OF THE SOUTH AMBOY REDEVELOPMENT AGENCY  
DESIGNATING JOHNROSE FM, LLC AS CONDITIONAL REDEVELOPER OF  
BLOCK 90, LOTS 1, 2, 3 AND 6 IN THE CITY OF SOUTH AMBOY AND AUTHORIZING  
THE EXECUTION OF A REDEVELOPMENT AGREEMENT**

**WHEREAS**, the Mayor and City Council of the City of South Amboy (the "City") adopted a Resolution which authorized and directed the Planning Board of the City of South Amboy (the "Planning Board") to conduct a preliminary investigation (the "Preliminary Investigation") to determine whether the parcels identified on the City's Official Tax Map as Block 90, Lots 1, 2, 3 and 6 (the "Study Area") qualified as a redevelopment area in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"); and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-6, the Planning Board caused a "Redevelopment Area Report" dated May 21, 2003 to be prepared by Angelo J. Valettuto, P.E., P.P. of the firm AJV Engineering, Inc. (the "Planning Consultant"); and

**WHEREAS**, public hearings were duly noticed and conducted by the Planning Board in accordance with the Redevelopment Law, after which the Planning Board adopted a Resolution recommending to the City Council that the Study Area be designated as an area in need of redevelopment; and

**WHEREAS**, having accepted the recommendation of the Planning Board, on March 19, 2003, the City Council adopted Resolution No. 88-03 designating the Study Area as an areas in need of redevelopment (hereinafter, the "Project Area" or "Redevelopment Area") in accordance with the Redevelopment Law; and

**WHEREAS**, on July 16, 2003, the City Council adopted Resolution 179-03 designating the Redevelopment Area as "The Route 35 Northbound Redevelopment Area" and authorized and directed the Planning Board to provide a report containing its recommendation for a Redevelopment Plan thereto in accordance with N.J.S.A. 40A:12A-7 of the Redevelopment Law; and

**WHEREAS**, the Planning Consultant prepared a redevelopment plan for the Redevelopment Area entitled the "Route 35 Northbound Redevelopment Plan" dated September 23, 2003 (the "Redevelopment Plan") for the Planning Board's review and consideration; and

**WHEREAS**, in accordance with the Redevelopment Law, the Planning Board reviewed the Redevelopment Plan and adopted a Resolution recommending that the City Council adopt the Redevelopment Plan; and

**WHEREAS**, upon receipt and review of Planning Board's recommendation, on December 1, 2003, the City Council adopted Ordinance No. 34-2003 adopting and approving the Redevelopment Plan, as amended and supplemented; and

**WHEREAS**, the Agency was established pursuant to N.J.S.A. 40:55C-1 et seq. (former Redevelopment Agencies Law) and operates pursuant to the Redevelopment Law, for the purpose

of exercising all those certain powers set forth in the Redevelopment Law to accomplish its established objectives as a redevelopment agency on behalf of the City; and

**WHEREAS**, JohnRose FM, LLC (the “Redeveloper”) submitted a proposal in which it proposes to redevelop the Project Area with the construction of 31 market rate townhouses and additional parking spaces (the “Project”); and

**WHEREAS**, upon review and evaluation of the Redeveloper’s proposal, the Agency determined that the Redeveloper’s proposal serves the goals of the Redevelopment Plan and the Redeveloper possesses the requisite experience and qualifications for successfully completing and operating similarly sized projects; and

**WHEREAS**, the Redevelopment Law authorizes the Agency to enter into contracts or agreements for the planning, construction or undertaking of any development project or redevelopment work in an area designated as an area in need of redevelopment; and

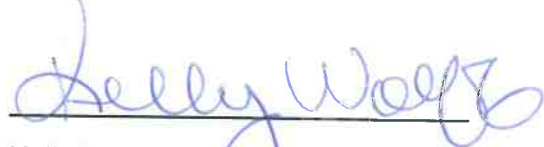
**WHEREAS**, in furtherance of the goals and objectives of the Redevelopment Plan, the Agency has determined that it is in the best interest of the Agency and the City and its residents to designate the Redeveloper as the exclusive redeveloper of the Project Area pending the successful negotiation and execution of a redevelopment agreement for the purpose of setting forth in detail the parties’ respective undertakings, rights and obligations in connection with the development and construction of the Project.

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Commissioners of the South Amboy Redevelopment Agency as follows:

1. The foregoing recitals are hereby incorporated by reference as if fully set forth herein.
2. JohnRose FM, LLC is hereby designated as the exclusive, conditional redeveloper of the Project Area.
3. The appropriate Agency officials are hereby authorized to execute a redevelopment agreement in substantial conformity with Attachment A, appended hereto, with such non-substantive changes as the Agency officials deem appropriate in consultation with the Agency’s redevelopment counsel and other professionals.
4. This resolution shall take effect immediately.

  
\_\_\_\_\_  
Kevin F. Meszaros, Chairman

Attested to:



Kelly Wolff, Secretary

Meeting Date: March 5, 2020

<b>Member:</b>	<b>Moved</b>	<b>Seconded</b>	<b>Ayes</b>	<b>Nays</b>	<b>Abstain</b>	<b>Absent</b>
Kevin Meszaros			✓			
Zusette Dato			✓			
Camille Tooker		✓	✓			
Tony Gonsalves						✓
Frank Milatta						✓
Anthony Conrad	✓		✓			
Dave Kales			✓			

**ATTACHMENT A**  
**(Redevelopment Agreement)**

**REDEVELOPMENT AGREEMENT**

**By and Between**

**SOUTH AMBOY REDEVELOPMENT AGENCY**  
**(as Redevelopment Entity)**

**AND**

**JOHNROSE FM, LLC**  
**(as Redeveloper)**

**DATED** as of \_\_\_\_\_, 2020



## **TABLE OF EXHIBITS**

<b>EXHIBIT A</b>	Legal Description of the Property
<b>EXHIBIT B</b>	Project Description and Concept Plan
<b>EXHIBIT C</b>	Project Schedule
<b>EXHIBIT D</b>	Form of Declaration of Redeveloper Covenants and Restrictions
<b>EXHIBIT E</b>	Form of Certificate of Completion
<b>EXHIBIT F</b>	Certificate of Incumbency

**THIS REDEVELOPMENT AGREEMENT** (the "Redevelopment Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the **SOUTH AMBOY REDEVELOPMENT AGENCY**, a corporate and body politic of the State of New Jersey with offices at 140 North Broadway, South Amboy, New Jersey 08879 (the "Agency"), and **JOHNROSE FM, LLC**, a limited liability company of the State of New Jersey with offices at 6 Riverview Plaza, Suite 2, Red Bank, New Jersey 07701 (the "Redeveloper"). The Agency and Redeveloper each may individually be referred to herein as a "Party," and collectively as, the "Parties."

**WITNESSETH:**

**WHEREAS**, the Mayor and City Council of the City of South Amboy (the "City") adopted a Resolution which authorized and directed the Planning Board of the City of South Amboy (the "Planning Board") to conduct a preliminary investigation (the "Preliminary Investigation") to determine whether the parcels identified on the City's Official Tax Map as Block 90, Lots 1, 2, 3 and 6 (the "Study Area") qualified as a redevelopment area in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law"); and

**WHEREAS**, pursuant to N.J.S.A. 40A:12A-6, the Planning Board caused a "Redevelopment Area Report" dated May 21, 2003 to be prepared by Angelo J. Valetutto, P.E., P.P. of the firm AJV Engineering, Inc.; and

**WHEREAS**, public hearings were duly noticed and conducted by the Planning Board in accordance with the Redevelopment Law, after which the Planning Board adopted a Resolution recommending to the City Council that the Study Area be designated as an area in need of redevelopment; and

**WHEREAS**, having accepted the recommendation of the Planning Board, on March 19, 2003, the City Council adopted Resolution No. 88-03 which designated the Study Area as Redevelopment Area (hereinafter, the "Project Area" or "Redevelopment Area") in accordance with the Redevelopment Law; and

**WHEREAS**, on July 16, 2003, the City Council adopted Resolution 179-03 designating the Redevelopment Area as "The Route 35 Northbound Redevelopment Area" and authorized and directed the Planning Board to provide a report containing its recommendation for a redevelopment plan thereto in accordance with N.J.S.A. 40A:12A-7; and

**WHEREAS**, the firm of AJV Engineering, Inc. prepared a redevelopment plan for the Redevelopment Area entitled "Route 35 Northbound Redevelopment Plan" dated September 23, 2003 (the "Redevelopment Plan") for the Planning Board's review and consideration; and

**WHEREAS**, in accordance with the Redevelopment Law, the Planning Board reviewed the Redevelopment Plan and adopted a Resolution recommending that the City Council adopt the Redevelopment Plan; and

**WHEREAS**, upon receipt and review of Planning Board's recommendation, on December 1, 2003, the City Council adopted Ordinance No. 34-2003 adopting and approving the Redevelopment Plan, as amended and supplemented; and

**WHEREAS**, the Agency was established pursuant to N.J.S.A. 40:55C-1 et seq. (former Redevelopment Agencies Law) and operates pursuant to the Redevelopment Law, for the purpose of exercising all those certain powers set forth in the Redevelopment Law to accomplish its established objectives as a redevelopment agency on behalf of the City; and

**WHEREAS**, the Redeveloper submitted a proposal in which the Redeveloper proposes to redevelop the Project Area with the construction of 31 market rate townhouses and 13 additional parking spaces (the "Project"), as more fully described in **Exhibit B**, attached hereto; and

**WHEREAS**, upon review and evaluation of Redeveloper's proposal, the Agency determined that the Redeveloper's proposal serves the goals of the Redevelopment Plan and the Redeveloper possesses the requisite experience and qualifications for successfully completing and operating similarly sized projects; and

**WHEREAS**, the Redevelopment Law authorizes the Agency to enter into contracts or agreements for the planning, construction or undertaking of any development project or redevelopment work in an area designated as an area in need of redevelopment; and

**WHEREAS**, the Agency and the Redeveloper have engaged in negotiations relative to the Project and the Agency has determined that in furtherance of the goals and objectives of the Redevelopment Plan, it is in the Agency's best interest to enter into this Redevelopment Agreement with the Redeveloper for the purpose of setting forth in detail each Parties' respective undertakings, rights and obligations in connection with the development and construction of the Project; and

**WHEREAS**, the Redeveloper acknowledges that all uses to which the Project may be devoted are guided and controlled by the Redevelopment Plan and this Redevelopment Agreement, and that under no circumstances shall the Redeveloper, or any assignee or Affiliate (as defined herein) undertake any development of the Project unless it is in strict accordance with the Redevelopment Law, the Redevelopment Plan, Applicable Law (as defined herein) and this Redevelopment Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind their successors and assigns, do mutually promise, covenant and agree as follows:



## ARTICLE I DEFINITIONS AND INTERPRETATIONS

**Section 1.01. Definitions.** In this Redevelopment Agreement, words that are capitalized, and which are not the first word of a sentence, are defined terms. The capitalized terms defined in the preamble and Recitals hereto shall have the meanings assigned to such terms. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Redevelopment Agreement shall have the meanings ascribed below.

"Agency" shall have the meaning set forth in the Recitals.

"Agency Costs" is defined in Section 2.04.

"Agency Events of Default" means, with respect to the Agency, an Event of Default, as such term is defined in Section 11.01 hereof.

"Agency Indemnified Parties" means the Agency and its officers, elected and appointed officials, agents, employees, contractors and consultants.

"Affiliate" means with respect to the Redeveloper, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with the Redeveloper. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of voting securities or by contract or otherwise.

"Appeal Period" shall mean the period of time specified by statute or court rule within which an appeal may be taken by any Party from the grant of any Governmental Approval (as defined herein), and includes the period for filing an appeal to an appellate court after entry of a judgment or decision by a lower court or administrative agency.

"Applicable Law" means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority (as defined herein), and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Redevelopment Area, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement, including without limitation, the Municipal Land Use Law and the Redevelopment Law.

"Certificate of Completion" means a certificate issued by the Agency upon Completion of the Project pursuant to Section 7.01.

"Certificate of Occupancy" means a Certificate of Occupancy (temporary or permanent), as such term is defined in the New Jersey Administrative Code, issued with respect to the Project.

"COAH" shall mean the Council on Affordable Housing.

"Commencement of Construction" means the undertaking by Redeveloper of any actual physical construction of any portion of the Project, including site preparation, environmental remediation, construction of new structures or construction or upgrading of infrastructure.

"Comple[t]e, [ed] or [ion]" means with respect to the Project, or any portion thereof, that (a) all work related to the Project, or a portion thereof, or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with this Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project, or any portion thereof that has been completed, as the case may be, may, in all respects, be used and operated under the applicable provisions of this Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed, (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Project, or any portion thereof that have been completed, or such other work or action to which such term is applied are in full force and effect, and (c) such "Completion" has been evidenced by a written notice provided by the Redeveloper (with respect to the Project, or any portion thereof) in the form of Exhibit I to the form of Certificate of Completion attached hereto as **Exhibit E**.

"Completion Date" means the date that the Project is Completed.

"Concept Plan" means the development plan as depicted in **Exhibit B** attached hereto.

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, the power, directly or indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

"Declaration" is defined in Section 6.05.

"Effective Date" means the date on which this Redevelopment Agreement is executed by the last of the Parties to so execute same, or such other date as may be agreed to by the Parties.

"Engineering Controls" means any mechanism to contain or stabilize contamination or to ensure the effectiveness of a Remediation. Engineering Controls may include, without limitation, caps, covers, dikes, trenches, leachate control systems, signs, fences and physical access barriers.

"Environmental Laws" means all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes and administrative orders or decrees, directives or judgments relating to environmental contamination or damage to or protection of the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. §§ 6901, et seq.); the Clean Water Act (33 U.S.C. §§ 1251, et seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11, et seq.); ISRA; the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et seq.);



the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et seq.); and the rules and regulations promulgated thereunder.

"Escrow Account" is defined in Section 2.05.

"Estoppel Certificate" is defined in Section 3.07.

"Event of Default" or "Default" means the occurrence of any Redeveloper Event of Default or Agency Event of Default, as the case may be, and as further defined in Section 11.01.

"Exhibit(s)" means any exhibit attached hereto which shall be deemed to be a part of this Redevelopment Agreement as if set forth in full in the text hereof.

"Force Majeure" is defined in Section 11.02.

"Foreclosure" is defined in Section 10.03(b).

"Governmental Applications" is defined in Section 5.01(a).

"Governmental Approvals" means all final and unappealable local, state or federal government approvals necessary for the implementation and completion of the Project in accordance with the terms of this Redevelopment Agreement, including, but not limited to, preliminary and final site plan approval, preliminary and final subdivision approval, if and as applicable, environmental permits, including, but not limited to, wetlands and storm water drainage permits, permits, consents, permissions or approvals relating to historic preservation matters, Utilities-related permits, including permits related to water supply and sewer service, and all other necessary permits, licenses, consents, permissions or approvals from or required by governmental agencies.

"Governmental Authority" means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority or jurisdiction over any part of the permitting, Remediation, construction or operation of the Project or the Project Area, or pursuant to Environmental Laws including without limitation, the Planning Board and the NJDEP.

"Hazardous Substance" means any element, compound, material, mixture, substance, chemical or waste that is listed as hazardous or toxic, or a pollutant or contaminant, in any Environmental Law.

"Holder(s)" is defined in Section 10.01(a).

"Improvements" means all buildings, structures and appurtenances, including, but not limited to, facilities and amenities, telecommunications equipment, surface parking or structured parking facility, infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic



striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatment and all other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Project Area and the streets immediately adjacent to the Project Area.

"Institutional Controls" means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of a Remediation over time, when contaminants remain at the contaminated site in levels or concentrations above the applicable remediation standard that would allow unrestricted use of the site. Institutional Controls may include, without limitation, structure, land and natural resource use restrictions, classification exception areas, well restrictions areas and deed notices.

"ISRA" means the Industrial Site Recovery Act, as amended (N.J.S.A. 13:1K-6 et seq.).

"Long Term Tax Exemption Law" means N.J.S.A. 40A:20-1 et seq.

"Municipal Land Use Law" means N.J.S.A. 40:55D-1 et seq., as amended and supplemented.

"Natural Resource Damages" means the loss, liability or damages owed to any natural resource trustee, including, without limitation, a state, the federal government or Indian tribe, to compensate for the loss or injury to natural resources.

"NJDEP" means the New Jersey Department of Environmental Protection.

"Notice" is defined in Section 13.01.

"Permitted Transfers" is defined in Section 8.03.

"Person" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, institution, or any other entity.

"Planning Board" shall have the meaning set forth in the Recitals.

"Plans and Specifications" means all plans, drawings, specifications and related documents needed to obtain Governmental Approvals and to implement and Complete Construction of the Project in accordance with this Redevelopment Agreement and all applicable Governmental Approvals.

"Progress Meetings" is defined in Section 4.01.

"Progress Reports" is defined in Section 4.02.

"Project" shall have the meaning set forth in the Recitals and as depicted in the Concept Plan attached hereto as **Exhibit B**.

"Project Area" shall have the meaning set forth in the Recitals.

"Project Costs" means the costs of designing, permitting and constructing the Project.

"Project Schedule" means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in **Exhibit C**.

"Redeveloper" shall have the meaning set forth in the Recitals.

"Redeveloper Covenants" shall have the meaning set forth in Section 6.04.

"Redeveloper Event of Default" means, with respect to the Redeveloper, an Event of Default as defined in Section 11.01(a).

"Redeveloper Fee" is defined in Section 2.07.

"Redevelopment Agreement" shall have the meaning set forth in the Recitals.

"Redevelopment Area" shall have the meaning set forth in the Recitals.

"Redevelopment Law" shall have the meaning set forth in the Recitals.

"Redevelopment Plan" shall have the meaning set forth in the Recitals.

"Remediat[el, [ed], [ing] or [ion]" means the investigation, study, planning, design, clean-up, removal, containment, disposal, dispersal, treatment (including, but not limited to, in-situ and ex-situ treatment), management, remediation (including, but not limited to, the use of Engineering Controls and Institutional Controls, stabilization, neutralization of Hazardous Substances required by Governmental Authority and/or pursuant to Environmental Laws which allows for the Project, including, but not limited to any operations, maintenance, and monitoring activities that may be required after completion of the foregoing.

"Section" means a section or subsection of this Redevelopment Agreement.

"Scheduled Completion Date" means the anticipated Completion Date as set forth in the Project Schedule attached hereto as **Exhibit C**, subject to any extensions granted in accordance with this Redevelopment Agreement.

"State" means the State of New Jersey.

"Substantial Completion" or "Substantially Completed" means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of "Completion" have been satisfied, with the exception of certain immaterial portions of the work relating to the Project that have been Completed, or such other work remains to be Completed as long as (a) the Redeveloper, with respect to the Project, has prepared and delivered to the Agency a "punch list" of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this



Redevelopment Agreement, (b) "punch list" items have been reasonably agreed to by the Agency, and (c) such "punch list" items are capable of being Completed within ninety (90) days of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion; and provided further however, that all such "punch list" items shall be Completed under all circumstances within (i) one hundred eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) three hundred sixty-five (365) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings. "Substantial Completion" shall be evidenced by issuance of a temporary Certificate of Occupancy for the Project, or any portion thereof that has been Substantially Completed.

"Agency" shall have the meaning set forth in the Recitals.

"Transfer" is defined in Section 8.02.

"Utilities" means municipal water, sanitary sewer and storm water facilities and natural gas, electric, and voice and data transmission facilities.

**Section 1.02. Interpretation and Construction.** In this Redevelopment Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Redevelopment Agreement, refer to this Redevelopment Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Redevelopment Agreement.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Redevelopment Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Redevelopment Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) Each right of the Agency to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the Agency official(s) with legal

authority to conduct such review or grant such approvals. Any review contemplated by this Redevelopment Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Agency shall inform the Redeveloper of all officials with the required authority.

(g) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(h) Unless otherwise indicated, any "fees and expenses" shall be required to be actual, out of pocket, customary and reasonable.

## **ARTICLE II**

### **FINANCIAL OBLIGATIONS; TAX EXEMPTION**

**Section 2.01. The Redeveloper's Financial Commitment.** The Redeveloper represents and warrants that to the best of Redeveloper's knowledge and belief, it has obtained or can obtain, and intends to commit the requisite equity and debt financing, in an amount necessary to implement and complete the Project.

**Section 2.02. Interim Costs.** The Parties executed an Interim Costs Agreement in which the Redeveloper agreed to pay for the Agency's out-of-pocket fees, costs and expenses related to the designation of Redeveloper as redeveloper of the Redevelopment Area, and the negotiation and execution of a redevelopment agreement. The Interim Costs Agreement shall terminate upon the Effective Date of this Redevelopment Agreement, at which time the Agency Costs (as defined herein) shall be paid out of the Escrow Account as set forth in Section 2.04 hereof. Any unused and unallocated funds held in escrow by the Agency that were previously deposited by Redeveloper pursuant to the Interim Costs Agreement shall be transferred to the Escrow Account on the Effective Date.

**Section 2.03. Project Costs.** All costs of implementing this Redevelopment Agreement and completing the Project, including reasonable Agency Costs as specified in Section 2.03 hereof, and the costs incurred by the Redeveloper will be borne by the Redeveloper.

**Section 2.04. Agency Costs.** In addition to the Redeveloper's estimated costs for the Project, the Redeveloper agrees to provide funding to the Agency for all reasonable out-of-pocket costs and expenses incurred by the Agency in connection with the redevelopment of the Project Area (the "Agency Costs"). Agency Costs shall include, but not be limited to, all reasonable fees and costs of any professional consultant, contractor or vendor retained by the Agency in connection with the Project, including attorneys, technical consultants, planners, financial consultants and appraisers, among others.

**Section 2.05. Payment of Agency Costs.** The Redeveloper agrees that it will reimburse the Agency for all Agency Costs in accordance with the terms hereof. The Agency shall establish a non-interest bearing escrow account (the "Escrow Account") which shall have an initial balance of Ten Thousand and 00/100 (\$10,000.00) Dollars provided by the Redeveloper. Such amount shall be funded as follows: first, any unused and unallocated funds held in escrow by the Agency



that were previously deposited by Redeveloper pursuant to the Interim Costs Agreement shall be transferred to the Escrow Account on the Effective Date, and thereafter Redeveloper shall deposit the remaining balance in the Escrow Account. The Redeveloper agrees that it will replenish the Escrow Account in the event that the balance drops below Five Thousand and 00/100 (\$5,000.00) Dollars. Funds in the Escrow Account will be applied to the payment or reimbursement of the Agency Costs as provided in this Redevelopment Agreement. At least ten (10) days prior to making any disbursement from the Escrow Account, written notice of the proposed disbursement shall be mailed to the Redeveloper, setting forth: (a) the amount of the disbursement; (b) the name of the person, company or entity designated to receive payment; and (c) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Redevelopment Agreement (including documentation detailing hours worked and billing rates). If the Redeveloper does not object to such disbursement within ten (10) days of receipt of such notice, the Redeveloper will be deemed to have acquiesced to the same. Should a dispute arise between the Parties herein as to the amount of the Escrow Account funds requested by the Agency, said dispute shall be adjudicated as set forth in Municipal Land Use Law Section 40:55D-53.2a. As of the Completion Date for the Project, as evidenced by the issuance of the Certificate of Completion, or upon termination of this Redevelopment Agreement, except in the event of a termination caused by an Event of Default by the Redeveloper, any money remaining in the Escrow Account shall be disbursed to the Redeveloper within sixty (60) days after issuance of the Certificate of Completion or the termination of this Redevelopment Agreement and the terms of this Section 2.05 shall survive the issuance of the Certificate of Completion or termination of this Redevelopment Agreement until such reconciliation has occurred. Notwithstanding anything to the contrary contained herein, if the Agency retains a different professional or consultant in the place of any professional originally responsible for any aspect of the Project, the Agency shall be responsible for all time and expenses of the new professional to become familiar with the Project and the Agency shall not bill Redeveloper or charge the escrow account for any such services.

**Section 2.06. Governmental Approval Fees.** The Redeveloper shall pay all fees for permits required by any Governmental Authority for the construction and development of the Project. The Redeveloper shall pay all other permit fees, which include any permit fees payable by the Agency or Redeveloper to all required Governmental Authorities, or for which the Agency is required to reimburse other Governmental Authorities or is required to pay other third-party contractors retained by or on behalf of the Agency to perform services that the Agency would otherwise be required to perform itself.

**Section 2.07. Redevelopment Fee.** The Redeveloper agrees that it will pay to the Agency the total sum of One Hundred Sixty Five Thousand and 00/100 (\$165,000.00) Dollars (the "Redevelopment Fee"). The Redevelopment Fee shall be payable to the Agency by the Redeveloper as follows:

- Five Thousand and 00/100 (\$5,000.00) Dollars per unit shall be paid at the time of the issuance of a Certificate of Occupancy for each individual townhouse unit; and
- A one-time fee of Ten Thousand and 00/100 (\$10,000.00) Dollars shall be paid at the time of the execution of this Redevelopment Agreement.



**Section 2.08. Performance Guarantees.** Not less than seven (7) days prior to the date for the Commencement of Construction, the Redeveloper shall submit proof of bonds issued by a duly authorized surety company authorized to do business in the State or letter of credit, or any combination thereof, as required by any Governmental Approvals for the Project as permitted under the Municipal Land Use Law.

**Section 2.09. No Assessment of COAH Fees.** The Parties hereby agree that no COAH fees shall be assessed against this Project or portion thereof.

### **ARTICLE III CONSTRUCTION OF PROJECT**

**Section 3.01. Construction of Project.** The Agency hereby affirms and agrees that the Redeveloper is designated and appointed as the exclusive redeveloper of the Project Area. In connection with such designation and appointment, Redeveloper has the exclusive right to perform and to have others perform on its behalf any and all redevelopment activities on and about the Project Area consistent with the Concept Plan and the Redevelopment Plan. Each of the Parties agrees that all redevelopment on and about the Project Area will only be authorized and may only be undertaken by Redeveloper under the framework and in accordance with the terms and conditions of this Redevelopment Agreement and the Redevelopment Plan. The Agency agrees that, absent an Event of Default by Redeveloper, it will not negotiate or entertain for the provision of another redeveloper for the Project Area or any portion thereof.

**Section 3.02. Redeveloper's Scope of Undertaking; Plans and Specifications.** The services and responsibilities undertaken by the Redeveloper, as more particularly set forth in this Redevelopment Agreement, shall include all aspects of acquisition, design, development, environmental remediation, site preparation, and construction of the Project including but not limited to, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all construction of Improvements required in connection with the Project, including the provision of any performance bonds, maintenance bonds, completion guarantees or any other performance assurances in connection therewith, whether required as a result of Governmental Approvals or pursuant to the terms of this Redevelopment Agreement, arrangement for interim and final inspections and any other actions required to satisfy the requirements of all Governmental Approvals necessary to develop and use the Project, all aspects of funding of the Project, including interim and permanent equity and debt financing and construction. Redeveloper hereby agrees that following an Event of Default by Redeveloper, the Agency and any entity acting on the Agency's behalf, shall have an irrevocable license to use Redeveloper's Plans and Specifications, Governmental Applications, and Governmental Approvals to complete the Project, without cost to or liability of the Agency (other than for actual services rendered to the Agency subsequent to the Event of Default by Redeveloper) and agrees to use best efforts to ensure that all agreements between Redeveloper and its contractors and consultants shall so provide. Redeveloper shall be compensated for such Plans and Specifications



as provided in Section 11.09 hereof. In addition, all performance or completion bonds provided by Redeveloper's contractors shall name the Agency as an intended beneficiary thereof, as its interests may appear, unless Redeveloper's construction lender objects in writing and for good cause to the inclusion of the Agency.

**Section 3.03. Project Description.** The Project consists of the construction of thirty-one (31) market rate townhouses, as well as the construction and maintenance of thirteen (13) additional parking spaces to be used as guest parking and as overflow parking for the adjacent property owner in accordance with the site plan submitted to the Agency, all as depicted on the Concept Plan attached hereto as **Exhibit B**. The Redeveloper will construct or cause to be constructed the Project in substantial conformity with the Concept Plan, Project Schedule, Governmental Approvals, this Redevelopment Agreement and Applicable Laws. The Redeveloper will design, permit, finance and construct the Project at the Redeveloper's sole cost and expense.

**Section 3.04. Project Schedule.** Unless otherwise tolled or adjusted as provided for in this Redevelopment Agreement, the Redeveloper agrees to Commence Construction and diligently Complete Construction of the Project in accordance with the Project Schedule attached hereto as **Exhibit C**, and failure to do so shall be an Event of Default by Redeveloper. Subject to the provisions of this Redevelopment Agreement, any material change in the scope of the Project including, but not limited to, changes in the Project budget, changes or updates to the Project Schedule, or extension of the projected Completion Date, shall require the Agency's prior written approval, which the Agency will not unreasonably withhold. Redeveloper agrees to simultaneously provide the Agency with copies of all Project *pro formas*, construction schedules and budgets that the Redeveloper submits to actual or potential lenders or investors in connection with the financing of the Project. Redeveloper shall have the obligation to provide the Agency all financial information (including, but not limited to, rent and operating expense information) that the Agency may deem necessary, in its sole discretion, to undertake necessary due diligence, reviews and calculations, to evaluate Redeveloper's performance of its obligation, and to otherwise preserve or enforce its rights under Applicable Law. The Redeveloper acknowledges and understands that the Agency will require Redeveloper's adherence to the schedule for Commencement of Construction and Completion of Construction, interim deadlines or milestones and time periods for the various activities and actions to be taken by the Redeveloper hereunder, subject only to the occurrence of a Force Majeure Event.

**Section 3.05. Relocation of Utilities.** The Redeveloper acknowledges that providers of Utilities may have certain rights with respect to the Project Area and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these Utilities and improvements and easements therefore, in order to complete construction of the Project, as provided by this Redevelopment Agreement. To the extent reasonably requested by the Redeveloper, the Agency shall cooperate in facilitating the installation and/or relocation of any such affected Utilities.

**Section 3.06. Nondiscrimination During Construction; Equal Opportunity.** The Redeveloper for itself, its successors and assigns, agrees that in the construction of the Project:



(a) The Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender. The Redeveloper will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed; national origin, ancestry, physical handicap, age, marital status, or gender. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) The Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper state that all qualified applicants will receive consideration for employment without regard to race, color, religion, creed, national origin, ancestry, physical handicap age, marital status, affectional preference or gender.

(c) The Redeveloper will cause the foregoing provisions to be inserted in all contracts for any work covered by this Redevelopment Agreement so that such provisions will be binding upon each contractor and subcontractor.

**Section 3.07. Estoppel Certificates.** Within fourteen (14) days following written request therefore by a Party, or of any Holder, purchaser, tenant or other party having an interest in the Project Area, the other Party shall issue a signed certificate ("Estoppel Certificate") stating that (i) this Redevelopment Agreement is in full force and effect, (ii) there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Redevelopment Agreement), or stating the nature of the default or breach or event, if any, and (iii) any other matter reasonably requested. In the event the Estoppel Certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than four (4) Estoppel Certificates may be requested per year.

#### **ARTICLE IV PROJECT OVERSIGHT**

**Section 4.01. Progress Meetings.** The Parties agree to attend and participate in progress meetings ("Progress Meetings") as may be reasonably requested by either Party, to report on the status of the Project and to review the progress under the Project Schedule. The Party requesting such a Progress Meeting shall give the other Party no less than seven (7) days advance written notice of any such meetings. The Progress Meetings shall be held in the offices of the Agency or such other place as the Parties may agree. Prior to the meeting, representatives of the Agency may visit the Project Area to inspect the progress of the work on the Project, in accordance with Section 4.03.

The agenda for the Progress Meetings shall include, but not be limited to, (a) a status report with regard to Governmental Approval submissions and approvals, (b) financial commitments, (c)



construction of the Project, and (d) compliance with the Redevelopment Plan. At the Progress Meetings, this information will be evaluated by the Agency to determine compliance with the terms and conditions of this Redevelopment Agreement and the Project Schedule. The Agency shall have the right at all reasonable times to inspect the construction contracts, financing commitments and agreements, books and records pertinent to the construction contracts, insurance policies, and such other agreements of the Redeveloper which are pertinent to the purposes of this Redevelopment Agreement and to the Progress Meetings in order to ensure completion of the Project in accordance with the Project Schedule, provided, however, Redeveloper shall have the right to withhold from the Agency's review, any materials that Redeveloper deems to be confidential and proprietary in nature.

**Section 4.02. Progress Reports.** The Redeveloper shall submit to the Agency a detailed quarterly written progress report ("Progress Report") (or more frequent Progress Reports, if reasonably requested by the Agency) which shall include a description of activities completed, the activities to be undertaken prior to the next quarterly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is causing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule and an explanation of corrective action taken or proposed. The Progress Report shall be submitted in a form acceptable to the Agency and the Redeveloper.

**Section 4.03. Access to Project Area.** The Agency and its authorized representatives shall have the right on not less than two (2) business days' advance notice, except in the event of an emergency, to enter the Redevelopment Area in accordance with Applicable Law to inspect the Project and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement. In no event shall the Agency's inspection of the Project (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Agency has under this Redevelopment Agreement. The Agency acknowledges hereby that the Project Area will be an active construction site and that the Redeveloper shall not be liable or responsible to the Agency, its employees or agents for injury to person or property sustained in connection with any such inspection, except to the extent that the Redeveloper willfully or negligently violates its standard of due care owed to invitees.

## **ARTICLE V APPLICATIONS FOR GOVERNMENTAL APPROVALS**

### **Section 5.01. Applications for Governmental Approvals.**

(a) The Redeveloper (at its sole cost and expense) shall apply for and obtain all Governmental Approvals (the "Governmental Applications") necessary to construct and use the Project, including approval to subdivide the Project Area, if such subdivision is necessary. The Redeveloper shall provide the Agency with a copy of each Governmental Application at such time as such Governmental Applications are submitted. The Redeveloper shall provide the Agency with a copy of each Governmental Approval received by the Redeveloper with respect to the Project.



(b) To the extent reasonably requested by the Redeveloper, and to the extent applicable, the Agency shall provide assistance and support to the Redeveloper in connection with any applications for any Governmental Approvals required to be obtained for or with respect to the Project.

(c) In the event that all necessary Governmental Approvals for the Project are not obtained from the required Governmental Authorities prior to the 120<sup>th</sup> day after the Effective Date of this Redevelopment Agreement, on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions reasonably acceptable to Redeveloper, then Redeveloper shall have the right to terminate this Redevelopment Agreement upon written notice to the Agency. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Agreement is terminated pursuant to the terms of this Section 5.01(c), then, except as expressly set forth herein to the contrary, this Agreement (including, but not limited to, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

**Section 5.02. Agency Cooperation.** To the extent reasonably requested by the Redeveloper and, to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Agency shall provide its support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate boards, bodies or departments, as applicable.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS**

**SECTION 6.01. Representations and Warranties by the Redeveloper.** The Redeveloper hereby represents and warrants the following to the Agency for the purpose of inducing the Agency to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company organized under the laws of the State of New Jersey, is in good standing under such laws, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(c) This Redevelopment Agreement has been duly authorized, executed and delivered by the Redeveloper, and is valid and legally binding upon the Redeveloper and enforceable in

accordance with its terms. The execution and delivery thereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

(d) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

(e) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

(f) No indictment has been returned against any member of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Redevelopment Agreement or otherwise.

(g) There are no suits, other proceedings or investigations pending or, to the best of the Redeveloper's knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(h) All materials and documentation submitted by the Redeveloper and its agents to the Agency and its agents were, to the best of Redeveloper's knowledge, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall inform the Agency of any material and adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Agency to enter into this Redevelopment Agreement.

(i) Subject to obtaining construction financing, the Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project.

(j) The cost and financing of the Project is the responsibility of the Redeveloper. The Agency shall not be responsible for any cost whatsoever in respect to same.

If reasonably requested by the Agency, the Redeveloper shall, from time to time, reaffirm the representations and warranties set forth in this Section 6.01.

**Section 6.02. Representations and Warranties by the Agency.** The Agency hereby represents and warrants the following to the Redeveloper for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Agency has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the



Agency is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Redevelopment Agreement has been duly authorized, executed and delivered by the Agency and is valid and legally binding upon the Agency and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Agency is a party.

(c) There is no pending or, to the best of the Agency's knowledge, threatened litigation that would in any way (i) contest or seek to invalidate the Redeveloper's ability to commence performance of its obligations under the Redevelopment Agreement, or (ii) prevent the Agency from performing its duties and obligations hereunder.

(d) There are no suits, other proceedings or investigations pending or, to the best of the Agency's knowledge, threatened against the Agency that would have a material adverse effect on the Agency's financial condition.

If reasonably requested by the Redeveloper, the Agency shall, from time to time, reaffirm the representations and warranties set forth in this Section 6.02.

**Section 6.03. Delivery of Documents by the Redeveloper.** The Redeveloper has delivered certified copies of its certificate of formation and certificate of good standing prior to the execution of this Redevelopment Agreement and the Agency hereby acknowledges the receipt of such documents.

**Section 6.04. Redeveloper Covenants.** Redeveloper covenants and agrees that, subject to the terms hereof, and except as explicitly provided herein (collectively, "Redeveloper Covenants"):

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project. The Redeveloper shall construct, improve, operate and maintain the Project in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws.

(b) The Redeveloper shall use commercially reasonable efforts to (i) obtain financing for the Project, if and as needed, (ii) construct and develop the Project with all due diligence, and (iii) commence and Complete each item in the Project Schedule on or prior to the applicable date set forth in the Project Schedule and, for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period. All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project.

(c) The Redeveloper shall construct the Project in accordance with this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law and, in the event that the Redeveloper wishes to materially change or modify the Project, notwithstanding the fact that such material change or modification is authorized by the Redevelopment Plan, the Agency's written approval (which shall not be unreasonably withheld, conditioned or delayed) must be secured prior to proceeding with any activities relating to such proposed material modifications. The Redeveloper acknowledges that the Agency has relied on the Concept Plan and Project Schedule in entering into its obligations under this Redevelopment Agreement.

(d) The Redeveloper shall fulfill its material obligations under any and all agreements it enters into with third parties with respect to the acquisition, construction, leasing, financing and other matters relating to the Project; provided, however, that this covenant is not intended to prevent the Redeveloper from contesting the scope or nature of such obligations as and to the extent provided in such agreements.

(e) The Redeveloper shall Complete the Project on or prior to the date set forth in the Project Schedule at its sole cost and expense; provided, however, that the Parties acknowledge that moneys may be made available towards the Completion of same from other outside sources. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs necessary to Complete the Project, the Redeveloper shall not be entitled to any funds from the Agency.

(f) Upon completion of the development and construction of the Project, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated hereby.

(g) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project.

(h) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(i) The Redeveloper shall immediately notify the Agency of any material change in its financial condition from the information provided to the Agency by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project in furtherance of the Agency's consideration in designating the Redeveloper as the redeveloper of the Project Area.



(j) The Redeveloper shall not use the Project Area, Project, or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(k) The Redeveloper shall not use the Project Area, Project, or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

**Section 6.05. Declaration of Redeveloper Covenants and Restrictions.** The Redeveloper shall execute and record a declaration of project covenant in the form of **Exhibit D** attached hereto (the "**Declaration**") imposing on the Project and the Project Area, the Redeveloper Covenants set forth in Section 6.04, and those other matters indicated in this Redevelopment Agreement to be included in the Declaration.

**Section 6.06. Effect and Duration of the Redeveloper Covenants.** It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in Section 6.04 hereof and those elsewhere in this Redevelopment Agreement designated for inclusion in the Declaration shall be covenants running with the land until the Project is Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, and any successor in interest to the Project, or any part thereof, the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project, or any part thereof provided, however, that such covenants shall not be binding on any Mortgagee except in accordance with the terms of Article X hereof. Such agreements and covenants, however, shall be binding on the Redeveloper itself, each successor in interest to the Redeveloper and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall be in possession or occupancy of the Project Area, the buildings and structures thereon, or any part thereof.

**Section 6.07. Enforcement of Redeveloper Covenants by the Agency.** In amplification, and not in restriction of, the provisions of this Article VI, it is intended and agreed that the Agency and any successor shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, 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 have been provided. The Agency shall have the right, in the event of any breach of any such agreement or covenant, to terminate this Redevelopment Agreement in accordance with the terms of Section 11.03 hereof. This Section is not intended to confer standing to sue on any party other than the Agency. Upon Completion of the Project (as evidenced by the issuance of a Certificate of Completion), the conditions that were found and determined to exist at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project.



## ARTICLE VII CERTIFICATES OF OCCUPANCY AND COMPLETION

**Section 7.01. Certificate of Occupancy and Certificate of Completion.** Upon the Completion of the Project, in accordance with the Governmental Approvals and Applicable Law, the Redeveloper shall apply to the appropriate governmental officer or body for a temporary or permanent Certificate of Occupancy for the individual townhouse units of the Project. A permanent Certificate of Occupancy and a Certificate of Completion, when issued, shall constitute evidence that the Redeveloper has fully performed its obligations under the Governmental Approvals. Following the issuance of a permanent Certificate of Occupancy and the satisfaction of the terms and conditions of this Redevelopment Agreement for the Project, the Agency agrees to issue a Certificate of Completion in substantially the form attached hereto as **Exhibit E**, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement with respect to the Project, and has completed construction of the Project, in accordance with the requirements of this Redevelopment Agreement and shall constitute a determination that the conditions that were found to exist when the Project Area was determined to be an "area in need of redevelopment" no longer exist. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants in this Redevelopment Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Project, within the date for the completion of same.

Within thirty (30) days after written request by the Redeveloper, the Agency shall provide the Redeveloper with the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that the Redeveloper has failed to Complete the Project in accordance with the provisions of this Redevelopment Agreement or is otherwise in default under this, or any other, applicable agreement and what reasonable measures or acts will be necessary in the opinion of the Agency in order for the Redeveloper to be entitled to the Certificate of Completion.

## ARTICLE VIII TRANSFERS

**Section 8.01. Prohibition Against Speculative Development.** The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of developing and constructing the Project and not for speculation in land holding.

**Section 8.02. Prohibition Against Transfers.** The Redeveloper recognizes the importance of the Project to the general welfare of the community and the public assistance to be made available by law, if any, and by the Agency on the conditions stated herein for the purpose of making such Project possible. The Parties acknowledge and agree that a change in control of the Redeveloper is for practical purposes a transfer or disposition of the property interest then owned by the Redeveloper, and that, therefore, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Agency.

In light of the foregoing, except for Permitted Transfers set forth in Section 8.03 hereof, during the Term of this Redevelopment Agreement, the Redeveloper shall not, without the prior

written consent of the Agency, which shall not be unreasonably withheld, conditioned or delayed, (a) effect or permit any change, directly or indirectly, in the control of the Redeveloper prior to the issuance of the final Certificate of Completion for the Project, or (b) assign or attempt to assign this Redevelopment Agreement or any rights herein (individually and collectively, a "Transfer").

**Section 8.03. Permitted Transfers.** (a) The Redeveloper, without violating the provisions of Section 8.02 hereof, may affect the following Transfers, to which the Agency hereby consents upon receipt of written notice thereof, without the necessity of further action by the Agency ("Permitted Transfers"):

- (a) security for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement with respect to completing the Project and any other purpose authorized by this Redevelopment Agreement;
- (b) the Declaration;
- (c) a mortgage or mortgages and other liens and encumbrances (but not including mechanic's liens) for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project;
- (d) utility and other development easements;
- (e) environmental covenants and restrictions imposed by a regulatory Agency as a condition of any permit or approval;
- (f) a lease, rental agreement or other similar agreement with any end user of the Project;
- (g) a transfer to an Affiliate of the Redeveloper or a transfer among members of the Redeveloper and/or trustees for their benefit, including a transfer to the Redeveloper's approved and duly formed Urban Renewal Entity;
- (h) a Transfer pursuant to a foreclosure or deed in lieu of foreclosure, and any Transfer by any Holder or any Holder's successor and/or assigns after foreclosure;
- (i) any contract or agreement with respect to any of the foregoing exceptions; and
- (j) a sale of individual townhouse unit pad sites.

**Section 8.04. Notice of Permitted Transfers.** With respect to any Permitted Transfers, the Redeveloper shall provide to the Agency written notice at least thirty (30) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. The Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Agency in order to assure that the transferee has assumed all of the Redeveloper's obligations under this Redevelopment Agreement and the



Declaration as to the Project (if the Redeveloper's right, title and interest in the Project is being transferred) or any portion thereof (if the Redeveloper's right, title and interest in a portion of the Project is being transferred).

**Section 8.05. Transfers Void.** Any transfer of the Redeveloper's interest in violation of this Redevelopment Agreement shall be a Redeveloper Event of Default and shall be null and void *ab initio*. Such default shall entitle the Agency to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by the Agency, or a deemed approval in accordance with the terms hereof, no such sale, transfer, conveyance or assignment or approval thereof by the Agency, shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. The Declaration shall contain a restriction against transfers as set forth in this Article and, in addition, shall provide that in the event of any attempted transfer in violation of the restrictions in this Article, the Agency shall be entitled to the *ex parte* issuance of an injunction restraining such transfer, and the award of legal fees and related expenses of the Agency in connection with any such legal action. Upon recording of the final Certificate of Completion, the provisions of the Declaration set forth in this Article as to the Project shall be deemed terminated, and the Declaration shall so state.

**Section 8.06. Approval of Transfer.** Notwithstanding anything to the contrary contained herein, with respect to any Transfer that requires the Agency's consent pursuant to the terms of this Article VIII, the Agency shall not unreasonably withhold, condition or delay its consent to such Transfer. The Agency shall notify the Redeveloper in writing whether the Agency consents to a Transfer within forty-five (45) days after Redeveloper's written request to the Agency for such consent. The Agency shall not withhold, condition or delay its consent to any Transfer to a transferee that has the same or greater experience and technical capability to carry out the Project as the Redeveloper, and has the same or greater wherewithal to obtain financing for the Project as the Redeveloper.

**Section 8.07. Transfer or Assignment Fee.** Any reasonable costs incurred by the Agency in connection with a request made by the Redeveloper for the Agency's consent to transfer or assign this Redevelopment Agreement shall constitute Agency Costs pursuant to Section 2.03 hereof.

**Section 8.08. Information as to Ownership of Redeveloper.** In order to assist in the effectuation of the purpose of this Article VIII, Redeveloper represents that the certificate attached to this Redevelopment Agreement as **Exhibit F** is an incumbency certificate of Redeveloper as of the Effective Date, subscribed and sworn to by a manager or authorized member of Redeveloper, setting forth the name(s) and address(es) of all entities owning at least a 10% interest in Redeveloper.

(a) At least annually during the period between the Effective Date and Completion of the Project as evidenced by the issuance of a Certificate of Completion, and at such other times as reasonably requested by the Agency, Redeveloper will update the incumbency certificate and keep **Exhibit F** current as to Redeveloper.



(b) Redeveloper will immediately notify the Agency in writing of any and all changes whatsoever in the ownership of Redeveloper resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information.

(c) Redeveloper shall, at such time or times as the Agency may request, furnish the Agency with a complete statement subscribed and sworn to by the managing member of Redeveloper, setting forth the names of all managing members, or other owners of equity interests of Redeveloper, and the extent of their respective holdings.

## ARTICLE IX INDEMNIFICATION

### SECTION 9.01. Redeveloper Indemnification.

(a) The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Agency Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Project, including but not limited to any lawsuit or proceeding relating to the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Project Area and which results from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from the negligence or willful misconduct of the Agency, its employees, representatives or agents.

(b) The Redeveloper shall defend, indemnify and hold harmless the Agency Indemnified Parties and its officers, agents, employees, contractors, and consultants from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorneys' fees and disbursements which result, wholly or partially, from (i) the performance or any failure or delay of performance by the Redeveloper of its obligations under the Redevelopment Agreement; or (ii) any bodily injury or property damage that may occur in the Project Area during the term of the Redevelopment Agreement; provided, however, that such indemnity shall not include the actions or inactions of third-parties over whom the Redeveloper does not exercise control, as long as the Redeveloper maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions.

(c) In any situation in which an Agency Indemnified Party is entitled to receive and desires indemnification by the Redeveloper, the Agency Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Agency Indemnified Party, unless such failure to give prompt notice materially impairs the Redeveloper's ability to defend such party.



Upon receipt of such notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Agency Indemnified Party, including the employment of counsel reasonably acceptable to the Agency Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the Agency Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such Agency Indemnified Party. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Agency Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the Agency Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the Agency Indemnified Party is entitled to indemnification hereunder. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that a full release of the Agency Indemnified Party is obtained and no admission of liability by the Agency Indemnified Party is required. In the event the Agency Indemnified Party fails or refuses to provide a release of such action, and a final judgment is rendered against the Redeveloper, the Agency shall be responsible for the Redeveloper's counsel fees and costs incurred subsequent to the Agency's refusal to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

(d) The Redeveloper's indemnity provided under this Section 9.01 shall survive the termination of this Redevelopment Agreement and shall run with the land and be referenced in the Declaration.

## ARTICLE X MORTGAGE FINANCING; NOTICE OF DEFAULT TO MORTGAGEE; RIGHT TO CURE

### SECTION 10.01. Mortgage Financing.

(a) Neither the Redeveloper 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 (other than liens for governmental impositions) to be made or attach to the Project, in excess of ninety (90%) percent of Project Costs, except as may be approved by the Agency (which approval shall not be unreasonably withheld) for the purpose of obtaining funds in connection with the construction of the Project; provided, however, that upon the issuance of a Certificate of Completion for the Project, such prohibition shall no longer apply with respect to Project. The Redeveloper, or its successor in interest, shall notify the Agency in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project, or any part thereof (the mortgagee thereunder, a "Holder") and, in any event, the Redeveloper shall promptly notify the Agency of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Project, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same.



(b) In the event that the Redeveloper is unable to obtain financing for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that financing for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon written notice to the Agency.

(c) If this Redevelopment Agreement is terminated pursuant to the terms of this Section 10.01 then, except as expressly set forth herein to the contrary and upon full payment of all Agency Costs accruing until the date of such termination, this Redevelopment Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

**Section 10.02. Notice of Default to the Redeveloper and Right to Cure.** Whenever the Agency shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Agency shall at the same time deliver to each Holder a copy of such notice or demand; provided that the Redeveloper has delivered to the Agency a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Agency are concerned) have the right at its option within ninety (90) days after the receipt of such notice (and the expiration of all applicable cure periods), to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. The Agency shall not seek to enforce any of its remedies under this Agreement during the period in which any such Holder is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If possession of the Project Area is necessary to cure any default or breach, any Holder will be allowed to complete any proceedings required to obtain possession of the Project Area, providing such Holder is proceeding diligently to so obtain possession.

**Section 10.03. No Guarantee of Construction or Completion by Holder.**

(a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project, or to guarantee such construction or completion, nor shall any covenant or any other provisions be construed to obligate a Holder. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder 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 made) without the Holder or Affiliate of Holder first having expressly assumed the Redeveloper's obligations to the Agency with respect to the Project by written agreement reasonably satisfactory to the Agency.

(b) If a Holder forecloses its mortgage secured by the Project, or takes title (in its name or the name of an Affiliate) to the Project by deed-in-lieu of foreclosure or similar transaction (collectively a "Foreclosure"), the Holder or its Affiliate shall have the option to either (i) sell the Project, as applicable, to a responsible entity reasonably acceptable to the Agency, which entity shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) itself, or its affiliate, assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. In the



event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Agency shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Agency pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of the Project Schedule, and shall submit evidence reasonably satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or other entity assuming such obligations of the Redeveloper, properly completing the Project shall be entitled, upon written request made to the Agency, to Certificates of Completion. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of the Redeveloper, to devote the Project Area, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Holder or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Project Area or Project in accordance herewith.

#### ARTICLE XI

#### EVENTS OF DEFAULT AND REMEDIES; REPLACEMENT REDEVELOPER

**Section 11.01. Events of Default.** Any one or more of the following shall constitute an event of default hereunder ("Event of Default"), subject to the occurrence of an event of Force Majeure (with none of the following to be construed as a limitation on any other):

(a) **Redeveloper Events of Default.** (i) Failure of Redeveloper to observe or perform any covenant, condition, representation, warranty or agreement hereunder and any other failure, act or omission by Redeveloper designated elsewhere in this Redeveloper Agreement as a default, and except as otherwise specified below the continuance of such default for a period of thirty (30) days after Notice from the Agency specifying the nature of such default and requesting that such default be remedied; provided, however, if the default is one that cannot be completely remedied within thirty (30) days after such notice, it shall not be an Event of Default as long as Redeveloper is proceeding in good faith and with diligence to remedy same as soon as practicable, but in no event later than ninety (90) days after such notice unless this Redevelopment Agreement specifically provides otherwise;

(ii) Redeveloper's failure or refusal to make any payment or deposit of funds required hereunder as and when required, and the failure to make such payment or deposit within fifteen (15) business days after Notice from the Agency, including, but not limited to, any failure or refusal to pay the Agency Costs in accordance herewith or to refresh the Escrow Account or to reimburse the Agency for properly reimbursable Agency Costs not cured within fifteen (15) business days of Notice by the Agency;

(iii) (a) Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (b) a custodian shall have been legally appointed with or without consent of Redeveloper; (c) Redeveloper (1) has



made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (d) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (e) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (f) a petition in bankruptcy shall have been filed against Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive days; (g) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper, under the Bankruptcy Code; (h) an Order, judgment or decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (i) Redeveloper shall have suspended the transaction of its usual business.

(iv) Redeveloper (a) except as otherwise permitted hereunder, fails to perform its obligations with respect to the implementation of the Project in accordance with this Redevelopment Agreement and the Project Schedule, the Redevelopment Plan, Governmental Approvals or Applicable Laws, including, but not limited to, failure to Commence Construction or Complete Construction in accordance with the Project Schedule; or (b) abandons the Project or suspends construction work for three (3) consecutive months without the prior knowledge and consent of the Agency (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension shall not be cured, ended, or remedied within thirty (30) days after Notice by the Agency; provided, however, if the default is one that cannot be completely remedied within thirty (30) days after such Notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice;

(v) There is a prohibited Transfer, immediately upon such Transfer with no Notice or opportunity to cure;

(vi) Material breach of any warranty or representation made by Redeveloper;

(vii) Violation by Redeveloper of any covenant or restriction contain in the Declaration;

(viii) There is a substantial change in Redeveloper's financial condition which, in the sole and reasonable judgement of the Agency, is determined as being materially adverse;

(ix) Redeveloper's failure to pay or delinquency in the payment of real property taxes or assessments, which failure or delinquency is not cured within thirty (30) days of Notice by the Agency; or

(x) Cancellation or termination by reason of any act or omission of Redeveloper of any insurance policy, performance or completion bond, letter of credit, guaranty or other surety required hereunder to be provided by Redeveloper for the benefit of the Agency, immediately upon cancellation or termination thereof if not replaced with no resulting gaps in coverage.



(b) **Agency Events of Default.** (i) Failure of the Agency to perform its obligations hereunder, and the continuance of such Default for a period of thirty (30) days after Notice from the Redeveloper specifying the nature of such Default and requesting that such Default be remedied; provided, however, if the Default is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the Agency is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this Redevelopment Agreement specifically provides otherwise;

(ii) Material breach of any warranty or representation made by the Agency and the continuance thereof for a period of thirty (30) days after Notice from the Redeveloper specifying the nature of such Default and requesting that such Default be remedied; provided, however, if the Default is one that cannot be completely remedied within thirty (30) days after such Notice, it shall not be an Event of Default as long as the Agency is proceeding in good faith and with due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this Redevelopment Agreement specifically provides otherwise.

**Section 11.02. Force Majeure.** Performance by either party hereunder shall not be deemed to be in default where delays or failure to perform are the result of events or conditions beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Redevelopment Agreement, including, without limitation, the following (a "Force Majeure" event):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project Area, other than those set forth above (such events being required to physically affect a Party's ability to fulfill its obligations hereunder; and the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure event);

(b) A landslide, fire, explosion, flood, release of nuclear radiation, damage to or theft of any part of the Improvements, or any casualty not created by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure;

(c) The order, judgment, action or inaction and/or determination of any Governmental Authority (other than the Agency when acting in conformance with this Redevelopment Agreement) excepting decisions interpreting federal, State and local tax laws generally applicable to all similar taxpayers; provided, however, that such order, judgment, action or inaction and/or determination shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such order, judgments, action or inaction and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party;

(d) The suspension, termination, interruption, denial, or failure of or delay in renewal or issuance of any Governmental Approval (including due to any appeal), provided, however, that such suspension, termination, interruption, denial, or failure of or delay in renewal or issuance shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from the Redeveloper's failure to make an administratively complete submission for a Governmental Approval in accordance with Applicable Law shall not be an event of Force Majeure; or

(e) An inability to procure goods or services for any reason not caused by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure, including, without limitation, the limited manufacturing capacity of any suppliers; a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market; failure of transportation, strikes, lockouts, slowdowns or similar labor action by trade unions or any of their members, equipment manufacturers, suppliers of material and/or transporters of same; or any other economic condition that may adversely affect the Project, the Project Redevelopment or the real estate markets; or

(f) Acts or omissions of the other Party, except in conformance with this Redevelopment Agreement or Applicable Law, or as to the Redeveloper, acts or omissions of the Agency.

Any event of Force Majeure affecting any counterparty to an agreement with either or both of the Parties hereto shall be considered an event of Force Majeure hereunder. Notice by the Party claiming such extension shall be sent to the other Party within thirty (30) calendar days of the commencement of the cause. During any Force Majeure event that affects part of the Project, to the extent reasonably practicable, the Redeveloper shall continue to perform its obligations for the rest of the Project. The existence of an event of Force Majeure shall not prevent a Party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure event; provided that the event that is the basis of the Event of Default is not a result of the Force Majeure event. Except for an event or events of Force Majeure resulting from acts or omissions of the Agency, any event or events of Force Majeure will be deemed to have ceased to exist as of a date twenty-four (24) months from its initial occurrence.

#### **Section 11.03. Remedies Upon Event of Default by the Redeveloper.**

(a) If an Event of Default by the Redeveloper occurs which is not cured under Section 11.01(a) and subject to the rights of a Holder under Section 10.02 hereof, the Agency shall have the right, in its sole and absolute discretion, to the following:

(b) Termination of this Agreement, in whole or in part, upon the expiration of the applicable cure period with respect to the Project or to otherwise de-designated the Redeveloper.



(c) The withholding of the issuance of any Certificate(s) of Occupancy and/or Certificate of Completion as to the Project until the Event of Default has been cured.

(d) To declare and direct the appropriate Agency official to enforce the forfeiture of the performance guarantees if such Event of Default is with respect to an obligation for which such performance guarantee was furnished.

(e) All other remedies at law or in equity.

**Section 11.04. Remedies Upon Events of Default by the Agency.** In the event that an Event of Default by the Agency occurs, which is not cured under Section 11.01(b) hereof, then the Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Agency, as applicable, under this Redevelopment Agreement, including an action for specific performance and/or damages. Further, but subject to any cure provisions afforded the Agency hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, to terminate this Redevelopment Agreement.

**Section 11.05. Failure or Delay.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**Section 11.06. Remedies Cumulative.** No remedy in favor of Redeveloper conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by Redeveloper shall not constitute a waiver of the right to pursue other available remedies.

**Section 11.07. Continuance of Obligations.** The occurrence of an Event of Default shall not relieve the defaulting Party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

**Section 11.08. Mitigation.** The Parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder; provided, however, that the costs of any mitigation efforts shall be at the sole cost of the defaulting Party.

**Section 11.09. Replacement of Redeveloper.** Upon termination of this Redevelopment Agreement by the Agency due to an Event of Default by the Redeveloper, the Agency shall, pursuant to its responsibilities and obligations under Applicable Law, use reasonable efforts to designate a replacement redeveloper for the Project. Such replacement redeveloper shall be designated as soon and in such a manner as the Agency shall find feasible and consistent with the objectives of Applicable Law and of the Redevelopment Plan. Consistent with Section 3.02,

Redeveloper shall deliver to the Agency originals of all Plans and Specifications and other Project documents to the extent in the possession and control of the Redeveloper or its consultants, contractors, engineers, architects or agents, and shall upon request execute assignments of all Project documents and other rights and agreements pertaining to the Project in favor of the Agency. Any proceeds resulting from the designation of the replacement redevelopment shall be applied as follows;

- (a) First, to all Agency Costs;
- (b) Second, to reimburse the Redeveloper, its successors or transferees up to the amount equal to the Redeveloper's actual costs (exclusive of profit and development or management fees paid to Redeveloper or its Affiliates) associated with the Project, for land acquisition, engineering, site improvement, developer costs and other costs expressly required by this Redevelopment Agreement; and
- (c) Any Remaining balance after such reimbursements shall be remitted to the Agency.

## ARTICLE XII INSURANCE

**Section 12.01. Insurance – General Requirements.** At all times during the construction of the Project, and until such time as the City shall issue a Certificate of Completion for the Project in accordance with the provisions of this Redevelopment Agreement, the Redeveloper shall maintain, or cause to be maintained by its contracts, who shall name the Agency as an additional named insured and provide proof of same, insurance for the mutual benefit of the Agency and the Redeveloper as their interests may appear:

- (a) Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available, in amounts sufficient to prevent the Agency or Redeveloper from becoming a co-insurer within the terms of the applicable policies, and in any event, in amounts not less than 100% of the then full insurable value of the Project;
- (b) All claims for bodily injury and property damage, under a policy of comprehensive general public liability insurance, with such limits as may be reasonably required by the Agency from time to time, but not less than \$1 million per occurrence in respect of injury or death and \$2 million per occurrence for property damage, plus excess ("umbrella") liability policies with coverage not less than \$5 million;
- (c) Works compensation insurance in an amount not less than \$1 million or as statutorily may be required under Applicable Laws for employees of Redeveloper and its contractors;
- (d) Builder's risk insurance;
- (e) Environmental insurance coverage to defend and indemnify the Agency during the course of any Remediation work to be performed by the Redeveloper, should such coverage be



commercially available based upon the anticipated cost of said Remediation work, to be posted in the event such Remediation costs exceed \$5 million; and

(f) Such other hazards and in such amounts as the Agency may reasonably require provided that such insurance is then customarily maintained in buildings of similar construction, use and class in the area in which the Project is located.

The Redeveloper's obligation to provide insurance, or to arrange for its contractors to provide insurance, at to the Project shall cease upon the issuance of a Certificate of Occupancy as to the Completion of Construction undertaken by the Redeveloper.

The Redeveloper shall furnish the Agency with satisfactory proof that it has obtained all applicable insurance as described in this Section from insurance companies or underwriters reasonably satisfactory to the Agency. The Redeveloper shall furnish to the Agency certificates of the preceding types of insurance showing the type, amount, and class of operations insured and the effective and expiration dates of the policies. Until construction of the Project is completed and a Certificate of Completion issued, the Redeveloper shall, on an annual basis, provide the Agency with proof that the aforesaid insurance policies are being maintained.

**Section 12.02. Insurance – Restrictions.** All insurance provided for under this Redevelopment Agreement will be reasonably effected under valid enforceable policies issued by insurers rated "A-" or better by A.M. Best and reasonably acceptable to the Agency. On or before the Effective Date, certificates procured by Redeveloper pursuant to Section 12.01 above must (i) specify therein the amount of the total insurance allocated to the Project, which amount shall not be less than the amount required to be carried in Section 12.01 above, and (ii) not contain any clause which would result in the insured thereunder being required to carry insurance with respect to the property covered thereby in an amount equal to a minimum specified percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss with insurer under such policy, (iii) specify that any loss will be payable to the Agency, notwithstanding any act or negligence of the Redeveloper which might otherwise result in the forfeiture of said insurance, (iv) specify that such policies may not be canceled except upon thirty (30) days prior written notice to each named insured and loss payee, and (v) specify that the coverage afforded thereby must not be affected by the performance of any work in or about the Project Site. All insurance provided under this Article XII may contain loss deductible clauses of not greater than \$50,000, or such higher maximum amounts as the Agency approves in its reasonable and sole discretion.

All insurance policies obtained pursuant to this Article XII must include waivers of subrogation against the Agency and the Redeveloper.

### ARTICLE XIII MISCELLANEOUS

**Section 13.01. Notices.** Formal notices, demands and communications between the Agency and the Redeveloper ("Notice") shall be in writing and deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested,

or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such Notice is deemed effective upon delivery. Such Notice may be sent in the same manner to such other addresses as either Party may from time to time designate by written notice.

Copies of all Notices shall be sent as follows:

If to the Agency:

Eric Chubenko, Executive Director  
South Amboy Redevelopment Agency  
140 North Broadway  
South Amboy, New Jersey 08879

With a copy to:

Craig J. Coughlin, Esq.  
Rainone Coughlin Minchello, Attorneys at Law  
555 U.S. Highway One South, Suite 440  
Iselin, New Jersey 08830

If to the Redeveloper:

Scott H. Caruso, Managing Member  
JohnRose FM, LLC  
6 Riverview Plaza, Suite 2  
Red Bank, New Jersey 07701

**Section 13.02. Non-Liability of Officials and Employees of the Agency or Agency.** No member, official or employee of the Agency or Agency shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Agency, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**Section 13.03. Non-Liability of Officials and Employees of Redeveloper.** No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Agency, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Agency, or their successors, on any obligation under the terms of this Redevelopment Agreement.

**Section 13.04. No Brokerage Commissions.** The Agency and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Agency or the Redeveloper, and the Agency and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.



**Section 13.05. Provisions Not Merged With Deeds.** To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Project Area from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

**Section 13.06. Successors and Assigns.** This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

**Section 13.07. Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

**Section 13.08. Severability.** If any term or provision of this Redevelopment Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

**Section 13.09. Execution of Counterparts.** This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically or by facsimile) and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

**Section 13.10. Prior Agreements Superseded.** This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

**Section 13.11. Waivers and Amendments in Writing.** All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Agency and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Redeveloper.

**Section 13.12. Drafting Ambiguities; Interpretation.** In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

Section 13.13. Governing Law. This Redevelopment Agreement shall be governed by and construed in accordance with the Applicable Laws of the State, and any disputes arising hereunder shall be resolved in the Superior Court, State of New Jersey, Mercer County Vicinage.


[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written above.

WITNESS/ATTEST:

  
Kelly A. Wolff, Agency Secretary

SOUTH AMBOY REDEVELOPMENT  
AGENCY

By:   
Kevin Meszaros, Chairman

By:   
Eric Chubenko, Executive Director

WITNESS/ATTEST:

  
Michael Glackin

JOHNROSE FM, LLC

By:   
Scott H. Caruso, Managing Member

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY**



**EXHIBIT B**

**PROJECT DESCRIPTION AND CONCEPT PLAN**

**EXHIBIT C**

**PROJECT SCHEDULE**

1	The Agency and the Redeveloper Execute and Deliver the Redevelopment Agreement	Effective Date
2	Redeveloper obtains all Governmental Approvals required for Commencement of Construction	Within 18 months after the Effective Date
3	Redeveloper closes on financing for Project	Within 21 months after the Effective Date
4	Commencement of Construction	Within 24 months after the Effective Date
5	Completion of Construction	Within 42 months after the Commencement of Construction

**EXHIBIT D**

**FORM OF DECLARATION OF REDEVELOPER  
COVENANTS AND RESTRICTIONS**

## EXHIBIT E

### FORM OF CERTIFICATE OF COMPLETION

Record and Return to:

### CERTIFICATE OF COMPLETION

Pursuant to Section 7.01 of the Redevelopment Agreement by and between the South Amboy Redevelopment Agency (the "Agency") and JohnRose FM, LLC (the "Redeveloper"), dated as of [\_\_\_\_\_, 2020], (the "Redevelopment Agreement"), the undersigned, as of the date hereof, certifies that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

- (i) the Project in its entirety has been Completed as of [\_\_\_\_\_, in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;
- (ii) all permits, licenses and approvals that are required in order for the Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;
- (iii) such Completion has been further evidenced by a written certificate of the Redeveloper and a certificate of the Redeveloper's engineer evidencing completion of the Project, which certificates are attached hereto as Attachment 1:
- (iv) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws; and
- (v) a copy of any Certificate of Occupancies issued with respect to any portion or portions of the Project for which a Certificate of Occupancy is required is attached hereto as Attachment 2.

The conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment no longer exist with respect to the Project Area. The Project Area shall no longer be subject to (i) any covenant running with the land covered by this Certificate of Completion for the benefit of the Agency, and (ii) eminent domain for purposes of redevelopment as a result of those determinations.



The Declaration recorded in the office of the Middlesex County clerk on [ ] in deed book [ ], page [ ] is hereby discharged of record and is void and of no further force and effect.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion of Project to be executed as of the [ ] day of [ ].

WITNESS OR ATTEST:

SOUTH AMBOY REDEVELOPMENT  
AGENCY

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

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

Acknowledgment

STATE OF NEW JERSEY :

:SS

COUNTY OF MERCER :

On this [ ] day of [ ] before me, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the South Amboy Redevelopment Agency, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the corporation and that s/he was authorized to execute the foregoing instrument on behalf of the corporation.

\_\_\_\_\_

Attachment 1

**REDEVELOPER'S CERTIFICATE**

Pursuant to Section 7.01 of the Redevelopment Agreement by and between the South Amboy Redevelopment Agency (the "Agency") and JohnRose FM, LLC (the "Redeveloper"), dated as of [\_\_\_\_\_, 2020], (the "Redevelopment Agreement"), the Redeveloper certifies as follows to the best of its knowledge information and belief (capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of [\_\_\_\_\_,] in accordance with the Agency of South Amboy building and construction code, the Redevelopment Agreement, the Redevelopment Plan and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to the Project;

(iv) attached hereto is a certificate of [\_\_\_\_\_,] Redeveloper's engineer, evidencing completion and certification of the Project; and

(v) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws.

**JOHNROSE FM, LLC**

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

Name:

Title:

Acknowledgment

STATE OF NEW JERSEY :

:SS

COUNTY OF MERCER :

On this [ ] day of [ ] before me, personally appeared \_\_\_\_\_, the \_\_\_\_\_ of the [Redeveloper], a limited liability company organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the corporation and that s/he was authorized to execute the foregoing instrument on behalf of the corporation.

**Exhibit 2**

**CERTIFICATE OF OCCUPANCY**



**EXHIBIT F**

**CERTIFICATE OF INCUMBENCY**