

REDEVELOPMENT AGREEMENT

By and Between

THE TOWNSHIP OF WEST ORANGE

as Redevelopment Entity

and

MDGA – WEST ORANGE DOWNTOWN REDEVELOPMENT, LLC,

as Redeveloper

Dated as of December 5, 2023

This Redevelopment Agreement (the “**Agreement**” or “**Redevelopment Agreement**”) is dated as of this 5th day of December, 2023, and entered into by and between **THE TOWNSHIP OF WEST ORANGE, NEW JERSEY** (the “**Township**”), a public body corporate and politic of the State of New Jersey in the County of Essex having its offices at 66 Main Street, West Orange, New Jersey 07052, in its capacity as redevelopment entity pursuant to *N.J.S.A. 40A:12A-4(c)*, and **MDGA – WEST ORANGE DOWNTOWN REDEVELOPMENT, LLC**, a limited liability company of the State of New Jersey authorized to do business in the State of New Jersey, having offices at c/o Matrix Development Group, 3 Centre Drive, Monroe Township, New Jersey 08831 (together with its permitted successors or assigns as hereinafter provided, the “**Redeveloper**”; each of the Township and the Redeveloper a “**Party**” and collectively the “**Parties**”).

W I T N E S E T H

WHEREAS, in accordance with the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.* (the “**Redevelopment Law**”), the Township has designated a portion of its downtown area generally bounded by the City of Orange to the southeast, Park Avenue to the southwest, Llewellyn Park to the northwest, and Kling Street to the northeast, and containing those properties identified on the Official Tax Map of the Township as Blocks 63, 64, 66, 115, 116, 116.02 and portions of Blocks 89, 114 and 117 as an area in need of redevelopment (collectively, the “**Redevelopment Area**”); and

WHEREAS, in accordance with the Redevelopment Law, the Township enacted a redevelopment plan for the Redevelopment Area entitled the “Downtown Redevelopment Plan Historic West Orange” on February 9, 2003 (the “**Original Redevelopment Plan**”); and

WHEREAS, the Original Redevelopment Plan has been amended throughout the years as follows: the “First Amendment,” adopted August 15, 2006, the “Second Amendment,” adopted March 6, 2007, the “Third Amendment,” adopted in 2010, and the “Fourth Amendment” adopted on September 14, 2021 (the Original Redevelopment Plan, along with the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment referred to collectively as the “**Redevelopment Plan**”); and

WHEREAS, the Fourth Amended Redevelopment Plan creates a new overlay zone (the Film Services Overlay District (the “**FSOD**”), which provides for film production activities adjacent to the location of the world's first film production studio, the Black Maria, which was on the grounds of what is now the Thomas Edison National Historical Park; and

WHEREAS, the FSOD is comprised of certain properties located within the Redevelopment Area designated as Block 63, Lots, 24, 25, 33.01, 33.02, 36, 37, 38, 39 and 41, which properties are located east of Standish Avenue and south of Lakeside Avenue; Block 64, Lots 2.01, 2.03, 2.04, 3.02, 28, 30, 31, 32, 33, 34, 34.01, 38, 42.02, 49 and 49.01, which properties are located east of Ashland Avenue, south of Lakeside Avenue and west of Standish Avenue; and Block 115, Lots 15, 16, 16.01 (a portion of which is designated as Block 1302, Lot 1 in the City of Orange), 17 (now consolidated with Lot 15) and 51, which properties are located

north of Lakeside Avenue, west of Watchung Avenue and south of Columbia Street (referred to collectively as the “**FSOD Properties**”); and

WHEREAS, the Township is the fee title owner of certain real properties within the Redevelopment Area designated as Block 115, Lots 15, 16, and 51, which properties are located north of Lakeside Avenue, west of Watchung Avenue and south of Columbia Street(referred to collectively as the “**Township Properties**”); and

WHEREAS, the Redeveloper has expressed an interest in purchasing and redeveloping the Township Properties (also referred to collectively as the “**Project Site**”) in accordance with the permitted uses set forth in the FSOD under the Redevelopment Plan as a film and video production campus of between 150,000 to 350,000 square feet (the “**Project**”) as more specifically described in the Project Concept Narrative, attached hereto as **Exhibit A**; and

WHEREAS, the Township has determined that Redeveloper meets all necessary criteria, including financial capabilities, experience, expertise to undertake the Project and accomplish the redevelopment of the FSOD Properties and, as a result, has determined to engage exclusively in negotiations with Redeveloper for the purpose of entering into this Redevelopment Agreement to designate Redeveloper as the exclusive redeveloper of the FSOD Properties; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Township has determined to enter into this Redevelopment Agreement with Redeveloper, which specifies the rights and responsibilities of the Township, and specifies the rights and responsibilities of Redeveloper with respect to the Project; and

WHEREAS, the Township and Redeveloper acknowledge that the mutual promises contained in this Redevelopment Agreement are good and valuable consideration for the binding execution and delivery of this Redevelopment Agreement by the Parties.

NOW, THEREFORE, for and in consideration of the promises and of the mutual representations, covenants and agreements herein set forth, the Parties, each binding itself, its successors and assigns (as and if permitted as set forth herein), do mutually promise, covenant and agree as follows:

ARTICLE I DEFINITIONS

1.1 Defined Terms.

(a) The following terms shall have the meanings ascribed to them in the Recitals above:

Agreement or Redevelopment Agreement	Project Site
FSOD	Redeveloper
FSOD Properties	Redevelopment Area
Original Redevelopment Plan	Redevelopment Law
Party	Redevelopment Plan
Parties	Township
Project or Redevelopment Project	Township Properties
Project Concept Narrative	

(b) The terms below shall have the following meanings:

“**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.

“**Applicable Laws**” shall mean all federal, state and local laws, ordinances, approvals, rules, regulations statutes, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses and other similar requirements applicable thereto, including but not limited to, the Redevelopment Law, the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.*, Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et seq.*, the Zoning Ordinance of the Township of West Orange, as and to the extent applicable pursuant to the terms of the Redevelopment Plan, Environmental Laws, relevant construction codes including construction codes governing access for people with disabilities, and all other applicable federal, state or local zoning, land use, environmental, health and safety laws, ordinances, rules and regulations.

“**Application**” or “**Government Application**” shall mean any application for Governmental Approval submitted by or on behalf of Redeveloper, including all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to implement and Complete Construction of the Project.

“**Certificate of Completion**” shall mean written acknowledgment by the Township in recordable form that the Redeveloper has completed construction of the Project (or relevant Phase thereof) in accordance with the requirements of this Redevelopment Agreement; and that, in accordance with the provisions of *N.J.S.A. 40A:12A-9*, the conditions determined to exist at the time the area was determined to be in need of redevelopment no longer exist and the Project Site and Improvements thereon that are the subject of the Certificate of Completion shall no longer be subject to eminent domain as a result of those determinations.

“Certificate of Occupancy” shall have the meaning ascribed thereto in the Township's Municipal Code and in the applicable provisions of the Uniform Construction Code.

“Commence Construction”, “Commencement of Construction”, or “Commencement Date” shall mean the date upon which the construction force and machinery is mobilized for construction of the Project in accordance with Governmental Approvals.

“Completion of Construction”, “Complete Construction” or “Completion Date” shall mean the date upon which the Redeveloper receives a Certificate of Completion for the Project (or relevant phase or portion thereof).

“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 of Covenants and Restrictions” or “Declaration of Restrictions” shall mean a written instrument, the form attached hereto as Exhibit B, intended to be executed by Redeveloper, to be recorded in the Office of the Essex County Register and to encumber the Project Site and to run with the land, setting forth certain statutory and contractual undertakings of and restrictions applicable to Redeveloper and its permitted successors and assigns in connection with the ownership, redevelopment or rehabilitation of the Project, all as more particularly described in Article VII.

“Default” shall mean a condition or event which constitutes or would constitute, after notice or lapse of time or both, an Event of Default as more particularly defined in Article X.

“Effective Date” shall mean the date of complete execution of this Agreement by Redeveloper and the Township.

“Environmental Laws” means all common law, federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments of any federal, state, regional, or local government entity, authority, agency, and/or department with relevant authority relating to environmental contamination, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances materials or wastes, whether heretofore, now in effect or hereinafter enacted or promulgated or amended, 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.); the Industrial Site Recovery Act, as

amended (“ISRA”) (*N.J.S.A. 13:1K-6 et seq.*); 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.*); the New Jersey Site Remediation Reform Act (*N.J.S.A. 58:10C-1 et seq.*); and the rules and regulations promulgated thereunder, including but not limited to the Technical Requirements for Site Remediation (*N.J.A.C. 7:26E et seq.*).

“Event of Default” shall have the meaning ascribed thereto in Section 10.2.

“Financial Agreement” shall have the meaning ascribed thereto in Section 13.1.

“Force Majeure Event” shall mean causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project or the relevant phase thereof; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods not reasonably foreseeable at the time the Project Schedule is agreed to); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; and strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary building materials (all of the foregoing provided that Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project.) During any Force Majeure Event that affects only a portion of a Project, Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of an event or occurrence of Force Majeure Event shall not prevent the Township from declaring a default or the occurrence of an Event of Default by the Redeveloper if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

“Governmental Approvals” shall mean all final and unappealable local, state or federal government approvals necessary for implementation and completion of the Project in accordance with the terms of this Agreement, including, without limitation, 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.

“Improvements” shall mean the construction, installation, repair, rehabilitation or reconstruction of all buildings, structures or improvements existing upon, or constructed on or installed as part of the Redevelopment Project.

“Minority” shall mean a person who is a citizen or lawful permanent resident of the United States and who is either one or a combination of: (i) African American (a person having origins in any of the black racial groups of Africa), (ii) Alaskan Native and/or American Indian

(a person having origins in any of the original peoples of North America), (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, Hawaii or the Pacific Islands), (iv) Hispanic (a person of Mexican, Puerto Rican, Cuban, or South American, or other Spanish culture or origin, regardless of race), or (v) Female (a person of the female gender).

“Mortgage” shall mean a permitted mortgage or related security in connection with financing necessary for Redeveloper to perform its obligations under this Redevelopment Agreement, including financing associated with the acquisition, development, construction, or marketing of the Project.

“Mortgagee” shall mean the holder of a Mortgage.

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

“Notice” shall have the meaning ascribed thereto in Section 14.9.

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

“PILOT” shall have the meaning ascribed thereto in Section 13.1.

“PILOT Contingency” shall have the meaning ascribed thereto in Section 13.1.

“Plans and Specifications” shall mean 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 Agreement and all applicable Governmental Approvals.

“Project Schedule” shall mean the agreed upon timetable and performance milestones for design, obtaining Governmental Approvals, Environmental Remediation, site preparation, and Completion of Construction of the Project as described herein, as may be modified or adjusted from time to time in accordance with the provisions of this Agreement and as set forth in Exhibit C.

“Redevelopment Entity” shall mean the Township of West Orange, in the County of Essex, New Jersey or its successors or assigns acting in the capacity of “redevelopment entity” for purposes of the Redevelopment Law.

“Remediation” or **“Remediate”** or **“Remediating”** shall mean demolition, removal, site clearance, disposition and related processing and other costs and charges regarding existing improvements, the land and any groundwater thereunder, and all necessary actions required under Environmental Laws or any other Applicable Law to investigate and clean up, remove, or otherwise respond to the known or suspected presence or threatened discharge of hazardous

substances or hazardous wastes, including, as necessary, preliminary assessment, site investigation, remedial investigation, and remedial action, including as to both demolition and Remediation “soft costs” such as professional fees, site audit costs, agency processing and the like, but specifically excluding fees paid to Redeveloper or to any affiliate of Redeveloper.

“**RDA Escrow Account**” shall have the meaning ascribed thereto in Section 4.6.

“**Termination Notice**” shall have the meaning ascribed thereto in Section 10.3.

“**Township Costs**” shall have the meaning ascribed thereto in Section 4.9.

“**Transfer**” shall mean a direct or indirect change in ownership or control, or an assignment.

ARTICLE II REDEVELOPER DESIGNATION; TERM OF AGREEMENT

2.1 **Redeveloper Designation.** The Township hereby designates and appoints the Redeveloper as the exclusive redeveloper of the Project Site, which designation and the execution of this Agreement was authorized by Council Resolution adopted on December 5, 2023. The Redeveloper shall have the exclusive right to perform development and redevelopment activities in connection with the Project, and to retain the profits derived therefrom, under the framework and in accordance with the terms of this Agreement, the Redevelopment Plan, and all Applicable Laws.

2.2 **Redeveloper's Scope of Undertaking.** The services and responsibilities undertaken by the Redeveloper, as more particularly set forth in this Agreement, shall include all aspects of the acquisition, design, development, environmental Remediation, site preparation, and construction of the Project and all Improvements, including, without limitation, 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 Redevelopment 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 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 Redevelopment Project; marketing, sales and 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.

2.3 **COAH Housing Obligation.** Redeveloper shall not be obligated to construct any affordable housing units as part of the Project but shall be responsible for compliance with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1, *et seq.* by the payment of the fees required thereunder into the Township’s affordable housing trust fund.

2.4 **Term of Agreement.** This Agreement shall commence on the Effective Date and shall expire upon the issuance of a final Certificate of Completion coinciding with Completion of Construction of the entire Project, unless earlier terminated in accordance with the provisions hereof.

2.5 **Plan Amendment.** The Township hereby agrees to consider in good faith amendments to the Redevelopment Plan with respect to the FSOD, if it determines that such amendments would facilitate a mutually-agreeable and beneficial Project.

2.6 **Historic Elements Branding.** The Project Site is adjacent to a historically significant property, and the Township confirms the proximity of the Project Site to such historically significant property will not adversely impact the development of the Project Site. To the extent required or desired, the Township will support Redeveloper's efforts with the Edison Trust, as well as local, state and federal agencies in order to: (a) repaint and/or rebrand the existing Edison water tower, and (b) utilize the Redeveloper's trademarks in relation to the marketing and promotional efforts for the Studio Project. The Township makes no guaranty or promise with respect to the Edison Trust or any other governmental agencies' willingness to agree to these requests. The Township shall have the opportunity, with Redeveloper's consent, which consent shall not be unreasonably withheld by Redeveloper, to use Redeveloper's Project and its presence in the Township to promote the Township generally.

ARTICLE III PURCHASE AND SALE OF TOWNSHIP PROPERTIES

3.1 **Agreement to Sell and Purchase the Township Properties.** Subject to the terms, of a Purchase and Sale Agreement to be negotiated and executed between the Parties, the Township agrees to sell the Township Properties to Redeveloper, and the Redeveloper agrees to purchase the Township Properties from the Township, for a purchase price of \$888,000.00 per acre (the "Purchase Price"). The Township Properties contain 12.2 acres, so the total Purchase Price shall be **TEN MILLION EIGHT HUNDRED THIRTY THREE THOUSAND AND SIX HUNDRED DOLLARS (\$10,833,600)**. While Block 115, Lot 51 is intended to be conveyed with the Township Properties, Redeveloper acknowledges that Block 115, Lot 51 is currently occupied by the owner of Block 115, Lot 16.01, in connection with a towing company operation. Accordingly, Redeveloper acknowledges that delivery of Block 115, Lot 51 shall not be a condition of the execution of the Purchase and Sale Agreement or closing on the other Township Properties.

3.2 **Exclusive Due Diligence Period.** The Parties shall have a period of 210 days from the Effective Date of this Agreement to negotiate and enter into a Purchase and Sale Agreement, including an updated Project Schedule to be attached to this Agreement as Exhibit C, to the mutual satisfaction of the Parties as well as a Financial Agreement pursuant to the terms set forth in Section 13 of this Agreement. (the "**Due Diligence Period**").

(a) **Initial Due Diligence Period.** In consideration of the Township's agreement to exclusively negotiate with the Redeveloper for the acquisition of the Township

Properties during the Due Diligence Period, on the Effective Date of this Agreement the Redeveloper shall deposit a sum of \$200,000 to be held by the Township (“**Initial Payment**”).

(b) **Second Due Diligence Period.** The Redeveloper shall have the automatic right to extend the Due Diligence Period for an additional 210 days, upon written notice to the Township to be served no later than 200 days after the Effective Date and an additional payment of \$200,000 (“**Extension Payment**”). Upon Redeveloper’s exercise of the right to extend into the Second Due Diligence Period, the Initial Payment shall become non-fundable. In the event that Redeveloper asserts that its determination not to extend the Due Diligence Period is based upon the Township’s unreasonable refusals to approve and execute the further required documents, as set in Section 3.3(a) below, Redeveloper may be entitled to a refund of the Initial Payment if the Township is found to be unreasonable pursuant to the process provided for in Section 3.3(a).

(c) **Additional Due Diligence Period.** The Parties may extend the Due Diligence Period beyond the Second Due Diligence Period upon terms and conditions mutually-agreeable and approved by the Township Council.

3.3 **Conclusion of Due Diligence Period.** (a) At the conclusion of the Second Due Diligence Period should the Parties fail to enter into a Purchase and Sale Agreement and Financial Agreement in accordance with Section 13.1, this Agreement shall automatically terminate, unless otherwise agreed by the Parties pursuant to Section 3.2(c). Upon such termination of this Agreement, the Township shall be entitled to retain the Initial Payment and Extension Payment paid by Redeveloper Pursuant to Section 3.2 above. In the event that the failure to enter into a Purchase and Sale Agreement is a result of the Township unreasonably refusing to agree to execute a Purchase and Sale Agreement that is substantially consistent with this Agreement and/or the Township unreasonably rejecting Redeveloper’s application for a Financial Agreement that provides reasonable justification for a Financial Agreement with respect to the need for financial assistance and a reasonable generation of revenue for the Township, in accordance with Section 13.1, the Township shall refund the refund the Extension Payment within fifteen (15) business days of the receipt of Redeveloper’s request for such refund. Should the Township refuse to return the Extension Payment, or the Initial Payment, if applicable, the Parties agree to refer the dispute to a retired Judge of the New Jersey Superior Court to be mutually agreed upon by the Parties, to determine the reasonableness of the Townships refusal to execute a Purchase and Sale Agreement and/or approve a Financial Agreement, which determination shall be binding and non-appealable. The cost of such process shall be borne equally by the Parties.

(b) In the event that the Parties enter into a Purchase and Sale Agreement and Financial Agreement pursuant to the terms set forth in Section 13.1 at the conclusion of the Due Diligence Period, the Initial Payment and Extension Payment shall be become non-refundable, and the Township may utilize the funds in its sole discretion.

3.4 **Preliminary Access Agreement.** Simultaneously with the execution of this Agreement, the Parties shall execute a Pre-Closing Access Agreement, in the form attached hereto as Exhibit E, to facilitate Redeveloper's due diligence investigations of the Property.

3.5 **Conveyance by the Township to Redeveloper.** Any conveyance of the Township Properties to the Redeveloper will be by bargain and sale deed, and each deed will contain a use restriction and limited right of reverter, as shall be provided more specifically in the Purchase and Sale Agreement, which the Township may but is not obligated to exercise in the event of an Event of Default that results in the termination of this Agreement prior to the issuance of a Certificate of Completion for the Project or applicable Phase thereof.

3.6 **Environmental Remediation.** Redeveloper shall be solely responsible to undertake and finance any and all required Environmental Remediation of the Township Properties.

ARTICLE IV IMPLEMENTATION OF PROJECT

4.1 **Project Implementation.** For so long as this Agreement and Redeveloper's designation as Redeveloper hereunder remain in effect, Redeveloper shall have the exclusive right to redevelop the Project Site, once acquired. The Redeveloper agrees to implement the Project in accordance with the applicable terms and conditions of this Agreement, the Redevelopment Plan, Applicable Laws, and all Governmental Approvals. All redevelopment activities performed under this Agreement shall be performed timely and diligently, and provided in accordance with the level of skill and care ordinarily exercised by developers of comparable first class commercial and/or residential developments, as applicable.

4.2 **Project Schedule.** The Project Schedule shall control the Commencement, progress and Completion of the Project. Subject to the provisions of Section 4.3, Redeveloper shall use commercially reasonable efforts, subject to obtaining Governmental Approvals, to Commence construction no later than the date set forth in the Project Schedule. If Redeveloper fails to meet a completion date set forth in the Project Schedule or determines that it will fail to meet a completion date, Redeveloper shall promptly provide notice to the Township Administration and the Township Council stating: (a) the reason for the failure to complete the applicable task; (b) Redeveloper's schedule for completing such task; and (c) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant completion dates. The Township's Mayor is hereby authorized and empowered (i) to request modifications to the Project Schedule on behalf of the Township, and (b) to consent to modifications to the Project Schedule requested by the Redeveloper, without the need for an amendment to this Agreement or further action by the Township.

4.3 **Tolling.** Redeveloper shall diligently adhere to the Project Schedule, provided that such obligations shall be extended on a day-for-day basis for each day that Redeveloper's performance hereunder is delayed by (a) the occurrence of an event of Force Majeure, or (b) an extension of the Project Schedule and/or the date for Completion granted by the Township's Mayor pursuant to Section 4.2. If a delay only affects a portion of the Project, the extension

granted hereunder shall only apply to the obligations so affected and Redeveloper shall continue to perform its obligations with respect to the balance of the Project.

4.4 **Governmental Approvals.** Redeveloper shall file and diligently pursue all required Governmental Approvals consistent with and as required for timely implementation of the Project Schedule.

(a) **Township Approval of Concept Plan.** At the conclusion of the Due Diligence Period, Redeveloper shall provide a more detailed concept plan for Township approval, which shall be substituted as Exhibit A to this Agreement. Approval of Redeveloper's concept plan by the Township, shall be a completeness item and prerequisite to the jurisdiction of the Planning Board to accept Redeveloper's application for Site Plan approval.

(b) **Application for Site Plan Approval.** Each Governmental Application submitted by or on behalf of the Redeveloper in connection with the Redevelopment Project shall conform in all material respects to the Redevelopment Plan and all Applicable Laws; provided, however, that nothing herein shall be construed as limiting the Redeveloper's ability to apply for reasonable bulk or area variances or waivers as may necessary or appropriate under the circumstances and in accordance with the applicable provisions of the Redevelopment Plan.

(c) **Scope of Governmental Approvals.** The Redeveloper represents that it will cause to be prepared and filed, at Redeveloper's sole cost and expense, all Governmental Applications as may be necessary and appropriate for the purpose of obtaining all Governmental Approvals required to implement the Project consistent with the Project Schedule. All of the Governmental Applications shall be in conformity with the applicable provisions of the Redevelopment Plan, this Redevelopment Agreement and Applicable Laws. Redeveloper shall provide the Township with a copy of each Governmental Application at the same time those applications are submitted to the governmental agency having jurisdiction over the same.

(d) **Diligent Pursuit of Governmental Approvals.** Redeveloper agrees to prosecute all of Redeveloper's applications for Governmental Approvals diligently and in good faith, and in accordance with the Project Schedule. Subject to the requirements of Applicable Law, Redeveloper shall determine when and in what order to file each specific application. At Redeveloper's reasonable request, the Township will, in its reasonable judgment, sign consents or other documents required in connection with Redeveloper's applications for Governmental Approvals and will supply information which is in the Township's possession. The Township will, in its reasonable judgment, otherwise cooperate with and support Redeveloper in connection with the applications for Governmental Approvals as Redeveloper may reasonably request.

(e) **Expedition of Applications for Governmental Approvals.** The Township will use diligent and best efforts to expedite Governmental Approvals for any land use, development and entitlement approvals over which it exercises jurisdiction and control, including, but not limited to, site plan approval, subdivision approval, variances, design waivers, zoning/building permits or other permitting, and certificates of occupancy for all submittals and

will use diligent and good faith efforts to support and expedite any Governmental Approvals over which it does not exercise jurisdiction and control.

(f) **Final Governmental Approvals.** No Governmental Approval shall be deemed “final” or “issued” until (i) the time for all appeals has run without the filing of an appeal or (ii) in the event an appeal is filed, all such appeal(s) have been resolved fully in favor of the Project and/or Redeveloper and the time for filing any further appeal has expired without the filing of any such appeals.

(g) **Conditions of Governmental Approvals.** Redeveloper shall have the right to contest any unsatisfactory requirement or condition with respect to the Project imposed on Redeveloper as a condition to a Governmental Approval; provided that Redeveloper shall have no obligation to comply with any such requirement or condition if Redeveloper is unsuccessful in contesting same and such requirement is not commercially reasonable as reasonably determined by Redeveloper or is materially inconsistent with Redeveloper’s building and site plans, in which event, Redeveloper may terminate this Agreement upon notice to the Township in accordance with Section 14.9. In such instance, the Parties may agree to consider a modification of this Agreement in a manner similar to that provided for in Section (h) below, but the Township shall not be obligated to do so.

(h) **Governmental Approval Denied.** In the event that Redeveloper’s application for any Governmental Approval is denied or any Person brings an action that contests or challenges the grant of any Governmental Approval, then Redeveloper shall have the right in its discretion to (i) modify and resubmit such application, if applicable, in order to secure such Governmental Approval; provided that such modification does not have a material adverse impact on (1) the financial condition of the Project (2) the Project, or its intended uses or (3) either Party, and/or (ii) appeal or defend against such action. In the event of a final, adverse, nonappealable decision; the Parties shall during the sixty (60) day period immediately following receipt by both Parties of such decision, use diligent, reasonable efforts and good faith negotiations to modify the Project and amend this Agreement in order to assist Redeveloper in obtaining the required Governmental Approvals. If, at the end of such sixty (60) day period, there is no agreement between the Parties as to how to modify the Project and amend this Agreement, either Party may terminate this Agreement by providing written notice to the other Party in accordance with the provisions of Section 14.9 of this Agreement.

4.5 **Work to be Performed by Redeveloper; Plans and Specifications.** The Redeveloper at its sole cost and expense shall perform or cause to be performed all Remediation, site preparation, construction, operation, administration and management of the Project. Redeveloper hereby agrees that following an Event of Default the Township and anyone acting on the Township’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 Township (other than for actual services rendered to the Township subsequent to the Event of Default) and agrees to use best efforts to ensure that all agreements between Redeveloper and its contractors and consultants shall so be provided. In addition, all performance or completion bonds provided by Redeveloper’s contractors shall name the Township 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 Township.

4.6 **Progress Reports and Project Oversight by the Township.** During the implementation of the Project, the Redeveloper shall make monthly written Progress Reports, in such detail as may reasonably be requested by the Township, as to the actual progress of Redeveloper and which shall include, among other things, a description of activities completed, milestones achieved, status of the Project with respect to the Project Schedule, activities to be undertaken prior to the next regularly scheduled Progress Report, and any unanticipated problems or delays and the explanation therefor. The Township may request a virtual meeting with Redeveloper at reasonable intervals if further detail is required.

4.7 **Certificate of Occupancy and Certificate of Completion.** Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy, as required under Applicable Laws following the Completion of the Project or applicable phase thereof. Following the issuance of all required Certificates of Occupancy and the satisfaction of the terms and conditions of this Redevelopment Agreement with respect to the applicable Phase of the Project by Redeveloper, and upon receipt of a Notice of Completion from Redeveloper, the Township agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Redevelopment Agreement and has completed construction of the applicable phase of the Project in accordance with the requirements of this Redevelopment Agreement. Within 30 days after receipt of the Notice of Completion from the Redeveloper, the Township shall provide the Redeveloper with the Certificate of Completion or a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to complete the Project in accordance with the provisions of this Redevelopment Agreement or is otherwise in default under this Agreement, and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to the Certificate of Completion (the “**Denial Statement**”). Redeveloper may rely on the Denial Statement in determining what action it must take in order to achieve a Certificate of Completion. When issued, the Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants (as limited herein) in this Redevelopment Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Project or relevant phase, as well as a determination by the Township that the conditions that were found and determined to exist at the time the Project Site, or relevant portion thereof, 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 Redevelopment Project or applicable phase thereof. Unless otherwise required by a related Financial Agreement, Governmental Approval or Applicable Law, upon the issuance of Certificate of Completion the provisions of this Agreement shall no longer encumber the applicable phase of the Project; *provided, however*, that any other documents theretofore delivered pursuant to this Agreement that by their terms are intended to survive Completion of Construction shall not be affected by delivery of the Certificate of Completion except as otherwise expressly provided therein.

4.8 **Estoppel Certificates (Prior to Certificate of Completion).** At any time and from time to time prior to the issuance of a Certificate of Completion, the Township shall, within thirty (30) days following a written request by Redeveloper, execute and deliver to (a) Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, investor, tenant, etc.) designated by Redeveloper, an instrument in which the Township (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), and (ii) states whether to the actual knowledge of the Township, the Redeveloper is in default under this Agreement, and, if so, specifying each such default of which the Township shall have knowledge.

4.9 **Escrow Account to Cover Township Costs.** The Redeveloper agrees to provide funding for all reasonable and necessary out of pocket costs actually incurred by the Township in connection with the Project. Such costs include, any reasonable fees and costs of any outside professional consultant, contractor or vendor retained by the Township including attorneys, technical consultants, planners, financial consultants and appraisers, but specifically excluding Township employees (the “**Township Costs**”).

(a) **Payment of Township Costs.** Redeveloper shall make timely payment or reimbursement to the Township of the Township Costs. Redeveloper shall fund an escrow account (the “**RDA Escrow Account**”) with an initial balance of Twenty-Five Thousand Dollars (\$25,000.00). If, when, and as often as may occur that the RDA Escrow Account is drawn down to Ten Thousand Dollars (\$10,000.00), then Redeveloper, upon the Township’s written request, shall within ten (10) business days thereafter provide to the Township funds sufficient to replenish the RDA Escrow Account to the amount of Twenty-Five Thousand Dollars (\$25,000.00) for use in accordance with these terms, unless such time period shall be extended for good reason by the Township in its sole discretion. Funds in the RDA Escrow Account will be applied to the payment or reimbursement of the Township Costs as provided in this Agreement.

(b) **Billing and Rates.** All professional consultants, contractors or vendors retained by the Township shall bill their time in one-tenth (1/10) hour increments. Township Costs shall be limited to the actual rates charged to the Township, pursuant to agreements and contracts with the Township, by these professionals for their work with no additional mark-up.

(c) **Disbursement.** Each payment for professional services charged to the RDA Escrow Account shall be pursuant to an invoice from the professional identifying the personnel performing the reimbursable service, each date the services were performed, the hours spent in not greater than one-tenth (1/10) hour increments, the hourly rate, and properly specifying the reimbursable expense. All professionals shall submit the required invoices to the Township on a monthly basis. The professional shall simultaneously send an informational copy of each invoice submitted to the Township to the Redeveloper. Any dispute concerning payment of the Township Costs shall be resolved in accordance with the procedures set forth in N.J.S.A. 40:55D-53.2a. Upon the issuance of the final Certificate of Completion, or upon termination of this Agreement, any money remaining in the RDA Escrow Account shall be disbursed to Redeveloper, except that the Township may retain, for not more than sixty (60) days

after the issuance of the Certificate of Completion or the termination date, an amount sufficient to cover unpaid Township Costs.

ARTICLE V ACQUISITION OF ACQUISITION PARCELS

5.1 **Acquisition by the Redeveloper.** In the event that the Redeveloper determines it is beneficial to the Project to acquire other properties within the Redevelopment Area (the "Acquisition Parcels"), Redeveloper may engage in whatever efforts it deems appropriate to acquire title to the Acquisition Parcels in an arm's length transaction between the Redeveloper and the current owners of such properties, at Redeveloper's discretion. Redeveloper is not requesting that the Township utilize its condemnation powers to acquire the Acquisition Parcels.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

6.1 **Representations and Warranties by the Redeveloper.** The Redeveloper makes the following representations and warranties:

(a) Redeveloper represents that it has obtained or can obtain and will commit the requisite equity and debt financing in an amount necessary to purchase the Township Properties on the terms and conditions set forth herein, and to perform Redeveloper's obligations hereunder.

(b) Redeveloper has the legal capacity to enter into this Redevelopment Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.

(c) Redeveloper is duly organized and a validly existing legal entity under the laws of the State of New Jersey, authorized to do business in the State of New Jersey and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Redevelopment Agreement and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.

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

(e) No indictment has been returned against any member, manager or officer of Redeveloper.

(f) As of the Effective Date, to the best of Redeveloper's knowledge and belief after diligent inquiry there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Redevelopment Agreement, Redeveloper's execution hereof, or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment Agreement; or (ii) is likely to result in a material

adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair Redeveloper's ability to perform its obligations pursuant to the terms of this Redevelopment Agreement.

(g) Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating agreement of the Redeveloper or of any other agreement, mortgage, indenture, instrument or judgment to which the Redeveloper is a party.

(h) All factual information and statements submitted by Redeveloper to the Township and its agents are complete, true and accurate in all material respects. Redeveloper acknowledges that the facts and representations contained in the information submitted by Redeveloper are incorporated herein by reference, are being relied upon by the Township, and are a material factor in the decision of the Township to enter into this Redevelopment Agreement with Redeveloper.

(i) To the best of Redeveloper's knowledge and belief, at the time of submission thereof to the Township all projections, estimates, pro formas and other information submitted by Redeveloper to the Township and its agents were materially correct and Redeveloper had no reason to believe any such information to be inaccurate or misleading in any material respect.

(j) Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating and maintaining the Project.

(k) The party or parties signing the Redevelopment Agreement on behalf of Redeveloper is or are fully authorized to sign on behalf of the current members of Redeveloper and to bind them with respect thereto.

(l) As of the Effective Date the respective interests of the Redeveloper are as set forth in the Incumbency Certificate attached as Exhibit D hereto.

Redeveloper's representations and warranties are intended to and shall survive the delivery of deeds to the Township Properties to Redeveloper.

6.2 **Representations and Warranties by the Township.** The Township hereby makes the following representations and warranties:

(a) The Township has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Township is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder, and as of the Effective Date except as to the PILOT Contingency and Financial Agreement and matters relevant thereto the Township has taken all action and is in receipt of all Governmental Approvals required to consummate the transactions contemplated hereunder and to perform its obligations hereunder.

(b) This Agreement is duly executed by the Township, and is valid and legally binding upon the Township and enforceable in accordance with its terms on the basis of Applicable Laws currently 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 Township is a party.

(c) As of the Effective Date, to the best of the Township's knowledge there is no action, proceeding or investigation now pending nor any basis therefor, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the Township pursuant to this Agreement.

(d) To the best of the Township's knowledge, there is no pending litigation which affects the title to the Township Properties, the Redevelopment Area designation, the Redevelopment Plan, or the Township's ability to convey the Township Properties to Redeveloper.

(e) To the best of the Township's knowledge the Township is not in violation of any term of any judgment, decree, injunction or order affecting the Township Properties.

(f) The Township has not received notice of any pending eminent domain or condemnation of Township Properties and the Township does not know of, or have reason to know of, any proposed eminent domain or condemnation proceeding with respect to any portion of the Township Properties.

(g) To the best of the Township's knowledge the Township has not received any notice of violation issued by any federal, state or other public authority with respect to the Township Properties.

(h) The Township is not aware of any pending challenge to the validity of the Redevelopment Plan or this Redevelopment Agreement. The Township knows of no statement, act or omission on the part of the Township or its employees or agents that as a matter of law would provide a basis for invalidating or nullifying the Redevelopment Area designation, the Redevelopment Plan or this Agreement.

(i) The Township's representations and warranties are intended to and shall survive the delivery to Redeveloper of the deeds to the Township Properties.

ARTICLE VII COVENANTS AND RESTRICTIONS

7.1 **Description of Covenants.** The covenants to be imposed upon Redeveloper, its successors and assigns, are set forth below, and shall be recorded in the form of a Declaration of Covenants and Restrictions (Exhibit B) as of the date of conveyance of the Township Properties to the Redeveloper and/or acquisition of any additional properties within the Project Site. The covenants and restrictions shall remain in effect for the period set forth in Section 7.2 below:

(a) in connection with its use or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby any portion of the Project is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and Redeveloper, its successors and assigns, shall comply with all applicable laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status.

(b) comply with the applicable provisions and public purposes of the Redevelopment Law and all obligations under this Agreement and shall at all times develop, design, finance, construct and operate the Project or cause the Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, this Agreement and the Redevelopment Plan. All uses to which the Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Redevelopment Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Redevelopment Agreement.

(c) use diligent efforts to obtain all Governmental Approvals requisite to the construction and development of the Project including evidence satisfactory to the Township that its use of the Project is in compliance with this Agreement, the Redevelopment Plan and all Applicable Laws, and use diligent and commercially reasonable efforts to ensure timely performance of its obligations hereunder, including but not limited to Completion of Construction of the Project within the time periods specified in the Project Schedule.

(d) not encumber, hypothecate or otherwise use the Project, or any part thereof, as collateral for an unrelated transaction; nor sell, lease or otherwise transfer all or any portion of a Project without the Township's consent, except as otherwise specifically set forth in this Agreement.

(e) during construction of the Project, take commercially reasonable steps to minimize or mitigate impacts on the surrounding neighborhood (such as, for example, noise and dust controls), and keep debris and/or waste materials containerized and/or stored and disposed of, all within normal industry standards.

(f) keep and maintain in good condition any improvements required under the Governmental Approvals, including but not limited to any landscaping required to be planted or cause an entity in control of the Project (i.e. condominium or homeowner association) to maintain such improvements.

7.2 **Effect and Duration of Covenants.** It is intended and agreed that the agreements and covenants set forth in this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, against 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. The covenants shall cease and terminate when a Certificate of Completion for such improvements has been issued, provided however, that the covenants in Section 7.1(a) shall remain in effect without limitation as to time.

ARTICLE VIII PROHIBITION AGAINST ASSIGNMENT AND TRANSFER

8.1 **Prohibition Against Transfers of Interests in Redeveloper.** Redeveloper recognizes the importance of the Redevelopment Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Township in entering into this Agreement, particularly in view of the public aids that may be made available for the purpose of making such redevelopment possible. The Township considers that a Transfer of the ownership in Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership of or with respect to the identity of the parties in control of Redeveloper or the degree thereof, is for practical purposes a Transfer or disposition of the Project. Redeveloper recognizes that it is because of such qualifications and identity that the Township is entering into this Agreement with Redeveloper, and, in so doing, the Township is relying on the obligations of Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder.

As a result, prior to completion of the Project (or applicable phase thereof) as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Township (which approval shall not be unreasonably withheld), Redeveloper agrees for itself and all successors in interest that there shall be no Transfer of (i) the Project Site, (ii) any equity interest in Redeveloper, nor (iii) any direct or indirect change in control of Redeveloper as it exists on the Effective Date, whether by changes in capitalization, merger, or otherwise. The Township recognizes that implementation of the Project may involve one or more joint venture arrangements between Redeveloper and other developers having particular development expertise and financial capabilities. The Township agrees to consider such joint venture arrangements in good faith, and will not unreasonably withhold its consent to any such arrangement provided (A) that such joint venture entity assumes all of the obligations of Redeveloper under the terms of this Agreement and under all applicable Governmental Approvals as to the applicable phase of the Project, provided that Redeveloper shall not be released from and shall remain liable for the performance of Redeveloper's and the joint venture's obligations; (B) that the creation and existence of the joint venture does not materially and negatively affect the Township's ability to enforce its rights under this Agreement; and (C) that the proposed joint venture partner and structure is acceptable to the Township, in its reasonable discretion. The Transfer or Transfers of a non-controlling interest or interests in the Redeveloper that do not result in a change in control of Redeveloper as set forth in the operating agreement shall not constitute a prohibited Transfer. The death or incapacity of a principal of a member of Redeveloper shall not constitute a prohibited Transfer hereunder. With respect to this provision, Redeveloper and the party or parties signing the Redevelopment Agreement on behalf of Redeveloper represent that each has authority to agree to this provision on behalf of the current members of Redeveloper and to bind them with respect thereto.

8.2 **Exemption from Prohibited Transfers.** Notwithstanding the foregoing, and with prior knowledge of the Township by prior written notice from Redeveloper, the following shall not constitute a prohibited Transfer, for purposes of Section 8.1: transfer to an entity or entities controlled by Redeveloper, including but not limited to an urban renewal entity or entities formed by Redeveloper pursuant to *N.J.S.A. 40A:20-4*; *provided, however*, that such successor and assignee of Redeveloper shall assume all of the obligations of Redeveloper hereunder, but Redeveloper shall remain primarily liable for the performance of Redeveloper's obligations; and *provided further*, that (i) a copy of the fully executed written instrument of conveyance and assignment and assumption of this Redevelopment Agreement shall be promptly delivered to the Township; and (ii) such conveyance or assignment does not violate any of the Governmental Approvals.

8.3 **Prohibition of Transfer of Redevelopment Agreement.** Redeveloper further agrees for itself, its successors and assigns, that prior to the Completion of the Project or applicable phase thereof, as evidenced by the issuance of a Certificate of Completion, Redeveloper will not make or create, or suffer to be made or created, any assignment or other Transfer of its interests in this Agreement, without the prior written approval of the Township, except as provided in Section 8.1 above, Section 8.2 above or Section 8.4 below (including a Transfer as a result of a foreclosure or a deed in lieu given to a lender).

8.4 **Consent to Permitted Transfers.** The Township hereby consents, upon advance notice and without the necessity of further approvals from any entity, to the following Transfers (the "**Permitted Transfers**"): (a) a mortgage, leasehold mortgage or related security (including conditional assignments to mortgagees required as a condition to the closing of the financing so secured) granted by Redeveloper to a mortgagee or to a leasehold mortgagee and any transfer pursuant to or in enforcement thereof; (b) mortgages, leases, and other liens and encumbrances for the purpose of financing the costs associated with, or incurred in connection with the acquisition, development and construction of the Project; (c) the Declaration of Covenants and Restrictions; (d) utility and other development easements, leases, and licenses; (e) a lease, sublease, license, or franchise agreement to a tenant, sublessee, licensee, or franchisee occupying premises in the Project for the purpose of operating a permitted business of that tenant as a part of the intended use of the Project; (f) transfer to an Affiliate of Redeveloper; (g) transfers of the direct or indirect ownership or control of Redeveloper among the existing owners, family members of the owners, and/or trusts established for estate planning purposes; (h) environmental covenants and restrictions imposed by a regulatory agency; (i) any contract or agreement with respect to any of the foregoing exceptions, or (j) any transfer to effectuate a Long Term Tax Exemption, or other tax abatement program (including, without limitation, transfers to an urban renewal entity controlling or controlled by Redeveloper or any of its respective Affiliates).

8.5 **Prohibition Against Speculative Investment.** Because of the importance of the Project to the general welfare of the community, Redeveloper represents and agrees that its acquisitions of the Township Properties conveyed to Redeveloper, and any Acquisition Parcels acquired by Redeveloper, and Redeveloper's undertakings pursuant to this Redevelopment Agreement are, and will be used, for the purpose of the Redevelopment Project and redevelopment of the Project Site as provided herein, and not for speculation in land holding.

8.6 **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 Agreement as Exhibit D 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 or persons owning an interest in Redeveloper, and, as to each such entity, all entities owning an interest therein, such disclosure being intended to be the same disclosure that Redeveloper will be required to make in connection with its Governmental Applications for land use approvals pursuant to *N.J.S.A. 40:55D-48.2*.

(a) At least annually during the period between the Effective Date and Completion of the Project or phase thereof as evidenced by the issuance of a Certificate of Completion, and at such other times as reasonably requested by the Township, Redeveloper will update the incumbency certificate and keep Exhibit D current as to Redeveloper as well as to each permitted urban renewal entity or joint venture.

(b) Redeveloper will immediately notify the Township in writing of any and all changes whatsoever in the ownership of Redeveloper and any permitted urban renewal entity or joint venture, legal or beneficial, or of any other act or transaction involving or 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 Township may request, furnish the Township with a complete statement subscribed and sworn to by managing member of Redeveloper, setting forth all of managing members, or other owners of equity interests of Redeveloper, and of any permitted urban renewal entity or joint venture, and the extent of their respective holdings, and in the event any other parties have a beneficial interest in Redeveloper's entity, their names and the extent of such interest.

8.7 **Transfer or Assignment Fee.** Any reasonable costs incurred by the Township in connection with a request made by the Redeveloper for the Township's consent to transfer or assign this Redevelopment Agreement shall constitute a Township Cost for purposes of this Agreement.

ARTICLE IX MORTGAGE FINANCING

9.1 **Mortgages, Liens, or other Encumbrances.** Prior to the issuance of a Certificate of Completion Redeveloper shall promptly notify the Township of any encumbrance or lien that has been created on or attached to the Project, by mortgage or involuntary act of the Redeveloper or others, upon obtaining knowledge or notice of same.

9.2 **Obligations of Mortgagee.** Notwithstanding any of the provisions of this Redevelopment Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Redevelopment Agreement (including but not limited to any such holder who obtains title to one or more

properties comprising the Project Site, or to any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title from or through any such holder or (b) any other purchaser at foreclosure sale, other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project or to guarantee such construction or completion; provided that nothing in this Article or any other Article or provision of this Redevelopment Agreement shall be deemed or construed to permit or authorize any such holder to devote the Project Site or any part thereof to any uses, or to construct any project thereon, other than those uses provided or permitted under this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws.

9.3 **Notice of Default to Mortgagee and Right to Cure.** (a) Subject to N.J.S.A. 55:17-1, *et seq.*, whenever the Township shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Township shall at the same time deliver to each lender (or equity participant in Redeveloper) a copy of such notice or demand, provided that the Redeveloper has delivered to the Township a written notice of the name and address of such lender and equity participant. Each such lender shall (insofar as the rights of the Township are concerned) have the right at its option within ninety (90) days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such default with respect to that portion of the Project which is being financed by such lender and which is subject to being cured and to add the cost thereof to the debt and the lien which it holds, or to the obligations of the lessees under any lease-back or of the guarantor under any other conveyance for financing.

(b) **Assume Obligations of Redeveloper.** To the extent that any Holder is required to foreclose against any lien it has with respect to the Redevelopment Project (as a result of a Redeveloper Event of Default or a default by Redeveloper under any agreements executed by Redeveloper and its project lenders), the Township agrees to forebear from the enforcement of any remedies provided under this Agreement that it may have against Redeveloper in order to permit such Holder to foreclose and assume or cause a third party to assume the obligations of Redeveloper under this Agreement; provided, however, that the Township shall not be obligated to forebear from the exercise of any remedies available to it hereunder if such forbearance will result (or may result, in the reasonable judgment of the Township) in a waiver of the Township's rights under this Agreement.

9.4 **Estoppel Certificate; Mortgagee Request for Modifications.** Within thirty (30) days following written request by the Redeveloper, or of any Mortgagee, lender, purchaser, tenant or other party having an interest in the Project, the Township shall issue a signed estoppel certificate stating:

(i) that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) whether to the best knowledge of the Township Redeveloper is in default under this Agreement, and, if so, specifying each such default of which the Township shall have knowledge; and (iii) confirming such other factual matters within the Township's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project or the Project Site. In the event the

estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

(ii) In the event that a permitted Mortgagee reasonably requests changes to this Agreement in order to make the same acceptable to the Mortgagee, the Township agrees to consider such changes in good faith and to consent to such changes if they do not materially and adversely affect the Township's rights nor increase the Township's obligations, which consent will not be unreasonably withheld, conditioned or delayed.

ARTICLE X EVENTS OF DEFAULT; TERMINATION

10.1 Default Related to Conveyance of the Township-Owned Property.

(a) **Default by the Township.** If title to the Township Properties does not close because of the Township's Default, then the Redeveloper shall be entitled to pursue all other remedies at law or equity available to it by reason of the Township's default (including but not limited to specific performance and recovery of costs); provided, however, that failure of the Governing Body to authorize or approve the transaction shall not constitute a Default by the Township, but only a failure of the condition precedent to the conveyance; and provided further, that under no circumstances shall the Township be liable for consequential, indirect or special damages of any kind.

(b) **Default by Redeveloper.** If title to the Township Properties does not close because of the Redeveloper's Default, the Township shall be entitled to terminate this Agreement. Nothing in this Section shall be construed as limiting the ability of the Township to be reimbursed from the RDA Escrow Account for Township Costs incurred through the date of termination.

10.2 **Events of Default.** Any one or more of the following shall constitute an “**Event of Default**” hereunder, subject to Force Majeure Extension and tolling as provided elsewhere in this Agreement:

(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 Agreement as a “**Default**” or a “default”, and except as otherwise specified below the continuance of such Default for a period of thirty (30) days after Notice from the Township 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 due diligence to remedy the same as soon as practicable, but in no event later than ninety (90) days after such Notice unless this 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) days after Notice from the Township, including but not limited to failure or refusal to refresh the Escrow Account or to reimburse the Township for properly reimbursable Township Costs not cured within ten (10) business days of Notice by the Township.

(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 purchase of the Township Properties or the implementation of the Project in accordance with this 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 except as permitted to be otherwise modified as permitted herein; or (B) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Township (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 Township; 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, which shall be void *ab initio* 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 contained in the Declaration of Covenants and Restrictions.

(viii) Redeveloper's failure to pay or delinquency in the payment of real property taxes or assessments, which failure or delinquency is not cured within ten (10) days of Notice by the Township.

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

(x) Foreclosure of any of the Project Site once such lands have been conveyed to the Redeveloper.

(b) Township Events of Default.

(i) Failure of the Township to perform its affirmative obligations to Redeveloper under this Agreement, 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 Township 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 Agreement specifically provides otherwise.

(ii) Material breach of any warranty or representation made by the Township 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 Township 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 Agreement specifically provides otherwise.

10.3 Remedies Upon Event of Default. Whenever any Event of Default of Redeveloper shall have occurred, the Township may, on written notice to Redeveloper (a "**Termination Notice**") terminate this Redevelopment Agreement and Redeveloper's designation as Redeveloper hereunder, and take whatever other 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 Redeveloper under this Agreement. Neither Party shall be liable for indirect, consequential or special damages of any kind. In the event of a finally adjudicated dispute regarding an Event of Default or Termination Notice, the prevailing Party shall be entitled to recover its attorneys' fees against the other Party. With respect to a Default affecting the Township Properties for which a Certificate of Completion has not been issued, the Township may elect to exercise its right of reverter for the Township Properties that is the subject of the Default, subject to payment by the Township to the Redeveloper of the purchase price paid by the Redeveloper for the Township Properties, including all reasonable hard and soft

costs expended by Redeveloper in connection with subject Township Property(ies) up and through the date title is transferred, other than Township Costs, and subject further to any Holders rights to cure and redevelop the Township Properties provided for in Section 9.3. However, such condition subsequent and any reversion of title as a result thereof in the Township (a) shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way (i) the lien of any mortgagee authorized by this Agreement; and (ii) any rights or interests provided in this Agreement for the protection of Holders and (b) shall not apply to any Township Property or portion thereof which has received a Certificate of Completion by the Township. The Township's right to declare such reversion of the title is not intended as a waiver by the Redeveloper of any rights it may have to challenge the validity of such a declaration if the Redeveloper believes, in good faith, such right is improperly exercised.

10.4 **Force Majeure Extension.** For the purposes of this Agreement, neither the Township nor Redeveloper shall be considered in breach or in default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Township or Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event plus a reasonable period of time not to exceed sixty (60) days, or such other period of time which may be agreed to by the Township and the Redeveloper, for Redeveloper to re-mobilize its contractors and agents to complete the Project or affected phase thereof, and Redeveloper's non-performance of such obligation during any such period of time shall not be deemed a default by Redeveloper of its obligations under this Agreement. To invoke the tolling provisions hereunder the party invoking the provisions hereof must give Notice to the other party of the occurrence of a Force Majeure Event as soon as practicable. The tolling period shall be calculated from the date of the Notice.

10.5 **No Waiver.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by the Township in asserting any of its rights or remedies as to any default by Redeveloper, shall not operate as a waiver of such default, or of any such rights or remedies, or to deprive the Township 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.

10.6 **Remedies Cumulative.** No remedy 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 shall not constitute a waiver of the right to pursue other available remedies.

10.7 **Failure or Delay by Either Party.** 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 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 as established by this Agreement.

10.8 **Termination Rights Related to Litigation.** If third party litigation is commenced challenging the validity of (i) the designation of the Redevelopment Area, (ii) the Redevelopment Plan, (iii) the Redeveloper's designation as Redeveloper or (iv) the execution of this Redevelopment Agreement by the Township, the commencement of such litigation shall be a Force Majeure Event effective as of the date of the filing of the summons and complaint if Redeveloper invokes the Force Majeure provisions of Section 10.4; *provided, however*, that (a) if such litigation is finally determined in favor of the plaintiff with no further opportunity for appeal, then either Party may terminate this Agreement by written notice to the other, and (b) if such litigation is not finally determined (inclusive of the expiration of any applicable appeal period) but the Force Majeure Extension has been in effect for at least six (6) months from the date the complaint was filed, Redeveloper may elect to terminate this Agreement by Notice to the Township. In the event of a termination pursuant to this Section 10.8, Redeveloper shall be entitled to return of the Initial Payment, if such termination occurs within the Initial Due Diligence Period, after which the Initial Payment shall be non-refundable under this Section, and return of the Second Payment, if such termination occurs within the Second Due Diligence Period, provided for under Section 3.3 herein.

10.9 **Events of Default Specific to Phase.** To the extent that a Default by Redeveloper occurs which is specific only to a particular phase of the Project, and does not in any way impact any other Phase, such Default shall not be considered a Default with respect to any other phase. Defaults by Redeveloper which are not specific to a particular phase of the Project (e.g., failure to make payment of escrow deposits to the Township from time to time) shall be considered a Default with respect to all phases.

ARTICLE XI INSURANCE

11.1 **Insurance — General Requirements.** At all times during the term of this Agreement the Redeveloper shall maintain, or cause to be maintained, insurance for the mutual benefit of the Township and 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 Township 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) War risks, when and to the extent that such insurance is generally obtainable from the United States Government or an agency thereof, in an amount sufficient to prevent the Township or Redeveloper from becoming a co-insurer within the terms of the applicable policy, and, in any event, in an amount not less than 100% of the then full such lesser amount as insurable value of either the Project or the amount that the United States Government or an agency thereof limits the insured to obtaining;

(c) All claims for bodily injury and property damage, under a policy of commercial general public liability insurance, with such limits as may reasonably be required by the Township 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 of not less than \$10 million.

(d) Workers compensation insurance in an amount not less than \$1,000,000 or such greater amount as may be required under Applicable Laws for employees of Redeveloper and the Contractors.

(e) Such other hazards and in such amounts as the Township 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 Township-Owned Property is located.

(f) In respect of the Township Properties, the title to which is acquired and conveyed to Redeveloper by the Township pursuant to the provisions of Article III of this Agreement, Redeveloper agrees to use commercially reasonable efforts to cause the Township to be named as an additional insured as its interests may appear under pollution legal liability or other environmental insurance policies, if and to the extent procured by Redeveloper for itself or its lender(s).

11.2 **Insurance — Restrictions.** All insurance provided for under this 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 Township. On or before the closing on the conveyance of the Township Properties, a certificate procured by Redeveloper pursuant to Section 11.1 (or certificates thereof) will be delivered to the Township. At least thirty (30) days prior to the expiration date of any policy, the original renewal policy (or certificates thereof) for such insurance will be delivered by the Redeveloper to the Township as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in Section 11.1 will, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss will be payable to the Township, notwithstanding any act or negligence of the Redeveloper which might otherwise result in forfeiture of said insurance, (b) such policies may not be canceled except upon thirty (30) days prior written notice to each named insured and loss payee, and (c) the coverage afforded thereby must not be affected by the performance of any work in or about the Project Site.

11.3 **Township as Insured.** Each policy of insurance required herein shall name the Township as an insured or as an additional insured, as its interests may appear.

11.4 **Additional Insurance.** Nothing in this Article XI shall prevent the Redeveloper from taking out insurance of the kind and in the amounts and with companies provided for under Section 11.1 or Section 11.2 under a blanket insurance policy or policies which can cover other properties within the Project Site as well as the Township Properties; provided, however, that any such policy of insurance provided for under Section 11.1 must (a) specify therein, or the Redeveloper shall furnish the Township with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Project, which amount will

not be less than the amount required by Section 11.1 to be carried, and (b) 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.

11.5 **Deductibles.** All insurance provided under this Article XI may contain loss deductible clauses in such maximum amounts as the Township approves in its reasonable discretion.

11.6 **Subrogation.** All insurance policies obtained pursuant to this Article must include waivers of subrogation against the Township and Redeveloper.

ARTICLE XII COMMUNITY INITIATIVES

12.1 **Equal Employment Opportunity.** Redeveloper agrees that during construction of the Project:

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

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

(c) Subcontractors and suppliers to the Project shall include qualified and certified minority enterprises, to the extent qualified subcontractors and suppliers are available consistent with the Project Schedule.

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

12.2 **First Source Employment.** The Redeveloper shall make good faith efforts to employ and shall provide in its contracts with its contractors and subcontractors that they must make good faith and commercially reasonable efforts to employ residents of Township in the construction of the Project, consistent with market wages and the financial success of the Project. If so requested by the Township, Redeveloper agrees (i) to cooperate with the Township or its

designee in developing a plan to coordinate training programs and employment recruitment efforts for Township residents; (ii) to cooperate with efforts to recruit Township residents for all employment opportunities in connection with the Project, including participation in Township job fairs or similar events; and (iii) to meet with appropriate Township officials to determine the status of recruitment and training efforts, and to plan future employment training and recruitment activities.

12.3 **Affirmative Action.** Redeveloper during the construction of the Project covenants that it will comply with, and shall provide in its contracts with its contractors and subcontractors, the following:

(a) When hiring workers in each construction trade, or when engaging contractors, Redeveloper agrees to use its good faith efforts to employ Minority workers and Township residents.

(b) Redeveloper will undertake a program of local preference to facilitate entering into contracts with and/or purchasing good and services from local merchants and businesses located within the Township, including preferences for local retail and restaurant businesses.

(c) Where applicable, Redeveloper will at all times conform to the laws, regulations, policies of the State, the Federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, and particularly those which are imposed as a condition to receipt of any government sponsored funding for the Project, notwithstanding any other provision of this Redevelopment Agreement to the contrary.

12.4 **Reporting and Enforcement.**

(a) All contracts entered into by the Redeveloper for the construction of the Project shall contain appropriate language to effectuate this Article XII.

(b) If and as reasonably requested by the Township, or if otherwise required by Applicable Law, Redeveloper and its contractors and subcontractors shall submit periodic reports regarding their compliance with this Article XII.

(c) Redeveloper covenants to enforce its contracts with its contractors and subcontractors if such parties are not in compliance with this Article XII.

ARTICLE XIII

PILOT CONTINGENCY & FINANCIAL AGREEMENT; FINANCIAL ASSISTANCE

13.1 **PILOT Contingency & Financial Agreement.** (a) Redeveloper anticipates applying to the Township for approval of a financial agreement with respect to the Project (the “**Financial Agreement**”) providing for, among other things, payments in lieu of taxes (the “**PILOT**”) pursuant to the Long-Term Tax Exemption Law, upon terms which are generally consistent and commensurate with those provided in the financial agreement entered into between the Township and GP177 Main Urban Renewal, LLC dated August 8, 2014 (the

“Edison Lofts PILOT”) that will result in a commercially reasonable agreement providing for a reasonable rate of return consistent and commensurate with the Edison Lofts PILOT, adopted for the applicable uses proposed by Redeveloper. The Township agrees to consider and pursue Redeveloper’s PILOT applications in good faith but Redeveloper acknowledges that the Township retains discretion under Applicable Laws as to whether to grant the PILOT. If the terms of a mutually acceptable Financial Agreement are not approved by Township ordinance, and any applicable State approvals in connection therewith are not obtained by Redeveloper, within the Due Diligence Period detailed in Article III hereof, then Redeveloper may elect to terminate this Agreement by providing Notice to that effect to the Township (the “**PILOT Contingency**”). In the event that the Township unreasonably rejects Redeveloper’s application for a Financial Agreement that provides reasonable justification for a Financial Agreement with respect to the need for financial assistance and a reasonable generation of revenue for the Township, in accordance with Section 13.1, the Township shall refund the refund the Extension Payment Pursuant to Section 3.3 herein.

13.2 **Other Financial Assistance.** The Township will use good faith efforts to support Redeveloper’s applications for any federal, state or county benefit or tax incentive programs that could be received by Redeveloper in connection with the development or operation of the Project.

13.3 **Redeveloper’s Indemnification of Township.** In amplification and not limitation of the definition of Township Costs and any other indemnity obligation pursuant to this Agreement, Redeveloper hereby agrees to indemnify and shall pay, protect and hold the Township harmless from and against all liabilities, losses, claims, demands, costs, expenses (including reasonable attorneys’ fees and expenses) and judgments of any nature arising, or alleged to arise, from or in connection with this Agreement; provided, however, that such liability, loss, claim, demand, cost or expense is not the result of gross negligence or willful misconduct of the Township or its officers, employees, agents or representatives. Redeveloper’s obligation to indemnify the Township pursuant to this Section shall survive conveyance of title to the Township Properties to Redeveloper and any termination of this Redevelopment Agreement.

ARTICLE XIV MISCELLANEOUS

14.1 **Cooperation.** The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Township further agrees to cooperate as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining financing for the Project; provided, however, that all costs and expenses of such cooperation by the Township shall constitute Township Costs.

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

14.3 **No Consideration For Agreement.** The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for 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 Township, any money or other consideration for or in connection with this Redevelopment Agreement.

14.4 **Non-Liability of Officials and Employees of the Township.** No member, official or employee of the Township shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Township, 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.

14.5 **Non-Liability of Officials and Employees of the Redeveloper.** No member, officer, shareholders, director, partner or employee of the Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of the Redeveloper or the members of the Redeveloper shall be personally liable to the Township, 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 Township, or their successors, on any obligation under the terms of this Redevelopment Agreement.

14.6 **Inspection of Books and Records.**

(a) The Township shall have the right upon reasonable request and at all reasonable times to inspect the books and records of the Redeveloper pertinent to the purposes of this Redevelopment Agreement.

(b) The Redeveloper shall have the right at all reasonable times to inspect the books and records of the Township pertinent to the purposes of this Redevelopment Agreement.

(c) Such inspections must be for a legitimate business purpose affecting the material interest of the party seeking the inspection.

(d) Such inspections must be performed at a time and in a manner as to not unreasonably interfere with the business operations of the party whose books and records are being inspected.

14.7 **Time of the Essence.** Any other provision of this Agreement notwithstanding, the Township reserves its right to serve a “time of the essence” notice as permitted under and in accordance with Applicable Law.

14.8 **Modification of Agreement.** No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Redeveloper and the Township.

14.9 **Notices.** A notice, demand or other communication required to be given under this Redevelopment Agreement by any Party to the other (the “**Notice**”) shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), by facsimile transmission (with receipt acknowledged) or electronic mail (with electronic proof of receipt) to the Parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section.

As to the Township:

Township of West Orange
66 Main Street
West Orange, New Jersey 07052-5313
ATTN:, Business Administrator

With copies to:

Robert Beckelman, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, New Jersey 07095
rbeckelman@wilentz.com

As to the Redeveloper:

Donald M. Epstein,
MDGA – West Orange Downtown Redevelopment, LLC
c/o Matrix Development Group
3 Centre Drive
Monroe Township, New Jersey 08831
depstein@matrixcompanies.com

With a copy to:

Francis J. Giantomasi, Esq.
Chiesa Shahinian & Giantomasi PC
105 Eisenhower Parkway
Roseland, New Jersey 07068
fgiantomasi@csglaw.com

From time to time either party may designate a different person or address for all the purposes of this Notice provision by giving the other party no less than ten (10) days’ notice in

advance of such change of address in accordance with the provisions hereof. Notices shall be effective upon receipt or rejection of delivery by the addressee.

14.10 **Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement, as set forth in the Table of Contents or at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

14.11 **Severability.** The validity of any Articles and Section, clause or provision of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Section, clauses or provisions hereof.

14.12 **Successors Bound.** This Redevelopment Agreement shall be binding upon the respective parties hereto and their permitted successors and assigns.

14.13 **Governing Law; Jurisdiction and Venue; Jury Trial Waiver.** This Redevelopment Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey or in a United States Court having jurisdiction in the District of New Jersey, in either case sitting in Essex County, New Jersey, and Redeveloper hereby waives all objections to such venue. Redeveloper, Guarantor and the Township, for themselves and their successors and assigns, hereby waive trial by jury in any action arising out of or in connection with this agreement.

14.14 **Counterparts.** This Redevelopment Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument. The parties will be entitled to rely upon a pdf (sent via e-mail) of a signed copy of this Agreement as if it were an original signed counterpart.

14.15 **Exhibits.** Any and all Exhibits annexed to this Redevelopment Agreement are hereby made a part of this Redevelopment Agreement by this reference thereto.

14.16 **Entire Agreement.** This Redevelopment Agreement constitutes the entire Redevelopment Agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof.

14.17 **Waiver.** No waiver made by any party with respect to any obligation of any other party under this Redevelopment Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

14.18 **Confidentiality.** Neither the Township nor Redeveloper will issue any public announcements, or press releases associated with the transactions contemplated herein or Redeveloper's potential acquisition and development of the Properties without the express written approval of the other party. Notwithstanding, it is acknowledged that this Agreement and any other agreements executed between the Parties, are subject to a public approval process and that such agreements may be public records subject to disclosure under the New Jersey Open Public Records Act ("OPRA") if there are no exemptions under OPRA from disclosure. To the

extent applicable, the Township shall assert deliberative process during the negotiations of the Redevelopment/Purchase Documents as an exemption from disclosure under OPRA. To the extent that Redeveloper claims that anything it is providing to the Township contains proprietary and confidential financial information, Redeveloper shall so indicate when providing such materials to the Township. The Township will seek to maintain the confidentiality of such materials and in the event that such materials and those relating to or shared in connection with the negotiation of this Agreement or the Purchase and Sale Agreement become the subject of an OPRA request, Redeveloper will be notified and given a reasonable opportunity to respond and to propose redactions before disclosure and/or seek any protective order that it deems appropriate.

IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

**TOWNSHIP OF WEST ORANGE,
NEW JERSEY**

Attest:

By: _____
Susan McCartney, Mayor

REDEVELOPMENT, LLC

MDGA – WEST ORANGE DOWNTOWN

Witness:

By: _____

EXHIBIT A

PROJECT CONCEPT NARRATIVE

The objective of the Project is to diversify mixed-use development and the economic base of West Orange, by promoting film production activities (“Studio Use”) adjacent to the location of the world's first film production studio, consistent with the requirements of the Fourth Amendment to the Downtown Redevelopment Plan adopted September 21, 2021, which amends and restates the First, Second and Third Amendments and further modifies the Original Plan (collectively the “Redevelopment Plan”).

The Studio Use is estimated to be between 150,000 and 350,000 square feet. It will include between three and six production stages ranging from 20,000 to 30,000 square feet each. Each production stage will be serviced by on site production services, including but not limited to grip and electric, equipment, props, set building, restaurants, location catering, cleaning service and security. The facility will also include office and support space as well as parking to accommodate between 200-400 cars and 30-60 trucks. Once fully operational, it is anticipated 300-600 new fulltime jobs will be created as a result of the Studio Use.

EXHIBIT B

FORM OF DECLARATION OF COVENANTS AND RESTRICTIONS

Record and Return to:

Robert Beckelman, Esq.
Wilentz, Goldman & Spitzer
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, New Jersey 07095

DECLARATION OF COVENANTS AND RESTRICTIONS

**Block ____ Lots ____ and Block ____ Lots ____, Township of West Orange (the
“Property”)**

(Record in Mortgage Book)

This Declaration of Restrictions is made this ____ day of _____, 20__ by and
between **THE TOWNSHIP OF WEST ORANGE, NEW JERSEY** (the “**Township**”), a
public body corporate and politic of the State of New Jersey having its offices at 66 Main Street,
West Orange, New Jersey 07052, in its capacity as redevelopment entity pursuant to *N.J.S.A.*
40A: 12A-4(c);

and

_____, LLC, a limited liability company of the State of _____
_____ authorized to do business in the State of New Jersey, having offices at _____
_____ (together with its permitted successors or assigns as hereinafter provided, the
“**Redeveloper**”).

W I T N E S E T H

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1 et seq., as
amended and supplemented (the "Redevelopment Law"), provides a process for municipalities to
participate in the redevelopment and improvement of areas in need of redevelopment; and

WHEREAS, the Governing Body duly adopted a resolution determining that the
Downtown Redevelopment Area was an “area in need of redevelopment” in accordance with the
procedures and criteria in *N.J.S.A.* 40A:12A-6 of the Redevelopment Law; and

WHEREAS, on February 9, 2003, the Governing Body adopted a redevelopment plan
for the Downtown Redevelopment Area (as amended from time to time, the “Redevelopment
Plan”) in accordance with *N.J.S.A.* 40A:12A-7 of the Redevelopment Law; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, the Governing Body of the Township by duly adopted resolution authorized the execution of Redevelopment Agreement with the Redeveloper, dated December____, 2023 (the "Redevelopment Agreement") in accordance with N.J.S.A. 40A:12A-8(f) of the Redevelopment Law; and

WHEREAS, N.J.S.A. 40A:12A-9(a) of the Redevelopment Law requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring, among other things, that "...the owner shall construct only the uses established in the current redevelopment plan..."; and

WHEREAS, the Redevelopment Agreement contains such a covenant by the Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as two (2) perpetual covenants by the Redeveloper and its successor or assigns not to unlawfully discriminate upon the basis of age, race color creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any building or structures erected thereon and to maintain in good condition any improvements made on the Property (as defined above) in accordance with Article VII or the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement also provides that the Property, the Redevelopment Agreement, and Redeveloper's interest therein shall not be transferable, subject to certain conditions, prior to the issuance of a Certificate of Completion and further provides certain remedies to the Township for violations of the covenants and defaults under the Redevelopment Agreement ; and

WHEREAS, the Redevelopment Agreement requires that such covenants be memorialized in a Declaration of Restrictions and said declaration be recorded in the office of the Essex County Register.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Defined terms not otherwise defined herein shall have the meaning assigned to such terms in the Redevelopment Agreement.

Section 2. Redeveloper covenants and agrees that:

(A) In connection with its use or occupancy of the Project, Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby any portion of the Project is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and Redeveloper, its successors and assigns, shall comply with all applicable laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status.

(B) Redeveloper shall comply with the applicable provisions and public purposes of the Redevelopment Law and all obligations under the Redevelopment Agreement and shall at all times develop, design, finance, construct and operate the Project or cause the Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, the Redevelopment Agreement and the Redevelopment Plan and for a period of thirty (30) years from the issuance of a Certificate of Completion shall construct no other use except that established in the Redevelopment Plan, *provided however*, that Redeveloper shall not be deemed to be in breach if Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws. All uses to which the Project may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and the Redevelopment Agreement and that under no circumstances can the Redeveloper undertake any construction or development of the Project not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws or the Redevelopment Agreement.

(C) Redeveloper shall use diligent efforts to obtain all Governmental Approvals requisite to the construction and development of the Project including evidence satisfactory to the Township that its use of the Project is in compliance with the Redevelopment Agreement, the Redevelopment Plan and all Applicable Laws, and use diligent and commercially reasonable efforts to ensure timely performance of its obligations under the Redevelopment Agreement, including but not limited to Completion of Construction of the Project within the time periods specified in the Project Schedule.

(D) Redeveloper shall, during construction of the Project, take commercially reasonable steps to minimize or mitigate impacts on the surrounding neighborhood (such as, for example, noise and dust controls), and keep debris and/or waste materials containerized and/or stored and disposed of, all within normal industry standards.

(E) Redeveloper shall keep and maintain in good condition any improvements required under the Governmental Approvals, including but not limited to any landscaping required to be planted or cause an entity in control of the Project (i.e. condominium or homeowner association) to maintain such improvements.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 of this Declaration shall run with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement and this Declaration, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any Person in possession or occupancy of the Property or any part thereof. The covenants and restrictions herein shall be binding on Redeveloper itself, each successor in interest to Redeveloper and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall be in possession or occupancy of the Property, the Redevelopment Project or any part thereof.

Section 4. In amplification, and not in restriction, of the provisions of Section 2 of this Declaration, it is intended and agreed that the Township and its successors and assigns shall be deemed beneficiaries of the covenants and restrictions set forth in the Redevelopment Agreement and this Declaration, 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 covenants and restrictions have been provided. Such covenants and restrictions shall run in favor the Township for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein. The Township shall have the right, in the event of any material breach of any such covenant or restriction, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of covenant or restrictions, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 5. Upon redevelopment of the Property and completion of the Redevelopment Project, the conditions that were found and determined to exist at the time the Property 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 Redevelopment Project or any applicable portion thereof. The covenants contained herein, except for those contained in Sections 2(a) and (b), which shall remain in effect without limitation as to time, shall terminate and this Declaration will be discharged of record upon Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 7.2 thereof (i) for the Redevelopment Project, or (ii) for a Phase thereof, in which case the covenants shall terminate and the Declaration will be discharged of record only as to such Phase.

IN WITNESS WHEREOF, the parties hereto have caused this **Declaration of Covenants and Restrictions** to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers all as of the date first written above.

**TOWNSHIP OF WEST ORANGE,
NEW JERSEY**

Attest:

By:_____

Witness:

_____, LLC

By:_____

Name:_____

Title:_____

STATE OF NEW JERSEY :

: SS

COUNTY OF ESSEX :

BE IT REMEMBERED, that on this __ day of _____, 20__ before me, the subscriber, a Notary Public of New Jersey, personally appeared _____, who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction that he/she is the _____ of the **TOWNSHIP OF WEST ORANGE, NEW JERSEY**, the entity named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township of West Orange and said Instrument was signed and delivered by said as and for the voluntary act and deed of said entity.

Notary Public of New Jersey

STATE OF NEW JERSEY :

: SS

COUNTY OF ESSEX :

BE IT REMEMBERED, that on this __ day of _____, 20__ before me, the subscriber, a Notary Public of New Jersey, personally appeared _____ who, being by me duly sworn on his or her oath, deposes and makes proof to my satisfaction that he is the _____ of _____, **LLC**, the Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Redeveloper, and said Instrument was signed and delivered by said as and for the voluntary act and deed of said Redeveloper.

Notary Public of New Jersey

EXHIBIT C
PROJECT SCHEDULE

Governmental Approvals, Commencement of Construction. Subject to the provisions of Section 4.3 and 10.4 of the Redevelopment Agreement, Redeveloper shall apply for and diligently pursue all other Governmental Approvals required to Commence and Complete Construction within such times as are consistent with implementation of the Project in accordance with the timetable set forth below.

a) Within six (6) months of the conclusion of the Due Diligence Period, Redeveloper shall submit an application for preliminary and final site plan approval to the Planning Board, for the first phase of its Project (the “Site Plan Approval”).

b) Within six (6) months of the receipt of Site Plan Approval from the Planning Board, Redeveloper shall submit all applications for Governmental Approvals necessary for the first phase of its Project.

c) Redeveloper shall apply to the Township for building permits as soon as possible, but in no event more than six (6) months after receipt of all Governmental Approvals prerequisite to the issuance of building permits for the first phase of its Project.

d) Within three (3) months of receipt of building permits from the Township, Redeveloper shall Commence Construction of the first phase of its Project.

e) Within four (4) years of the conclusion of the Due Diligence Period, Redeveloper shall Complete construction of the entire Project.

EXHIBIT D

INCUMBENCY CERTIFICATE

Pursuant to Section 6.1(l) of the Redevelopment Agreement between the Township of West Orange and _____, LLC (the "Company"), the undersigned, as managing member of the Company hereby represents and warrants to the Township of West Orange that:

1. The only entity which owns a 10% or greater interest in the Company is _____, a _____ company, having an address _____
2. Attached hereto as Schedule 1 is the Company's Ownership Chart.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of _____.

_____, LLC
a _____ limited liability company

, Member

Sworn to before me this
___ day of ____, 20__

EXHIBIT E

FORM OF PRE-CLOSING ACCESS AGREEMENT

PRE-CLOSING ACCESS AGREEMENT

THIS ACCESS AGREEMENT (this “**Agreement**”) is dated December__, 2023 and is made by and among **THE TOWNSHIP OF WEST ORANGE**, a body corporate and politic of the State of New Jersey, having its address at 66 Main Street, West Orange, New Jersey 07052 (“**Owner**”), and MDGA – West Orange Downtown Redevelopment, LLC (“**Entrant**”). Owner and Entrant are hereinafter collectively referred to as the “**parties**”.

RECITALS

WHEREAS, Owner is the owner of that certain real property designated as _____ collectively referred to herein as the “**Premises**”);

WHEREAS, in anticipation of a possible acquisition of the Premises, Entrant desires a right of access to the Premises for itself and its officers, directors, employees, agents, principals, partners, representatives, accountants, advisors, attorneys, consultants and contractors (collectively, the “**Permitted Parties**”) for the purpose of performing certain investigatory activities at the Premises; and

WHEREAS, Owner is willing to grant Entrant and the Permitted Parties a limited right of access to the Premises upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. **Recitals.** The recitals set forth above are hereby incorporated herein as if set forth in full in the body of this Agreement.
2. **Definitions.** Capitalized terms not otherwise defined in this Agreement shall have the meanings ascribed to such terms in ***Schedule 1*** attached hereto.
3. **Right of Access.** Owner hereby grants to Entrant and the Permitted Parties the non-exclusive license and limited right to enter upon the Premises to perform certain investigatory activities at the Premises and to conduct due diligence reasonably related to the purchase of the Premises (including, without limitation, sampling, boring, drilling, or other physically intrusive testing, and the completion of a Phase II environmental Assessment) (collectively, the “**Activities**”), at the sole cost and expense of Entrant, but only upon the terms and conditions set forth in this Agreement.

4. Performance of Activities.

(a) Performance of the Activities shall be coordinated with a representative of Owner to minimize unreasonable interference with normal operation of the Premises. All Activities at the Premises shall be performed during normal business hours or at such other times and on such days of the week as Owner shall determine in its reasonable discretion and shall be performed in a manner that will not have any material adverse effect on Owner, or any other person or entity granted rights of use and occupancy through Owner, their respective agents, employees or invitees, or all of them.

(b) Upon completion of the Activities, Entrant shall, at its sole cost and expense, promptly remove and dispose of off of the Premises, in accordance with all Environmental Laws, all equipment, material, soil, water and debris which exists on the Premises as a result of Entrant's collection of samples from the Premises.

(c) Entrant shall use commercially reasonable efforts to cause its environmental consultant, to reasonably cooperate and coordinate with Owner for the collection of samples of any testing of soils or ground water at the Premises in accordance with Section 6 of this Agreement.

(d) All Activities performed at the Premises by Entrant or the Permitted Parties shall, once begun, be completed with reasonable diligence and paid for in full by Entrant, free and clear of all mechanic's or other liens and encumbrances, and shall be performed in accordance with all applicable statutes, ordinances, rules, regulations, orders and requirements of any Governmental Authority, including without limitation, Environmental Laws. All Activities performed by Entrant or the Permitted Parties shall be done in a good and workmanlike manner, and, subject to Section 6 of this Agreement, in such a manner so as not to cause any unreasonable damage to the Premises or unreasonable interference with the use and occupancy of the Premises by Owner, or any other person or entity granted rights of use and occupancy through Owner, or their respective agents, employees or invitees. Entrant shall restore, repair or replace, as the case may be, any damage to the Premises caused by the Activities to substantially the same condition as existed at the time the Activity which caused such damage commenced.

5. Insurance.

(a) Prior to entry upon the Premises, Entrant shall deliver or, as applicable, cause the Permitted Parties to deliver, to Owner ACORD certificates evidencing that Entrant and/or the Permitted Parties, as applicable, maintain: (i) commercial general liability insurance in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00), combined single limit in form and substance adequate to insure against all liability of Entrant and the Permitted Parties, respectively, and each of their respective agents, employees and contractors, arising out of Activities at the Premises or any part thereof made on Entrant's behalf, including: (A) contractual liability insurance providing coverage for Entrant's indemnity obligations under this Agreement and (B) an endorsement for hired and non-owned automobile coverage against personal injury and death and property damage with a combined single limit of not less than One Million and 00/100 Dollars (\$1,000,000.00); (ii) not less than Two Million and 00/100 Dollars

(\$2,000,000.00) of excess/umbrella liability insurance; and (iii) workers' compensation insurance in statutory limits to cover the employees, agents, representatives and contractors of Entrant and/or the Permitted Parties (as applicable) engaged in Activities at the Premises. Such insurance certificates shall be endorsed to name Owner as an additional insured with respect to the foregoing coverage. Each policy shall provide (whether by endorsement or otherwise) that it cannot be canceled without at least thirty (30) days' prior written notice to Owner, and each policy shall be issued by a recognized, responsible insurance company licensed to do business in the State of New Jersey.

(b) Entrant shall furnish or cause the applicable Permitted Parties to furnish to Owner and cause to be maintained and kept in effect, without expense to Owner, at all times that any entry is made upon the Premises for purposes of any invasive testing or sampling, contractor's pollution liability insurance of not less than Three Million and 00/100 Dollars (\$3,000,000.00), naming Owner as an additional insured. Each policy shall be on an occurrence basis and not on a claims made basis. Each policy shall provide (whether by endorsement or otherwise) that it cannot be cancelled without at least thirty (30) days' prior written notice to Owner, and each policy shall be issued by a recognized, responsible insurance company licensed to do business in the State of New Jersey. Reasonable proof of payment of the premium of each policy and each replacement policy shall also be delivered to Owner.

6. Invasive Testing. Notwithstanding anything to the contrary contained in this Agreement, each of the Permitted Parties shall only undertake soil borings, water samplings or any other physically intrusive or invasive physical investigations in accordance (in all material respects) with an approved sampling plan submitted to Owner at least two (2) Business Days prior to access to the Premises. Additionally, Entrant shall be solely responsible to arrange (or cause the Permitted Parties to arrange) for any utility mark-outs necessitated by any proposed sub-surface investigations prior to undertaking any invasive testing.

7. Notice of Entry. Prior to each entry upon the Premises, Entrant shall, at least two (2) Business Days in advance of each entry if such entry pertains to physically invasive testing, and at least one (1) Business Days in advance of all other entries, notify Owner, in writing, which notice may be by email to jabbott@westorange.org; psmeraldo@westorange.org; jgross@westorange.org, rtrenk@trenkisabel.law, and rbeckelman@wilentz.com, and which shall set forth:

- (a) the date and time of the proposed entry upon the Premises;
- (b) the identity of all persons and entities who will enter upon the Premises;
- (c) the nature, location and extent of all Activities to be performed upon the Premises;
- (d) whether the persons entering upon the Premises shall be wearing any environmental protective gear; and
- (e) the estimated duration of the entry.

8. Documents Generated by Activities. Entrant shall promptly deliver to Owner copies of the written results of any inspections, tests, studies, evaluations and/or investigations prepared by third parties for, or otherwise obtained by, Entrant or any of the Permitted Parties in connection with Entrant's Activities, except to the extent subject to the attorney/client privilege, or otherwise confidential. The obligations of Entrant pursuant to this Section will survive any termination of this Agreement.

9. Confidentiality. Entrant and its Permitted Parties and their respective employees, agents and contractors shall keep the Activities, including but not limited to the results of all sampling and all documents generated with respect to the Activities, confidential, except to the extent that (i) applicable law or OPRA¹ does not permit confidentiality, or (ii) Entrant or its Permitted Parties is required to disclose such information pursuant to any orders (including, without limitation, any regulation or order of a regulatory agency), by subpoena or any other legal, administrative or legislative process. The matters and items described in clauses above are herein referred to as the "**Confidential Information**", provided, however, notwithstanding anything contained herein to the contrary, Confidential Information shall not include any information (i) that is or becomes generally available to the general public other than as a result of a disclosure in violation of this Agreement, (ii) that is or becomes available to Entrant or its Permitted Parties from a third party on a non-confidential basis other than through the Activities, (iii) which was or is independently developed by Owner or its Permitted Parties without the use of or reference to Confidential Information provided by Owner or intentionally obtained by Entrant under this Agreement, and (iv) that was available to Entrant or its Permitted Parties prior to the date of this Agreement. If disclosure of the Confidential Information is required pursuant to applicable law, or OPRA, or pursuant to court order or other administrative process, then Entrant, its employees, agents or contractors, as the case may be, shall give immediate written notice to Owner, specifying to whom and why such disclosure is required. Owner shall have the right to interpose all objections that Owner may have to the disclosure, and Entrant shall, and shall cause Entrant's Permitted Parties and their respective employees, agents and contractors, at no cost to Owner, to reasonably cooperate with Owner in connection with such objections, including giving testimony and signing affidavits, certifications or other documentation as may be required by Owner, provided the information contained in the affidavits, certifications or other documentation is true and accurate. Notwithstanding anything to the contrary hereinabove set forth, Entrant may disclose Confidential Information on a need-to-know basis to its and its affiliates' employees, officers, lenders, investigators, and partners and any agents, consultants and members of professional firms serving it, its affiliates, or their respective potential lenders or investors. If the parties have not entered into a purchase agreement with respect to the Premises prior to the termination of this Agreement, Entrant shall, upon Owner's written request, promptly return (or, at Entrant's election, certify as having destroyed) all copies of materials furnished by Owner or Owner's representatives to Entrant relating to the Premises, provided, however, Entrant may retain such materials (and any derivative thereof) that (a) may be required by law, regulation or stock exchange rules, (b) are contained in electronic records and files are retained pursuant to automated electronic archiving or IT back-up procedures, and (c) are back-up copies of such materials that are retained pursuant to regulatory or investigatory requirements of any

¹ The parties hereto agree that these activities are for advisory, consultive and deliberative purposes and thus, exempt from OPRA or any other similar law.

Governmental Authority. Prior to the initial entry upon the Premises, Entrant shall advise anyone acting on behalf of Entrant, including the Permitted Parties, of the terms of this confidentiality provision and their obligation to be bound by it. This confidentiality provision shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

10. Indemnification. Except to the extent that any of the following arise in whole or in part from (i) any mere discovery by Entrant or any of Permitted Parties of any pre-existing conditions at the Premises, (ii) any diminution in the value of the Premises as a consequence of the results revealed by any tests, inspections, examinations and/or investigations, or (iii) the gross negligence or willful misconduct of the Owner Parties or any other person or entity granted rights of use and occupancy through Owner, Entrant shall indemnify, defend and hold the Owner Parties harmless from and against all claims, liabilities, actual losses, penalties, damages (excluding punitive, consequential, special, or indirect damages) and actual out-of-pocket costs, including, without limitation, reasonable third-party legal, engineering and other professional or expert fees and expenses, which are caused by Entrant and/or the Permitted Parties' Activities on the Premises. Except to the extent that any personal injury or property damage arises in whole or in part from the gross negligence or willful misconduct of the Owner Parties, Entrant releases and covenants not to sue the Owner Parties with respect to any personal injury or property damage suffered by Entrant, any of the Permitted Parties, their respective employees, representatives, agents and/or any third party, resulting directly or indirectly, wholly or partly, from the breach of this Agreement or the Activities of Entrant or the Permitted Parties or both. This Section 10 shall survive the termination of this Agreement for a period of one (1) year.

11. Notices. Except for the notices provided pursuant to Section 7 of this Agreement, all notices or other communications required or permitted hereunder shall be in writing, and shall be given by any nationally recognized overnight delivery service with proof of delivery, or by e-mail (provided that such e-mail is confirmed by the sender by expedited delivery service in the manner previously described), sent to the intended addressee at the addresses set forth below, or to such other addresses or to the attention of such other persons as the addressee will have designated by written notice sent in accordance herewith. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement will be as follows:

If to Owner:

Township of West Orange

Attention: James P. Abbott, Interim Business Administrator
66 Main Street
West Orange, New Jersey 07052
Email: jabbott@westorange.org

with a copy to:

Trenk Isabel Siddiqi & Shahdanian P.C.

Attention: Richard Trenk, Esq.
290 W. Mt. Pleasant Ave., Suite 2350

Livingston, New Jersey 07039
Email: rtrenk@trenkisabel.law

and:

Wilentz, Goldman & Spitzer, P.A.
Attention: Robert Beckelman
90 Woodbridge Center Drive
Suite 900, Box 10
Woodbridge, New Jersey 07095
Email: rbeckelman@wilentz.com

If to Entrant:

Donald M. Epstein,
MDGA – West Orange Downtown Redevelopment, LLC
c/o Matrix Development Group
3 Centre Drive
Monroe Township, New Jersey 08831
depstein@matrixcompanies.com

with a copy to:

Francis J. Giantomasi, Esq.
Chiesa Shahinian & Giantomasi PC
105 Eisenhower Parkway
Roseland, New Jersey 07068
fgiantomasi@csglaw.com

Notices given by (i) overnight delivery service as aforesaid shall be deemed received and effective on the first Business Day following such dispatch and (ii) e-mail as aforesaid (including but not limited to sending a copy of the e-mail via overnight courier) shall be deemed given at the time and on the date of the e-mail provided same is sent prior to 4:00 p.m. (Eastern Time) on a Business Day (if sent later, then notice shall be deemed given on the next Business Day). Notices may be given by counsel for the parties described above, and such notices shall be deemed given by said party for all purposes hereunder.

12. Termination.

(a) Owner shall have the right to terminate this Agreement, with or without cause, and without any liability to Entrant, upon written notice to Entrant following the termination of negotiations for the potential purchase of the Premises by Entrant or its affiliate.

(b) This Agreement and the right of access shall automatically terminate on the earliest of: (a) the date that is forty-five (45) days after the date hereof; (b) the date of the parties' mutual execution and delivery of a purchase agreement for the Premises; and (c) the date of Owner's delivery of a written notice to Entrant terminating this Agreement.

13. Survival. Except as otherwise expressly set forth herein, the obligations imposed upon Entrant shall survive the expiration or earlier termination of this Agreement for a period of one (1) year.

14. Cumulative Rights. Nothing contained herein shall constitute a waiver of any rights that Owner may have against Entrant.

15. Choice of Law. This Agreement shall be governed by the laws of the State of New Jersey. The parties acknowledge that this Agreement has been executed and delivered in the State of New Jersey, and the parties submit to the jurisdiction of the courts of the State of New Jersey.

16. Entire Agreement; Modifications. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. No change, addition or modification to this Agreement shall be effective unless signed in writing by all parties.

17. Prohibition on Assignment. Entrant and the Permitted Parties shall not assign any rights or delegate any responsibility imposed under this Agreement.

18. References. In all references in this Agreement to any parties, persons, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender and number as the text of this Agreement may require.

19. Binding Nature. This Agreement shall be binding upon Entrant, its successors and permitted assigns, and shall inure to the benefit of Owner, its successors and assigns.

20. Counterparts. This Agreement may be executed in multiple counterparts, each of which, when assembled to include a signature for each party contemplated to sign this Agreement, will constitute a complete and fully executed agreement. All such fully executed counterparts will collectively constitute a single agreement. The delivery of an executed counterpart of this Agreement via electronic means, such as e-mail, shall be as legally binding on the party so delivering same as the delivery of a counterpart bearing an original signature.

21. Prohibition on Recordation. Entrant shall not record this Agreement.

22. Exculpation. Neither the direct or indirect members, managers, employees or agents of Owner or Entrant, nor the shareholders, officers, directors, employees or agents of any of them shall be liable under this Agreement and all parties hereto shall look solely to the assets of Owner or Entrant, as applicable, for the payment of any claim or the performance of any obligation by Owner or Entrant, as the case may be.

[Remainder of page left blank intentionally. Signature page follows.]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first written above.

OWNER:

TOWNSHIP OF WEST ORANGE

a body corporate and politic of the State of New Jersey

By: _____

Name:

Title:

[Signatures continue on the following page.]

ENTRANT:

By: _____
Name: _____
Title: Authorized Signatory

SCHEDULE 1
DEFINED TERMS

“Activities” has the meaning ascribed to such term in Section 3 of this Agreement.

“Agreement” has the meaning ascribed to such term in the heading.

“Business Day” means any day other than a Saturday, Sunday or a day on which national banking associations are authorized or required to close.

“Confidential Information” has the meaning ascribed to such term in Section 10 of this Agreement.

“Entrant” has the meaning ascribed to such term in the heading of this Agreement.

“Environmental Laws” mean all applicable federal, state and local laws, ordinances, rules, regulations, codes or orders, including, without limitation, any requirement imposed under any permits, licenses, judgments, decrees, agreements or recorded covenants, conditions, restrictions or easements, the purpose of which is to protect the environment, human health, public safety or welfare, or which pertain to Hazardous Materials.

“Governmental Authority” means the federal, state, county or municipal government, and any department, agency, bureau or other similar type body obtaining authority therefrom or created pursuant to any Environmental Laws and having jurisdiction over the Premises.

“Hazardous Materials” means any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, processing, treatment, storage, disposal, transportation, spill, or release is regulated, monitored, or subject to reporting by any governmental authority, including, but not limited to, hydrocarbons, petroleum, gasoline, asbestos containing materials, crude oil or any products or byproducts thereof.

“Owner” has the meaning ascribed to such term in the heading of this Agreement.

“Owner Parties” means, collectively, (1) Owner; (2) Owner’s property manager (if any); (3) any direct or indirect owner of any beneficial interest in Owner; and (4) any officer, director, employee, representative or agent of Owner, Owner’s property manager, or any direct or indirect owner of any beneficial interest in Owner.

“Parties” has the meaning ascribed to such term in the heading of this Agreement.

“Permitted Parties” has the meaning ascribed to such term in the recitals of this Agreement.

“Premises” has the meaning ascribed to such term in the recitals of this Agreement.