

**AMENDED AND RESTATED REDEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**BOROUGH OF FLEMINGTON**  
**as Redevelopment Entity**

**AND**

**FLEMINGTON CENTER URBAN RENEWAL, LLC**  
**as Redeveloper**

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**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT** (the “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2017 (the “**Effective Date**”), by and between **THE BOROUGH OF FLEMINGTON** (the “**Borough**”), a municipal corporation and body politic of the State of New Jersey, having its offices at 38 Park Avenue, Flemington, New Jersey 08822 and **FLEMINGTON CENTER URBAN RENEWAL, LLC**, a limited liability company authorized to conduct business within the State of New Jersey and having a business office located at 5 Bartles Corner Road, Flemington, New Jersey 08822 (the “**Redeveloper**”) (together the “**Parties**” and individually a “**Party**”).

**WHEREAS**, pursuant to Borough Council Resolution 2010-94, adopted June 14, 2010, the Borough Council designated the Union Hotel property, located at 70-76 Main Street, Flemington, and identified as Block 22, Lot 4 on the Borough of Flemington Tax Map (the “**Initial Redevelopment Area**”), as an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law, *N.J.S.A.* 40A:12A-1, *et seq.* (the “**Redevelopment Law**”); and

**WHEREAS**, pursuant to Ordinance 2010-14, adopted on October 25, 2010, the Borough Council adopted the Union Hotel Redevelopment Plan; and

**WHEREAS**, pursuant to Borough Council Resolution 2014-44, adopted February 10, 2014, the Borough Council designated the area south of the Union Hotel property, inclusive of properties located at 78 Main Street, 80 Main Street, 82 Main Street, 90-100 Main Street, 104 Main Street, 110 Main Street, 7 Spring Street, 19 Spring Street, 3 Chorister Place and 6 Chorister Place, identified on the Borough Tax Map as Block 22 Lots 5, 6, 7, 8, 9, 10 and 12 and Block 23, Lots 1 and 7 as an area in need of redevelopment pursuant to the Redevelopment Law (such properties, together with the Initial Redevelopment Area, is the “**2014 Redevelopment Area**”) and, subsequently, on March 7, 2014, the Borough enacted an ordinance adopting a redevelopment plan for the Redevelopment Area (the “**2014 Redevelopment Plan**”); and

**WHEREAS**, on March 13, 2017, the Borough Council adopted Resolution 2017-65 approving and authorizing the execution of a certain redevelopment agreement between the Borough and Redeveloper dated April 12, 2017 (the “**Initial Redevelopment Agreement**”)

**WHEREAS**, on March 13, 2017, the Borough Council, via the adoption of Resolution 2017-166, directed the Planning Board to undertake a preliminary investigation to determine whether Block 22, Lots 13 and 14 (23 Bloomfield Avenue and 21 Bloomfield Avenue) and Block 24, Lots 1, 2, 3 and 5 (2 Spring Street, 8 Spring Street, 12 Spring Street) (the “**Study Area**”) qualifies as a “Non-Condensation Redevelopment Area,” pursuant to *N.J.S.A.* 40A:12A-5; and

**WHEREAS**, the Planning Board held a duly-noticed public hearing regarding a preliminary investigation of the Study Area on June 5, 2017, and upon conclusion of the hearing, determined that the Study Area qualifies for inclusion in a redevelopment area under Section 3 of the Redevelopment Law as necessary for the effective redevelopment of the area and, therefore, voted unanimously to recommend to the Borough Council that the Study Area be designated as an area in need of redevelopment under the Redevelopment Law; and

**WHEREAS**, at its regular meeting on June 27, 2017, the Planning Board adopted Resolution 2017-9, memorializing its findings and its recommendation that the Borough Council designate the Study Area as a Non-Condensation area, pursuant to the Redevelopment Law; and

**WHEREAS**, on July 10, 2017, the Borough Council accepted the Planning Board's recommendation and, via Resolution 217-130, designated the Study Area to be included in the "Union Hotel Redevelopment Area" (2014 Redevelopment Area and Study Area collectively referred to herein as the "**Redevelopment Area**"); and

**WHEREAS**, the Borough Council thereafter authorized and directed Clarke Caton Hintz (the "**CCH**"), licensed Professional Planners in the State of New Jersey, to prepare an updated and amended draft redevelopment plan for the Redevelopment Area; and

**WHEREAS**, CCH, working in conjunction and consultation with the Borough Council's Redevelopment Committee and a subcommittee of other individuals, prepared a draft redevelopment plan, entitled, "Redevelopment Plan: Union Hotel Redevelopment Area," dated October 19, 2017; and

**WHEREAS**, on [\_\_\_\_\_] the Borough Council adopted Ordinance [\_\_\_\_\_] approving the Union Hotel Redevelopment Area Plan dated October 19, 2017 (the "**Redevelopment Plan**"); and

**WHEREAS**, Redeveloper has proposed a Project for the Redevelopment Area that meets the Borough's goals for the redevelopment of the Redevelopment Area; and

**WHEREAS**, *N.J.S.A.* 40A:12A-8 (e) and (f) authorize the Borough Council, as the redevelopment entity, to enter into contracts or agreements for the planning, construction and undertaking of development projects and redevelopment work in an area designated as an area in need of redevelopment; and

**WHEREAS**, it is now the intention of the Parties to enter into this Agreement to further define and memorialize the respective obligations of the Parties with regard to proceeding with the redevelopment of the Redevelopment Area, which Agreement shall restate and supersede the Initial Redevelopment Agreement.

**NOW THEREFORE**, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereto agree as follows:

**ARTICLE 1**  
**DEFINITIONS AND INTERPRETATIONS**

**1.1 Defined Terms.**

The Parties agree that, unless the context otherwise specifies or requires, in addition to the terms defined above, the following terms shall have the respective meanings specified below and such definitions shall be applicable equally to the singular and plural forms of such terms.

2014 Redevelopment Area is defined in the recitals to this Agreement.

2014 Redevelopment Plan is defined in the recitals to this Agreement.

Affected Party is defined in Section 7.8.

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.

Agreement is defined in the preamble to this Agreement.

Applicable Law means any and all federal, state, county and local laws, rules, regulations, statutes, ordinances, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses, Governmental Approvals, and similarly binding authority, applicable to the Project or the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights in connection with this Agreement.

Application is defined in Section 3.2(a).

Borough is defined in the preamble to this Agreement.

Borough Costs is defined in Section 4.6(a).

Borough Ordinances means the ordinances of the Borough of Flemington.

Business Day means any day other than a Saturday, a Sunday, or a day on which banks generally and public offices are not open under the laws of the State of New Jersey.

CCH is defined in the recitals to this Agreement.

Certificate of Completion means a written certificate issued by the Borough in accordance with Section 4.3, which shall acknowledge that Redeveloper has performed all of its duties and obligations pursuant to this Agreement relative to a certain Phase of the Project or the entire Project, as applicable, whose issuance shall serve to release the relevant Phase of the Project or the entire Project, as applicable, and Redeveloper from all terms, obligations and conditions contained in this Agreement and in the Applicable Law.

Certificate of Occupancy is as defined in the Uniform Construction Code at *N.J.A.C.* 5:23.1.4, and as may be issued by the Borough relative to a particular Phase of the Project or the entire Project, as applicable, indicating that such Phase of the Project or the entire Project, as applicable, has been Completed in accordance with the construction permit, the Uniform Construction Code and any Applicable Law.

Claims is defined in Section 9.1.

Commencement of Construction means the beginning of vertical construction.

Completion, Complete or Completed means (i) that all work related to a Phase or the entire Project, has been Completed, acquired and installed in accordance with the terms of this Agreement, the Redevelopment Plan and any amendments thereto, and in compliance with all Applicable Law so that the developed Redevelopment Area may be used and operated under the applicable provisions of this Agreement, and (ii) that all Governmental Approvals required for the Redevelopment Area are in full force and effect. Completion shall be evidenced by the issuance of a Certificate of Completion.

Concept Plan is as shown in **Exhibit A**.

Control (including the correlative meanings of the terms “Controlled by” and “under common Control with” and “Controlling”) means with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

Declaration is defined in Section 6.3(a).

Deeds means the deeds transferring title to the Redevelopment Area or any portion thereof.

Effective Date is defined in the preamble to this Agreement.

Event of Default is defined in Section 7.1.

Event of Force Majeure is defined in Section 7.8.

Financial Agreement means an agreement entered into in accordance with *N.J.S.A.* 40A:20-1, *et seq.* or *N.J.S.A.* 40A:21-1, *et seq.*

Force Majeure is defined in Section 7.8.

Foreclosure means that event in which a Holder forecloses its mortgage secured by the Redevelopment Area, or part thereof, or takes title to the Redevelopment Area, or part thereof, by deed-in-lieu of foreclosure or similar transaction.

Governmental Approval(s) means any approvals, authorizations, permits, licenses or certificates required and issued or granted by any Governmental Body having jurisdiction necessary

to implement and Complete the Project or any Phase in accordance with the Redevelopment Plan, Applicable Law and this Agreement.

Governmental Body means any federal, state, county or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government.

Historic Sites Council is defined in *N.J.A.C. 7:4-1.3*.

Holder means a mortgagee or its Affiliate providing financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project or any Phase.

Impositions means all taxes, payments in lieu of taxes, assessments (including, without limitation, all assessments for Public Improvements or benefits), water, sewer or other rents, rates and charges, connection fees, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Redevelopment Area or on any of the Improvements constructed thereon.

Improvements means all buildings, structures and appurtenances including, without limitation, facilities and amenities, telecommunications equipment, surface parking or a structured parking facility, infrastructures, roads, fill, utilities, catch basins, curbs, site lighting, traffic striping, signage and demarcations, fire hydrants, retaining walls, sidewalks, walkways, landscaping, open space treatments and all other improvements constructed on or installed upon or within, or to be constructed on or installed upon or within, the Redevelopment Area and the streets immediately abutting the Redevelopment Area.

Indemnified Parties is defined in Section 9.1.

Initial Redevelopment Agreement is defined in the recitals to this Agreement.

Initial Redevelopment Area is defined in the recitals to this Agreement.

LSRP is defined in Section 6.1(i).

Municipal Land Use Law means the New Jersey Municipal Land Use Law, *N.J.S.A. 40:55D-1, et seq.*

NJDEP means the New Jersey Department of Environmental Protection established pursuant to *N.J.S.A. 13:1D-9, et seq.*

New Jersey State Historic Preservation Office means the Historic Preservation Office as defined in *N.J.A.C. 7:4-1.3*.

Notice of Default is defined in Section 7.1(a).

Option A is defined in Section 4.4(c).

Option B is defined in Section 4.4(c).

Party and Parties are defined in the preamble to this Agreement.

Permitted Transfer is defined in Section 13.2.

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

Phase means a building or component of the Project as set forth in **Exhibit A** or as determined pursuant to any approved phasing plan.

Planning Board means the Borough of Flemington Planning Board, pursuant to *N.J.S.A. 40:55D-23*.

Preliminary and Final Site Plan Approval means Preliminary Approval as defined in *N.J.S.A. 40:55D-6* and Final Approval as defined in *N.J.S.A. 40:55D-4*.

Progress Meeting is defined in Section 4.1.

Progress Report is defined in Section 4.1.

Project means the development of the Improvements, as more specifically described in the Concept Plan and in Redeveloper's Application for Site Plan approval to be filed with the Planning Board pursuant to the terms set forth in this Agreement.

Project Schedule means the schedule attached hereto as **Exhibit B**.

Public Improvements means streets, grading, pavement, gutters, curbs, sidewalks, street lighting, surveyors' monuments, water mains, culverts, storm and sanitary sewers, drainage structures, erosion control and sedimentation devices, open space, and landscaping required under Site Plan approval memorialized by the Planning Board that will be dedicated to the Borough pursuant to Applicable Law.

Qualified Entity is defined in Article 2.5(b).

Redeveloper is defined in the preambles to this Agreement.

Redevelopment Area is defined in the recitals to this Agreement.

Redevelopment Law is defined in the recitals to this Agreement.

Redevelopment Plan is defined in the recitals to this Agreement.

Site Plan is defined in *N.J.S.A. 40:55D-7*.

Spill Act means the Spill Compensation and Control Act pursuant to *N.J.S.A. 58:10-23.11, et seq.*

Study Area is defined in the recitals to this Agreement.

Uniform Commercial Code means *N.J.S.A. 12A:1-101, et seq.*

United State Bankruptcy Code means 1 *U.S.C. 1, et seq.*

**1.2 Interpretation and Construction.** In this Agreement, unless the context otherwise requires:

(a) The terms “hereby”, “hereof”, “hereto”, “herein”, “hereunder” and any similar terms, as used in this Agreement, refer to this Agreement, and the term “hereafter” means after the Effective Date.

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

(c) Unless otherwise noted, the terms “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation.”

(d) Any headings preceding the texts of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify or dictate.

(e) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than thirty (30) days, unless the context dictates otherwise.

(f) The word “days” as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided in this Agreement for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day.

(g) Any reference to Applicable Law shall be read to mean as the Applicable Law, as amended from time to time, except where Redeveloper’s obligation to comply was satisfied prior to the amendment.



(h) The recitals hereto contain statements of fact and/or expressions of intention and are incorporated into and made part of the substance of this Agreement.

**ARTICLE 2**  
**DESCRIPTION OF PROJECT**

**2.1 Designation as Redeveloper.** The purpose of this Agreement is to set forth the respective rights, obligations, conditions and agreements of the Borough and Redeveloper in connection with the development of the Redevelopment Area by Redeveloper. The Borough hereby affirms and agrees that Redeveloper is designated and appointed as the exclusive redeveloper of the Redevelopment Area. In connection with such designation and appointment, Redeveloper has the exclusive right to perform and to have others perform any and all redevelopment activities on and about the Redevelopment Area. Further, the Borough agrees that, absent an Event of Default by Redeveloper or with respect to any Holder's rights, it will not negotiate for the provision of another redeveloper or developer for the Redevelopment Area or any portion thereof.

**2.2 The Project.** The Project encompasses the entire Redevelopment Area. The Project shall be designed in accordance and conformance with the Concept Plan, the Redevelopment Plan and Applicable Law. In the event of a conflict between the Concept Plan and the Redevelopment Plan, the latter shall be controlling.

**2.3 Phases and Project Schedule.** The Project may be developed in Phases, subject to the Borough's approval, which shall not be unreasonably withheld. The Borough hereby approves the Phases set forth in **Exhibit A**.

**2.4 Development Milestones.** Redeveloper shall construct the Project or cause the Project to be constructed in accordance with the Project Schedule, subject to relief resulting from (a) mutually agreed upon extensions to the Project Schedule by the Redeveloper and the Borough or (b) by an Event of Force Majeure. If Redeveloper intends to claim reliance upon an Event of Force Majeure as a basis for its failure to comply with the Project Schedule, Redeveloper shall give written notice to the Borough pursuant to Section 7.9, setting forth in detail the reasons for delay and requesting an extension of such date, which extension the Borough shall not unreasonably deny if it determines that the alleged Event of Force Majeure exists in accordance with Article 7. The Borough shall consider requests by Redeveloper to extend the Project Schedule or any portion thereof for reasons that do not constitute an Event of Force Majeure, such as significantly adverse market conditions, which request the Borough shall not unreasonably deny upon satisfaction that requiring Redeveloper to proceed under the circumstances would be economically or practically infeasible.

**2.5 Qualified Entities.**

(a) Redeveloper of Project. The Project or any Phase will, at Redeveloper's option, be developed, in whole or in part, by (i) Redeveloper, (ii) any Person to which Redeveloper and/or any Affiliate of Redeveloper is the sole beneficial owner, or (iii) any Person to which Redeveloper and/or any Affiliate of Redeveloper are collectively the sole beneficial owners, subject to the review of the Borough.

(b) Qualified Entity Defined. A “**Qualified Entity**” is a Person which has demonstrated to the satisfaction of the Borough that it meets the following:

- (i) It is able to comply with the terms of this Agreement and expressly assumes all the obligations hereunder;
- (ii) No petition under federal bankruptcy laws or any state insolvency law has been filed by or against, nor has a receiver, fiscal agent or similar officer been appointed by a court for the business or property of such Person, or any partnership in which such Person was or is a general partner or any Person in which such Person was or is an officer or principal manager and the holder, directly or indirectly of an ownership interest in excess of ten percent (10%) (and, in the case of an involuntary proceeding, such proceeding has not been terminated within sixty (60) days of its commencement) within the ten (10) full calendar years preceding the date of submission of such Person’s application for consideration as a Qualified Entity;
- (iii) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding, (excluding traffic violations or other similar minor offenses), and, to the best of the knowledge and belief of the principals, directors, officers, partners, shareholders, and members of such Person, is not a target of or a potential witness in a criminal investigation;
- (iv) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been, directly or beneficially, a party to or beneficiary of any contract or agreement with the Borough or Redeveloper which has been terminated due to an Event of Default by such Person or which is currently the subject of a dispute in which the Borough or Redeveloper alleges such Event of Default, nor is such Person an adverse party in any currently pending litigation involving the Borough or Redeveloper;
- (v) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not been found in any civil or criminal action in or by a court or agency of competent jurisdiction to have violated any Federal or State law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision;

- (vi) Such Person and its principals, directors, officers, partners, shareholders, and members, individually, have not violated any Borough, state, or federal ethics law and entering into this Agreement will not cause any such violation or result in a conflict of interest; and
- (vii) Such Person shall comply with any other conditions that the Borough may find reasonably necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

(c) Redeveloper as Qualified Entity. Redeveloper represents and warrants herein that it meets the above criteria for a Qualified Entity and, based upon such representations and warranties, upon which the Borough relies in entering into this Agreement, Redeveloper is hereby deemed a Qualified Entity.

(d) Qualified Entity Approval Process. In the event that the Redeveloper seeks to assign or transfer any interest in any Phase or the Project that is not deemed a permitted transfer under Section 13.2, Redeveloper shall provide written notice to the Borough of any Person which Redeveloper desires be approved by the Borough as a Qualified Entity. Within thirty (30) calendar days after the date of such notice from Redeveloper, the Borough shall provide written notice to Redeveloper either (i) requesting additional information concerning the proposed Person, (ii) approving such Person as a Qualified Entity, or (iii) refusing to approve of such Person as a Qualified Entity, setting forth the basis for such denial. Approval by the Borough of a Person as a Qualified Entity shall authorize such Person to be considered a Redeveloper or hold a beneficial interest in Redeveloper. In the event of a denial by the Borough of a Person as a Qualified Entity as provided above, or in the event the Borough requests additional information, Redeveloper may resubmit its request to the Borough that the subject Person be approved as a Qualified Entity and Redeveloper shall in such resubmitted request set forth additional information and/or such reasons that demonstrate why Redeveloper believes the subject Person to be a Qualified Entity. Within fifteen (15) calendar days after the date of such further request from Redeveloper, the Borough shall provide written notice to Redeveloper stating whether the Borough approves of such Person as a Qualified Entity and, if the Borough does not approve of such Person as a Qualified Entity, the basis for such denial.

**ARTICLE 3**  
**PROCEDURES GOVERNING REVIEW AND APPROVAL OF APPLICATIONS FOR  
REDEVELOPMENT OF PROJECT**

**3.1 Procedures; General.** In order to facilitate the development and implementation of a mutually acceptable design, Site Plan and technical approach for the Project, the Parties have established the procedures set forth in this Article 3 for the following review and approval process. The process shall consist of an Application to the Borough and the Planning Board for review and approval of a Site Plan for the Project or any Phase, as set forth in detail below. The development process shall be in accordance with the Redevelopment Law and the Municipal Land Use Law. Nothing herein is intended to restrict the exercise of the Planning Board’s governmental authority with respect to applications for Site Plan approval under duly adopted rules and regulations or to in any way alter the procedures established for challenging the exercise of such authority pursuant to the Land Use Law. This procedure shall be used for all development applications by Redeveloper. As of the Effective Date, the Borough has conceptually approved the Concept Plan and, absent any deviations or waivers approved by the Borough pursuant to Section 3.2, the Application shall be consistent with the Concept Plan. Notwithstanding the foregoing, Redeveloper shall have the right to begin cleanout work, environmental and structural studies and testing upon the Redevelopment Area; this shall not include the right or authorization to demolish any structures within the Redevelopment Area, except as otherwise expressly authorized hereunder in Article 12.

**3.2 Application for Project.**

(a) Application. Redeveloper shall submit first to the Borough for a pre-application review pursuant to Section 3.2(c) and, after Borough approval of same, to the Planning Board an application for Site Plan approval of a proposed development pursuant of this Agreement (the “**Application**”), which Application must be deemed Complete by the Planning Board in accordance with its checklist and Borough Ordinances. The Application shall consist of submission of a report and required architectural and civil engineering plans.

(b) Redevelopment Plan Application Requirements. The Application shall also include information sufficient to determine compliance with applicable provisions of the Redevelopment Plan encompassing the following:

- (i) Plans depicting existing rights-of-way and easements in the portions of the Redevelopment Area that are the subject of the Application.
- (ii) Architectural renderings of the proposed development.
- (iii) Plans noting the use, location, plan area, setbacks, height and bulk of all existing and proposed structures within the portions of the Redevelopment Area that are the subject of the Application and their consistency with the Redevelopment Plan.

- (iv) Plans showing vehicular parking and loading areas and a layout of pedestrian and vehicular circulation patterns in relation to the buildings that are the subject of the Application.
- (v) Landscape plans sufficient to show general design concepts, including but not limited to lighting and signage design.
- (vi) A schedule that generally reflects the phasing of construction, as necessary and within the time period(s) set forth in the Project Schedule.
- (vii) A list of any requirements in the Redevelopment Plan from which Redeveloper seeks design waiver relief and the basis upon which such relief is requested.
- (viii) Such other information as may be reasonably required of the professionals employed by the Planning Board in writing no later than five (5) calendar days prior to any hearing before the Board on the Application, so as to afford Redeveloper an adequate opportunity to review and respond to such reports prior to the aforesaid Board hearing.

(c) Concept Review. Prior to making formal Site Plan Application to the Planning Board, the Redeveloper shall submit to the Borough, in concept form, the items in Sections 3.2(b)(i) through (vii) so that the Borough may confirm that same is consistent with the Redevelopment Plan. The Borough, within thirty (30) days of submission of the plans by the Redeveloper, shall conduct a review and advise Redeveloper in writing as to whether the submission is consistent with the Redevelopment Plan or whether revisions must be made in accordance with the Redevelopment Plan.

(d) Cooperative Technical Review. In order to proceed with the Project as expeditiously as possible, and to minimize the costs to both Parties, as well as avoid duplication in the review process and unnecessary delay, Redeveloper may request a technical review by the Planning Board, pursuant to N.J.S.A. 40:55D-10.1 along with the Borough and its professional staff at the time of the Concept Review on behalf of the Borough and the Planning Board. This provision shall not be read to supersede or supplant the Planning Board's jurisdiction under N.J.S.A. 40:55D-10.1 or Redeveloper's rights to request review under N.J.S.A. 40:55D-10.1. Additional technical reviews may occur if revisions are made to the Site Plan. Redeveloper shall, prior to submission of an Application and in the course of preparing the plans and reports referred to in Section 3.2(b), consult with the consultants and/or professionals of the Borough to review the Application(s). Such consultation may occur by way of conferences, written inquiries or informal communications and shall occur as frequently as is reasonably necessary to assure that such plans and reports comply with the Redevelopment Plan, Borough Ordinances, regulations, zoning, and all other criteria that will be used by the Planning

Board to determine whether the Application(s) will receive Preliminary and Final Site Plan Approval.

(e) **Development and Design Concepts.** It is acknowledged by Redeveloper that certain specific exterior elements of the Project as shall be approved by the Borough and its consultants, including but not limited to exterior building materials, quality of exterior finishes and designs, exterior architectural elements, and landscaping features, are material consideration for the Borough's approval of the Project and Redeveloper is obligated under this Agreement to construct the Project in accordance with such specific or similar/equivalent exterior elements and/or materials as have been approved. Redeveloper shall not deviate in any substantial way from such specific exterior elements or substitute any such specific materials without the Borough's express written approval, which shall not be unreasonably withheld.

Design concepts for the Project may be modified by Redeveloper from time to time, as approved by the Borough, to reflect additional detail and information, as such detail and information becomes available, or to reflect or accommodate the requirements of any Applicable Law, or to take into account engineering/construction considerations which render the then-existing design concepts physically or economically impractical. Any substantial modifications shall be subject to the review and approval of the Borough, which approval shall not be unreasonably withheld. Any modification which triggers the need to amend any site plan and/or subdivision approval secured by Redeveloper shall be reviewed by the Borough for consistency with the Redevelopment Plan and approved by the Borough prior to filing for same before the Planning Board.

**3.3 Other Governmental Approvals.** It is acknowledged by both Parties that it may be necessary for Redeveloper to obtain Governmental Approvals or permits from other Governmental Bodies in order to undertake the development of the Project. Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to attempt to obtain any needed permits and Governmental Approvals for the Project in a timely fashion and utilizing commercially reasonable efforts. The Borough agrees to provide any pertinent information in its possession and to provide any reasonable assistance which may be required of it to enable Redeveloper to properly apply for and obtain such permits or Governmental Approvals in a timely fashion, including making applications in the name of the Borough if deemed necessary for such approval or permit or if required by Applicable Law. The Borough agrees to support and endorse any applications for any Governmental Approvals required for the Project. Redeveloper shall report to the Borough on a monthly basis the status of such applications and Governmental Approvals.

**3.4 New Jersey State Historic Preservation Office Approval.** Redeveloper shall be responsible for preparation of the materials and application for project authorization on behalf of the Borough for approval of demolition of any structures that may be subject to review and authorization of the New Jersey State Historic Preservation Office and/or the Historic Sites Council, as may be required under Applicable Law. Such application(s) may be submitted either by the Borough or, in the Borough's discretion, by the Redeveloper after receipt of the Borough's written authorization to proceed. The Borough agrees to submit written or oral testimony in

support of the application when the application is heard before the Historic Sites Council and to otherwise cooperate with Redeveloper's efforts in this regard.

## **ARTICLE 4** **CONSTRUCTION OF PROJECT**

**4.1. Progress Reports and Progress Meetings.** Redeveloper shall submit to the Borough a quarterly report in writing concerning the actual progress of Redeveloper with respect to the implementation and construction of the Project, including ongoing updates concerning efforts to market and lease portions of the Project to tenants and end users and Redeveloper's progress toward leasing of residential and nonresidential space (the "**Progress Report**"). Other than statutorily required Uniform Commercial Code construction inspections, employees or representatives of the Borough shall not enter onto the Redevelopment Area or inspect the Project without prior written consent of the Redeveloper, which consent shall not be unreasonably withheld. Notwithstanding, the Borough shall have the right, upon reasonable notice, to inspect any work including deviations approved pursuant to Section 3.2. Upon the request of the Borough, Redeveloper and any necessary consultants and professionals shall meet with the Borough to report on its progress or to address any concerns the Borough has based upon its review of any Progress Report (the "**Progress Meeting**").

**4.2. Suspension of Construction.** Redeveloper shall not suspend or discontinue the performance of its obligations under this Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project or Redevelopment Area, except for the occurrence of an Event of Force Majeure, as set forth in Article 7,

If Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of one hundred twenty (120) consecutive days for reasons other than an Event of Force Majeure, and the suspension or abandonment is not cured, remedied or explained to the satisfaction of the Borough, in its sole discretion, in writing within fifteen (15) calendar days after written demand by the Borough to do so, then such shall constitute an Event of Default by Redeveloper under this Agreement and the Borough shall have the right to seek any remedies pursuant of this Agreement.

**4.3. Certificates of Occupancy and Certificate of Completion.**

(a) Certificate of Occupancy. Upon Completion of the construction of the Project and/or Phase, as may be applicable, in accordance with the Governmental Approvals, Redeveloper may apply to the Borough for a Certificate of Occupancy for the Project or Phase that has been Completed.

(b) Certificate of Completion. Upon Completion of the entire Project and/or a Phase, for purposes of releasing the restrictions referenced in this Agreement, and under the Applicable Law, the Borough shall issue a Certificate of Completion in proper form for recording, which shall acknowledge that Redeveloper has performed all of its duties



and obligations under this Agreement and has Completed construction of the Project or Phase in accordance with the requirements of the Applicable Law, the Redevelopment Plan and this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to Redeveloper's construction of the Project or Phase. Upon issuance of a Certificate of Completion (a) the agreements, restrictions, and covenants set forth in Section 6 shall cease and terminate, except for those covenants and restrictions set forth in Section 6 which shall survive in accordance with the terms of Section 6 for the Project and/or a Phase, (b) the conditions determined to exist at the time the Redevelopment Area was designated as in need of redevelopment shall be deemed to no longer exist for the Project and/or a Phase, and (c) the land and Improvements constituting the Completed Project and/or a Phase within the Redevelopment Area shall no longer be subject to eminent domain based upon such conditions. If the Borough shall fail or refuse to provide the Certificate of Completion within twenty (20) days after written request by Redeveloper, the Borough shall provide to Redeveloper a written statement setting forth in detail the respects in which it believes that Redeveloper has failed to Complete the Project or Phase, or portion thereof, in accordance with the provisions of this Agreement or otherwise has committed an Event of Default under this or any other applicable agreement and what reasonable measures or acts shall be necessary in order for Redeveloper to be entitled to a Certificate of Completion. Upon receipt of the Certificate of Completion, Redeveloper may record it in the Hunterdon County Clerk's office.

#### **4.4 Utility and Public Improvements.**

(a) On-Site Utilities. On-site utility services, including but not limited to telecommunications, water, sewer, gas and electric shall be the sole responsibility of Redeveloper. The cost for utility upgrades and installations required as a result of the construction of the Project shall be the sole responsibility of Redeveloper.

(b) Public Improvements. The Project will require some Public Improvements. The Parties agree that the Redeveloper shall be solely responsible to undertake, install and/or construct such Public Improvements that are included in the plans submitted for Preliminary and Final Site Plan Approval and any additional Public Improvements required by the Preliminary and Final Site Plan Approval.

(c) Water and Sewer.

(i) Additional Wells. The construction of the Project will utilize the current reserved capacity and will require construction of additional wells and infrastructure for the Project. The Borough represents that it will have sufficient water and sewer capacity and necessary easements to support the Project. The Redeveloper shall be responsible for up to Two Million Dollars (\$2,000,000.00) of the cost to increase the amount of available water by the amount required for the Project and to maintain the reserves as required under Applicable Law, which currently requires a reserve of three times (3x) the actual usage required, after Completion of the Project. By way of example, if the Project requires Eighty-Five Thousand gallons per day (85,000 GPD), the

Redeveloper shall be responsible for up to Two Million Dollars (\$2,000,000.00) of the cost to generate an additional two hundred and fifty-five Thousand gallons per day (255,000 GPD). The Borough shall use its best efforts to obtain financing through the New Jersey Environmental Trust to finance the water and sewer improvements. If the Borough is successful the Borough and Redeveloper shall use a special assessment or similar mechanism to secure the repayment of such New Jersey Environmental Trust loan by the Redeveloper up to the amounts for which the Redeveloper is obligated hereunder. If such financing is not secured prior to Site Plan Approval, upon submission of an application for a building permit the Redeveloper shall post a Two Million Dollars (\$2,000,000.00) performance bond or escrow account to be draw down to fund the construction of any additional required wells and infrastructure, which shall be a condition of Site Plan Approval. Should the total amount required to fund the additional wells and infrastructure to replenish the required reserves be less than Two Million Dollars (\$2,000,000.00), any remaining unused funds shall be returned to the Redeveloper. Notwithstanding anything contained herein, in the event the Borough has sufficient water and sewer capacity at the time Redeveloper applies for a building permit and Redeveloper has posted the performance bond or escrow account required in this paragraph, Redeveloper shall be permitted to proceed with the construction of Phase One and Phase Two.

(ii) Location of Water Lines. The Parties acknowledge that there are two options for water service to the Project: location of lines along Spring Street (the “**Option A**”) or location of lines along Main Street (the “**Option B**”). The Borough wishes to implement Option B, but acknowledges that this poses additional costs to Redeveloper than Option A. The Parties agree to discuss and explore in good-faith cost saving options, reimbursement mechanisms or other concepts to facilitate Option B. In the event that the Parties cannot reach a mutual agreement to provide for Option B, after engaging in such good-faith negotiations, Option A may be implemented.

(iii) Credits Against Connection Fees. Redeveloper shall receive a dollar for dollar credit for all Public Improvements to the water distribution system, exclusive of the cost of the well(s) or connecting the well to the distribution system, and sewer collection systems undertaken, installed and/or constructed against all water and sewer connection fees, which shall be calculated at the lesser of the then current rate or the rate in effect on November 30, 2017. By way of example, if the sewer and water connection fees totaled one million dollars (\$1,000,000) and Redeveloper spends more than one million dollars (\$1,000,000) to install the sewer and water lines into, out of and within the Project, the Borough would not collect any connection fees. If Redeveloper spends less than one million dollars (\$1,000,000), then the difference between the one million dollars (\$1,000,000) and the actual cost would be charged to Redeveloper as the balance for connection fees. The dollar for dollar credits do not apply to the cost of replenishing the Borough’s well reserve capacity, which cost to the developer is capped at two million dollars (\$2,000,000). Additionally, Redeveloper shall reimburse the Borough for the costs or fees, if any, imposed by the Raritan Township Municipal Utilities Authority.

#### **4.5 Design Elements.**

(a) Streetscape Improvements. All costs for streetscape improvements that are shown on the approved Site Plan are the responsibility of Redeveloper. This includes landscaping, lighting, public furniture and all other on-site Improvements located between the curb and the Improvements.

(b) Green and Sustainable Design Elements. The Redeveloper shall make good faith efforts to include and incorporate certain “green” or sustainable design elements, consistent with any objective standards set forth in the Sustainable Design Element of the Borough Master Plan, as adopted by the Borough Planning Board in June, 2011, where in Redeveloper’s sole opinion it is cost-effective and economically feasible.

(c) Historic Preservation. Redeveloper shall make good-faith efforts to preserve and salvage, for reincorporation and re-use into the Project, where in Redeveloper’s opinion it is cost-effective and economically feasible, any artifacts, architectural elements or other historically relevant objects or elements. Redeveloper shall respond to all Borough inquiries concerning any particular opportunities for preservation or salvage, such elements and make good faith and commercially reasonable efforts to fulfill any such Borough goals. Redeveloper shall cooperate with the Borough so that the Borough may fully-document the buildings and any historic artifacts prior to demolition, destruction or removal of same and the Borough’s efforts shall not unreasonably delay or interfere with Redeveloper’s implementation of the Project.

(d) Coordination of Projects. Streetscape improvements are being made by the Borough in 2017 pursuant to the \$1M Transportation Alternatives Program (TAP) grant. Redeveloper will use good-faith efforts to match the architectural and design aesthetic of the Project regarding material and block choices, to the extent practical and permissible, to the streetscape improvements made under the TAP grant. Redeveloper shall be responsible to repair or replace any portions of such streetscape improvements that are damaged in connection with the construction of the Project. The Borough shall work with Redeveloper to locate and coordinate conduits and utilities so as to avoid damage to or destruction of such streetscape improvements.

#### **4.6 Contribution To Costs, Financial and Approval Obligations.**

(a) Administrative Costs. The Parties acknowledge that there have been and will be various administrative costs associated with the redevelopment of the Redevelopment Area and the Project, including, but not limited to, professional costs, personnel time and expenses related to negotiations, development of the Redevelopment Area, meetings between the Redevelopment principals and Borough officials, public meetings, telephone conferences, staff scheduling of meetings, staff and secretarial work in preparation for said meetings and/or negotiations, and the like. In furtherance of the objectives of the Redevelopment Plan and this Agreement, and to alleviate the continuing and unique administrative burden and costs to the Borough associated with redevelopment initiatives, Redeveloper has executed an escrow agreement and made payment to the

Borough in the amount of Fifteen Thousand Dollars (\$15,000.00) which the Borough has deposited into an escrow account established by it for the payment of its reasonable and necessary third-party interim costs in connection with the Project (the “**Borough Costs**”). If, when and as often as may occur that the escrow account is drawn down to Fifteen Thousand Dollars (\$15,000.00) then the Redeveloper, upon the Borough’s written request, shall within fifteen (15) Business Days thereafter, provide to the Borough for deposit funds sufficient to replenish the escrow account to the amount of Fifteen Thousand Dollars (\$15,000.00) for use in accordance with these terms, unless such time period shall be extended for good reason by the Borough in its sole discretion. The Borough shall provide the Redeveloper with copies of all invoices to be paid from the escrow account at least thirty (30) days prior to payment. The Redeveloper shall have fifteen (15) days from the receipt of the invoices to provide comments to the Borough or appeal the charges. In the event this Agreement either expires or is lawfully terminated by the Borough, then all escrowed monies and the interest earned thereon shall be returned to the Redeveloper following the payment from the fund of the Borough Costs incurred up to the time of said expiration or cancellation.

(b) Grants, Loans and Other Financing. Upon the execution of this Agreement, the Borough will reasonably assist Redeveloper as requested in applying for and securing any and all available grants, loans and other types of financing available from public entities at all levels of government to assist in the construction of the Project. Any expenses incurred by the Borough will be deemed Borough Costs.

(c) Redevelopment Project Financial Tools. Redeveloper has determined that it will be necessary for the Borough to enter into a Financial Agreement and issue **NON-RECOURSE** redevelopment area bonds pursuant to *N.J.S.A. 40A:12A-65 et seq.* in order to undertake the Project. Such redevelopment area bonds shall be issued in an amount not anticipated to exceed One Million Dollars (\$1,000,000.00) and shall be secured by the Project and the Financial Agreement. The Borough shall NOT be required to pledge its full faith and credit OR taxing power to the repayment of such bonds. The bondholders shall only look to the Project for repayment of such bonds. Redeveloper will present to the Borough, for its consideration, a request for a Financial Agreement and bond financing, pursuant to *N.J.S.A. 40A:12A-65 et seq.* The Borough agrees to consider such requests in good faith on terms acceptable to the Borough. Redeveloper represents that it has the financial capability to finance the acquisition of the Redevelopment Area, purchase a liquor license and construct the Project provided the Borough executes a Financial Agreement and issues such bonds. Notwithstanding the above, the Borough and Redeveloper may agree to issue redevelopment area bonds as a part of any New Jersey Environmental Trust Financing as described in Section 4.4(c).

(d) Approval Process. The Borough shall coordinate with the Planning Board to provide, to the extent that it can be provided, for an expedited review process by the Planning Board, including provisions for special meetings, if necessary, to expedite the approval process for the Project.

**4.7 Groundbreaking.** Prior to Commencement of Construction, Redeveloper

shall sponsor and host a groundbreaking ceremony at the Redevelopment Area, to which the public will be invited and at which a principal of Redeveloper and the Mayor, and a representative of the Borough Council, as well as any other Person agreed upon by the Parties, will be invited to speak. The Parties shall confer and mutually agree upon all other details concerning the groundbreaking.

**4.8. Estoppel Certificates (Prior to Issuance of Certificate of Completion).** At any time and from time to time prior to the issuance of a Certificate of Completion, the Borough shall, within ninety (90) days of its receipt of a written request by the Redeveloper or of any mortgagee, lender, purchaser, tenant or other party having an interest in the Project, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, investor, tenant, etc.) designated by the Redeveloper, an instrument in which the Borough (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), (ii) states whether to the best knowledge of the Borough the Redeveloper is in an Event of Default under this Agreement, and, if so, specifying each such Event of Default of which the Borough shall have knowledge; and (iii) confirms such other factual matters within the Borough's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project or the Redevelopment Area. The Redeveloper shall not request and the Borough shall not be required to issue more than two estoppel certificates in any calendar year. Any costs incurred by the Borough in connection with preparing such estoppel certificate shall be reimbursable Borough Costs, pursuant to Section 4.6(a).

**4.9 Affordable Housing.** Redeveloper shall address the affordable housing obligation created by the Project through the construction, at its sole cost and expense, of affordable housing units within the Redevelopment Area equal to the greater of 14 units or five percent (5%) of the total number of residential units constructed, whichever is greater. Notwithstanding, the Parties acknowledge that the Borough's housing obligations have not been finally-determined and are the subject matter of a proceeding pending in the Superior Court, the outcome of which may or may not impact the Project and the number of affordable units required therein. In the event that the proceeding results in a requirement to construct more affordable housing units than agreed to herein, the Parties shall confer and work in good faith to meet such obligations but, in the event that Redeveloper determines that meeting such obligation would render the Project economically unfeasible, Redeveloper shall have the right to request modifications to the Project to render compliance feasible, which requests shall not be unreasonably denied by the Borough. In the event that the Parties cannot agree upon revisions to the Project that are necessary to meet the housing obligation so as to render the Project economically feasible, Redeveloper shall have the right to terminate this Agreement.

## **ARTICLE 5**

### **PURCHASE, ACQUISITION, AND CONTROL OF THE REDEVELOPMENT AREA AND RELATED EASEMENTS**

**5.1 Purchase of the Redevelopment Area.** Redeveloper shall use its best efforts to acquire title to the Redevelopment Area in accordance with the Project Schedule, subject to the

occurrence of an Event of Force Majeure. Should Redeveloper be unable to acquire title to the Redevelopment Area or establish site control of the Redevelopment Area as required to submit an Application for Preliminary and Final Site Plan Approval within the time period set forth in the Project Schedule, the Borough may make written demand for completion of the purchase(s) or site control. Redeveloper shall provide an explanation for its inability to complete the transaction by such date and request such additional time as may be necessary to complete the transaction, which request for additional time the Borough shall not unreasonably deny. The Borough may determine to assist Redeveloper with the acquisition of properties within the Redevelopment Area, which may include, but not be limited to, directing the Planning Board to study the Redevelopment Area as a condemnation redevelopment area, to the extent permitted by Applicable Law and pursuant to the Redevelopment Law. In the event that the Borough does not grant an extension or determine to assist Redeveloper with property acquisition, either Party may terminate this Agreement.

**ARTICLE 6**  
**REPRESENTATIONS, WARRANTIES AND COVENANTS**

**6.1 Redeveloper's Representations, Warranties and Covenants.** Redeveloper hereby represents and warrants to, and covenants with the Borough that:

(a) Organization. Redeveloper is a limited liability company duly formed under the laws of the State of New Jersey and validly existing and in good standing under the laws of the State of New Jersey with all requisite power and authority to enter into this Agreement. Redeveloper's ownership structure is attached hereto as **Exhibit C**.

(b) Authorization; No Violation. The execution, delivery and performance by Redeveloper of this Agreement has been duly authorized by all necessary action and will not violate the certificate of formation, operating agreement or any other formation or operating document of Redeveloper or constitute an Event of Default under any loan or credit agreement, or other material agreement to which Redeveloper is a party or by which Redeveloper may be bound or affected.

(c) Valid and Binding Obligations. The Person executing this Agreement on behalf of Redeveloper has been duly authorized and empowered and this Agreement has been duly executed and delivered by Redeveloper and constitutes the valid and binding obligation of Redeveloper.

(d) Litigation. No suit is pending against Redeveloper which could have a material adverse effect upon Redeveloper's performance under this Agreement, other than the two matters entitled *Friends of Historic Flemington, LLC v. the Borough of Flemington, et al.*, under Docket Nos. HTN-L-170-17 and HTN-L-290-17, or the financial condition or business of Redeveloper. There are no outstanding judgments against Redeveloper that would have a material adverse effect upon Redeveloper or which would materially impair or limit of the ability of Redeveloper to enter into or carry out the transactions contemplated by this Agreement.

(e) No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which Redeveloper is a party or is otherwise subject.

(f) No Violation of Laws. As of the Effective Date, Redeveloper has not received any notices asserting any noncompliance in any material respect by Redeveloper with applicable statutes, rules and regulations of the United States, the State of New Jersey or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on Redeveloper's ability to perform its obligations under this Agreement. Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other Governmental Body which is in any respect material to the transactions contemplated hereby.

(g) Qualifications of Redeveloper. Redeveloper is fully experienced and properly qualified to undertake the responsibilities and perform the work provided for in, or contemplated under, this Agreement and it is properly equipped, organized and in good financial standing so as to perform all such work and undertake all such responsibilities hereunder.

(h) Limited Undertakings. Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the sole purpose of redevelopment of the Redevelopment Area and not for speculation in land holding.

(i) Environmental Contamination. In the event of discovery of environmental contamination within the Redevelopment Area which is not historic fill and which requires remediation, which shall include but not be limited to any type of active remedial treatment of soil and/or groundwater, engineering and site controls, a cap, a deed notice, a remedial action permit, and/or a classification exception area for groundwater and monitored natural attenuation, Redeveloper, who and/or which the Borough acknowledges is not a responsible party and is not in any way responsible for any discharges under the Spill Act, may terminate this Agreement in his or its sole discretion if the estimated cost of the remediation by a licensed site remediation professional (the “**LSRP**”) reduces the return on Redeveloper’s investment to the point that the project is economically and practically infeasible. In that case, Redeveloper shall provide written notice of termination of this Agreement within forty-five (45) days of the receipt of the LSRP’s estimate of the cost of remediation. Should Redeveloper choose to construct the Project or any Phase regardless of any remediation requirement and cost, the Redeveloper’s sole obligation to the Borough is to bring the Redevelopment Area into compliance with respect to reporting obligations to NJDEP. If other Persons are responsible, or in any way responsible, or alleged to be so, for the environmental contamination on-site, Redeveloper may pursue legal, administrative, enforcement or contribution action(s) against such Persons at Redeveloper’s sole cost and expense. Redeveloper may also agree by contract with another Person that shall assume some or all of any remediation responsibility at its or their cost and expense. The Borough agrees to cooperate with Redeveloper’s efforts to obtain any necessary Governmental Approvals from the NJDEP, and any other agencies to facilitate remediation and/or compliance. The Borough shall assist Redeveloper in applying for and obtaining any grants or loans that may facilitate environmental investigation or remediation efforts. It is understood and agreed that should Redeveloper choose to remediate the Redevelopment Area, Redeveloper may utilize any Remediation method acceptable to the NJDEP. As of the Effective Date, it is understood by the Parties that the Redeveloper is not a responsible Person for any discharges or for remediation of the Redevelopment Area and any remediation that is being conducted, or will be conducted, is being or will be conducted by or on behalf of the responsible Persons.

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



of bankruptcy of Redeveloper or a filing for voluntary bankruptcy by Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to Redeveloper shall have been filed.

(k) Reasonable Efforts to Complete. Developer shall use commercially reasonable efforts to Complete each Phase of the Project on or before the timeframes set forth in the Project Schedule.

**6.2 Borough's Representations, Warranties and Covenants.** The Borough hereby represents and warrants to, and covenants with, Redeveloper that:

(a) Organization. The Borough is a public body corporate and politic and a political subdivision of the State of New Jersey. The Borough has all requisite power and authority to enter into this Agreement.

(b) Authorization; No Violation. The execution, delivery and performance by the Borough of this Agreement are within the authority of the Borough under, and will not violate, the statutes, rules and regulations establishing the Borough and governing its activities, have been duly authorized by all necessary Resolution(s) and/or Ordinances and will not result in the breach of any material agreement to which the Borough is a party or, to the best of its knowledge and belief, any other material agreement by which the Borough or its material assets may be bound or affected.

(c) Valid and Binding Obligations. The Person executing this Agreement on behalf of the Borough has been duly authorized by Resolution to execute this Agreement, has been duly executed and delivered by the Borough and constitutes the valid and binding obligation of the Borough.

(d) Litigation. No suit is pending against or affects the Borough which could have a material adverse effect upon the Borough's performance under this Agreement, other than the two matters entitled *Friends of Historic Flemington, LLC v. the Borough of Flemington, et al.*, under Docket Nos. HTN-L-170-17 and HTN-L-290-17, or the financial condition or business of the Borough. There are no outstanding judgments against the Borough that would have a material adverse effect upon the Borough or which would materially impair or limit of the ability of the Borough to enter into or carry out the transactions contemplated by this Agreement.

(e) No Conflicts. This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Borough is a party or is otherwise subject.

(f) No Violation of Laws. As of the Effective Date, the Borough has not received any notices from any public agency asserting any noncompliance in any material respect by the Borough with applicable statutes, rules and regulations of the United States of America, the State of New Jersey or any other public agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement which would

have a material adverse effect on the Borough's ability to perform its obligations under this Agreement. The Borough is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby. The Borough shall comply with all Applicable Law in fulfilling its obligations under this Agreement.

(g) Water and Sewer Infrastructure. The Borough represents that it currently has sufficient sewer capacity and necessary easements to support Phase One and Phase Two of the Project. The Borough represents that it currently has sufficient water capacity for Phase One of the Project and may have sufficient water capacity for Phase Two of the Project. Subject to Section 4.4 herein, to the best of the Borough's knowledge there are no limits on availability of water or sewer capacity or restriction on the expansion of water and sewer infrastructure that would impact service to the Redevelopment Area site to support the Project. The Borough covenants that it shall work with the Redeveloper to confirm the availability of water and sewer capacity with the providers of those services to the Borough.

(h) Adoption of Redevelopment Plan. The Redevelopment Plan has been duly adopted in compliance with all Applicable Law.

(i) Borough Authorization. All requisite action has been taken by the Borough and all requisite consents have been obtained in connection with the entering into this Agreement and the instruments and documents referenced herein to which the Borough is a party, and the consummation of the transaction contemplated hereby, are to the best of the Borough's knowledge and belief authorized by all Applicable Law. To the best knowledge of the Borough there are no writs, injunctions, orders or decrees of any court or Governmental Body that would be violated by the Borough entering into or performing its obligations under this Agreement.

(j) Extinguishment of All Public Access Easements. The Borough agrees to extinguish any and all public access easements or interests located within the Redevelopment Area that will impede the development or operation of the Project.

### **6.3 Redeveloper Declaration of Covenants.**

(a) Recording. Redeveloper agrees to record, and provide a recorded copy to the Borough, a Declaration of Covenants and Restrictions (the "**Declaration**"), with respect to the Redevelopment Area that shall run with the land to all subsequent holders of title, imposing upon said lands the agreements, covenants and restrictions required to be inserted in the Deeds. All provisions hereinafter with respect to the insertion in or the application to the Deeds of any covenants, restrictions and agreements shall apply equally to the Declaration and such covenants, restrictions and agreements shall be inserted in and apply to the Declaration, whether or not so stated in such provisions.

(b) Description of Covenants and Restrictions. The Covenants and Restrictions to be imposed upon Redeveloper for so long as the Redeveloper is a party of

this Agreement, its successors and assigns, herein and recorded in the Deeds and the Declaration, shall set forth that the Redeveloper and its successors, transferees and assigns shall:

- (i) Construct only the uses established in the current Redevelopment Plan;
- (ii) Pursuant to the Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any buildings or structures erected or to be erected thereon, or any part thereof;
- (iii) In the sale, lease or occupancy of the Redevelopment Area or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status, and Redeveloper, its successors and assigns shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status to the extent required by the Applicable Law;
- (iv) Commence Construction of the Improvements within the Project Schedule provided that the Governmental Approvals and permitting are not delayed by the actions or inactions of the Borough, or an Event of Force Majeure; and
- (v) Not sell, lease or otherwise transfer the Redevelopment Area, or any part thereof, without the written consent of the Borough, except for permitted transfers to a Qualified Entity as set forth in Section 2.6(b).

(c) Effect and Term of the Covenants and Restrictions. Subject to the provisions of Section 6 it is intended and agreed, and the Deeds and the Declaration shall so expressly provide to the extent permitted by Applicable Law, that the Covenants and Restrictions set forth in Section 6 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 Borough, its successors and assigns, and any successor in interest to the Redevelopment Area, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Redevelopment Area or any part thereof. It is further intended and agreed that the Covenants and Restrictions set forth in Section 6 shall remain in effect until the issuance

by the Borough of a Certificate of Completion for the Project or any Phase, as provided in Section 4.3 (at which time all agreements, obligations, Covenants and Restrictions shall cease and terminate for the Project or any Phase, as applicable), except, however, that the Covenants and Restrictions provided in Sections 6.3(b)(ii) and (iii) shall remain in effect without limitation as to time; provided that, until their termination as provided above, such Covenants and Restrictions shall be binding on Redeveloper itself, each successor in interest to the Project and/or any Phase, the Redevelopment Area, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successors, transferees or party shall have title to, or an interest in, or possession or occupancy of the Redevelopment Area, and the Improvements constructed thereon or any part thereof.

(d) Enforcement by Borough. In amplification, and not in restriction of the provisions of this Article 6, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the Covenants and Restrictions set forth in Section 6(b) both for and in their own right but also for the purposes of protecting the interests of the community and other Persons, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Borough for the entire period during which such Covenants and Restrictions shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such Covenants and Restrictions relate. The Borough shall have the right, in the event of any breach of any such Covenants and Restrictions, 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 such Covenants and Restrictions, to which they or any other beneficiaries of such Covenants and Restrictions may be entitled.

**ARTICLE 7**  
**DEFAULT**

**7.1 Events of Default.** Each of the following shall constitute an Event of Default by the applicable party, respectively:

(a) **Failure to Perform.** Failure of the Redeveloper or the Borough to observe or perform any covenant, condition, representation, obligation, warranty or agreement hereunder, and any act or omission characterized elsewhere in this Agreement as an Event of Default, subject to the occurrence of an Event of Force Majeure and the provisions hereto, and the continuance of such failure, act or omission for a period of thirty (30) days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure, act or omission be remedied (the “**Notice of Default**”); provided, however, that if the Event of Default is one that cannot be completely cured within thirty (30) days after receipt of the Notice of Default, it shall not be an Event of Default as long as the defaulting party promptly begins to take actions to correct the Event of Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Event of Default as soon as practicable, but in no event longer than ninety (90) days unless the non-defaulting party consents, in writing, to an extension of time to cure. It shall not be deemed to be an Event of Default if the Redeveloper diligently contests, in good faith, and by appropriate proceedings, such compliance with any Applicable Law.

(b) **Default in Payment.** Redeveloper is in default in the payment of any sum payable to the Borough hereunder or associated with the Project, as the same shall become due and payable, and such Event of Default shall have continued for a period of thirty (30) days after receipt of written notice specifying such Event of Default, and demanding that same be remedied.

(c) **Failure to Construct.** In the event Redeveloper shall fail to implement or construct the Project pursuant to the Project Schedule, subject to the occurrence of an Event of Force Majeure and the provisions hereto, or shall abandon or substantially suspend construction of the Project for a continuous period in excess of one hundred twenty (120) days, unless such suspension arises out of an Event of Force Majeure, and any such Event of Default, violation, abandonment, or suspension shall not be cured within thirty (30) days after written demand by the Borough to do so, or such longer period if incapable of cure within such thirty (30) day period and Borough agrees to extend such time to cure, provided that Redeveloper has commenced and is diligently prosecuting such cure.

(d) **Failure to Pay Impositions.** Redeveloper or its successor in interest shall fail to pay any Impositions when due, or shall suffer any levy or attachment to be made, or any material men’s or mechanics’ lien, or any other unauthorized encumbrance or lien to attach and such Imposition shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within thirty (30) days after written demand by the Borough to do

so, to the extent not otherwise provided for herein, up to the issuance of a Certificate of Completion.

(e) Transfers. There is, in violation hereto, any transfer of the fee title to the Redevelopment Area or a portion thereof, except for Permitted Transfers as provided in Section 13.2, and such violation shall not be cured within thirty (30) days after written demand served upon the Redeveloper by the Borough.

(f) Redeveloper Dissolved or Bankrupt. Redeveloper is dissolved, or files a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts as they become due, or suspends payment of its obligations, or takes any action in furtherance of the foregoing; or Redeveloper consents to the appointment of a receiver, or an answer proposing the adjudication of Redeveloper as bankrupt or its reorganization pursuant to the Bankruptcy Act or any similar law, federal or state, now or hereafter in effect, is filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within sixty (60) days from entry thereof, or the Redeveloper consents to the filing of such petition or answer.

(g) Court Action. A decision or order determination by a court of competent jurisdiction that Redeveloper has engaged in fraud in the inducement of, or willful misconduct in connection with the Project.

**7.2. Right to Cure Upon Event of Default**. Except as otherwise provided in this Agreement, in the Event of Default by any party hereto or any successor to such party, such party (or successor) shall, within thirty (30) days (or such longer, or shorter, period to the extent expressly provided above) of receiving written notice from another, proceed to cure or remedy such Event of Default. In case such action is not taken or diligently pursued, or the Event of Default shall not be cured or remedied within such proscribed time, or any extension of such time granted at the discretion of the non-defaulting party, the non-defaulting party may pursue its remedies in accordance with this Agreement.

**7.3 Borough's Remedies**. If Redeveloper shall fail to timely cure any Event of Default by Redeveloper as set forth in Section 7.1, the Borough shall have the right to:

- (a) terminate this Agreement and de-designate Redeveloper; and
- (b) retain any payments already made by Redeveloper hereunder for Public Improvements; and
- (c) pursue all other remedies available to it at law or equity.

**7.4 Redeveloper's Remedies**. If the Borough shall fail to timely cure any Event of Default by Borough as set forth in Section 7.1, Redeveloper shall be entitled, in its sole and

absolute discretion, to terminate this Agreement and/or seek any other remedies available to it at law or equity.

**7.5 Limitation of Liability.** The Parties agree that if an Event of Default occurs, the Parties shall look solely to the Parties hereto and/or their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, representative or other person affiliated with such party shall be personally liable for any such judgment or damages. In no event shall either Party be responsible for any consequential or punitive damages.

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

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

**7.8 Force Majeure.** For purposes of this Article and as otherwise used in this Agreement, "**Event of Force Majeure**" shall mean any of the events or conditions set forth below, or any combination thereof, that has had or may reasonably be expected to have a material and adverse effect on the ability of a party to perform its obligations (an "**Affected Party**") under this Agreement:

(a) Acts of God. An act of God including severe natural conditions such as landslide, lightning, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of public enemy, terrorism, war, blockade, insurrection, riot, general arrest or general restraint of government and people,

or any other similar act or event outside the Control of the Affected Party; provided however, that any question as to whether any such conditions should be deemed to constitute an Event of Force Majeure shall be considered in light of good engineering practice and industry standards to protect against reasonably foreseeable severe natural weather conditions, taking into account the geographic location and topographic and geotechnical conditions of the Project;

(b) Condemnation or Taking. The condemnation, taking, seizure, involuntary conversion or acquisition of title to or use of the Redevelopment Area, or any material portion or part thereof, by the action of any federal, state or local government or governmental agency or authority;

(c) Governmental or Utility Approvals. Delays incurred in obtaining Governmental Approvals or approvals by utilities caused solely by the approving agency or utility after the Affected Party has taken all required action in obtaining such Governmental Approval and the continued delay is outside and beyond the Control of the Affected Party;

(d) Legal Challenges. Legal challenges brought to challenge any permit and/or Governmental Approval related to this Project by third-parties over whom the Affected Party has no Control;

(e) Labor Union Actions. Labor union strikes or similar labor union action by equipment manufacturers, suppliers of materials, employees or transporters of same, to the extent that such labor union strikes relate to general labor disputes that are non-specific to the Project of Redeveloper and have a material and adverse effect upon the Affected Party's ability to perform its obligations under this Agreement;

(f) Unavailability of Materials. The unavailability of suitable fill or materials required for performance of the work related to the Project due to fluctuations in the historically reasonable commercial rates for fill or materials, shortages of same in the market place and/or the inability to obtain transportation services for transporting fill or materials to the Redevelopment Area or the Project area as a result of a public or private labor dispute;

**7.9 Notice of Event of Force Majeure**. If an Event of Force Majeure has occurred and is continuing, the Affected Party wishing to suspend its performance as a result of such Event of Force Majeure shall provide written notice thereof to the other party as promptly as is reasonably possible under the circumstances and in all events within five (5) days following such party's knowledge of the occurrence of such Event of Force Majeure. The party receiving such notice may contest and/or reject the claim of an Event of Force Majeure in writing, setting forth its bases for such rejection and demanding that the Affected Party proceed with its obligations under this Agreement. If the Affected Party intends to continue to rely upon the condition claimed to result in an Event of Force Majeure, it may request, in writing, a neutral professional review. The Parties shall then mutually select and designate a local member of the profession to which the Event of Force Majeure relates and agree to permit such individual to arbitrate and decide the



reasonableness of the claim of Force Majeure and the appropriate extension of time to be granted to the Affected Party.

**7.10 Effect on Obligations.**

(a) Extension Equal to Delay Caused by Event of Force Majeure. In the event of an Event of Force Majeure, the applicable deadline, obligation or term affected by such Event of Force Majeure shall be extended for a period of time equal to the delay caused by the Event of Force Majeure, provided that timely notice was provided by the Affected Party.

(b) Not an Event of Default. The performance, non-performance or delay in performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Agreement shall not be deemed to be an Event of Default where such performance, failure of performance or delay in performance is/are the result of an Event of Force Majeure, provided, however, that the Event of Force Majeure (a) was not invoked in bad faith or intentionally by a Party (b) was not the result of any unlawful action or non-action of the Affected Party as justification for the performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility, and (c) the Affected Party takes all reasonable efforts within its power to timely mitigate the Event of Force Majeure.

(c) Mitigation of Event of Force Majeure. Each party shall diligently and in good faith seek to mitigate the effect of such Event of Force Majeure and to perform its obligations to the extent practicable notwithstanding the occurrence of an Event of Force Majeure and to overcome such Event of Force Majeure as soon as is possible or practicable.

(d) Reinstatement of Performance Obligations. The performance by the Parties of any obligation under this Agreement excused as aforesaid shall be recommenced as promptly as is legally and reasonably practicable after the occurrence of an Event of Force Majeure and, in the case of the party not seeking to delay its performance based upon such Event of Force Majeure, after receipt by such party from the Affected Party of written notice that the Event of Force Majeure is no longer occurring and that such party can resume performance of its obligations under this Agreement.

**7.11 Defense of Governmental Approvals.** Except as set forth herein or below, Redeveloper shall assume the defense to any challenge to any Governmental Approval it requires to proceed with the Project without cost to the Borough so as to continue to move forward with the Project, until a final, non-appealable judicial determination is obtained, subject to the provisions set forth in Section 14.1. Notwithstanding the above, the Borough shall assume the defense of any and all actions taken by the Borough in furtherance of the Project including the establishment of the Redevelopment Area, adoption of the Redevelopment Plan and amendments thereto, authorization and execution of any and all agreements including this Agreement and the Financial Agreement and the issuance of any debt related to the Project, until a final, non-appealable judicial determination is obtained, subject to the provisions set forth in Section 14.1.

Redeveloper shall be solely responsible for its own costs and attorneys' fees if it is named in or chooses to intervene in any such actions.

**ARTICLE 8**  
**INSURANCE**

**8.1 Insurance Requirements.** During the term hereto, or as required prior to any construction at the Redevelopment Area, Redeveloper shall provide and maintain adequate insurance including the types of coverage and in amounts reflecting industry standards for adequate insurance against risk of loss and casualty in connection with the type, extent and magnitude of work to be performed under this Agreement until such work has been Completed and furnish the Borough with a copy of certificates of insurance evidencing that Redeveloper has obtained such insurance. This coverage shall be primary to any other policies of the Borough and shall not be contributing with any other insurance or similar protection available to the Borough whether other available insurance be primary, contributing or excess.

**ARTICLE 9**  
**INDEMNITY**

**9.1 Obligation to Indemnify.** Redeveloper and the Borough agree to indemnify and hold each other and their respective officials, members, agents, servants, employees and consultants (collectively, the “**Indemnified Parties**”) harmless from and against any and all demands, suits, causes of action, recoveries, judgments, losses, and costs and expenses in connection therewith of any kind or nature, however arising, imposed by law or otherwise (including reasonable attorneys’ fees and expenses and experts’ fees and expenses) (collectively, “**Claims**”) which the Indemnified Parties may sustain, be subjected to or be caused to incur, by reason of personal injury, death or damage to property, arising from or in connection with the condition, use, possession, conduct, management, planning, design, financing, implementation, construction, inspection, or maintenance of the Project, marketing, leasing or sale of the Redevelopment Area or the Project or any activities of or on behalf of Redeveloper or Borough within the Redevelopment Area, except that to the extent that any such claim or suit arises from the intentional or willful wrongful acts or omissions of the Indemnified Parties. The Redeveloper or Borough shall provide notice to the other Party of the subject Claims as soon as reasonably possible after their occurrence but in any case within ten (10) days of the Redeveloper or Borough receiving actual notice of the subject Claims, provided, however, that in the event such notice is not timely received, Redeveloper or Borough shall only be excused of its obligations hereunder to the extent it is prejudiced by the failure to timely receive said notice.

**9.2 Notice of Claims.** In any situation in which the Indemnified Parties are entitled to receive and desire defense and/or indemnification, the Indemnified Parties shall give prompt notice of such situation to Redeveloper or Borough, as the case may be. Failure to give prompt notice shall not relieve Redeveloper or Borough of any liability to indemnify the Indemnified Parties, unless such failure to give prompt notice materially impairs Redeveloper’s or Borough’s ability to defend. Upon receipt of such notice, Redeveloper or Borough shall resist and defend any action or proceeding on behalf of the Indemnified Parties, including the employment of counsel reasonably acceptable to the Redeveloper or Borough, the payment of all expenses and the right to negotiate and consent to settlement. The Redeveloper and Borough shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the Redeveloper or Borough unless the employment of such counsel is specifically authorized by Redeveloper or Borough, which authorization shall not be unreasonably withheld or delayed, provided, however, that if the defense of such action is assumed by Redeveloper’s or Borough’s insurance carrier, employment of such separate counsel by the Redeveloper or Borough shall be at the sole discretion of such carrier. Redeveloper or the Borough shall not be liable for any settlement of any such action effected without their respective consent, but if settled with the consent of Redeveloper or the Borough, or if there is a final judgment against Redeveloper party or Borough party in any such action, Redeveloper or the Borough, as the case may be, shall indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Indemnified Parties are entitled to indemnification hereunder.

**9.3 Survival of Indemnity.** The provisions of this Article 9 shall survive the termination of this Redevelopment Agreement due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged as a result of the recording of a Certificate of Completion, provided, however, that such indemnity shall be binding on each successor in interest to the Project, the Redevelopment Area, or any part thereof, and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall have title to, or an interest in, or possession or occupancy of the Redevelopment Area, the Project or any part thereof.

**ARTICLE 10**  
**CONSUMPTION OF LIQUOR WITHIN PROJECT**

**10.1 Liquor License.** The Project shall require a liquor license for use with the hotel and restaurant portions of the Project. Redeveloper may secure a liquor license in connection with the construction of the hotel with at least one hundred (100) rooms. The redeveloper has secured another liquor license in the Borough which liquor license shall be utilized for the Project in the event that Redeveloper does not secure another liquor license in connection with the 100 room hotel or otherwise. So long as this Agreement remains effective and has not been terminated, Redeveloper shall not sell or convey the liquor license it currently owns unless and until it has fully-secured another liquor license for use in the Project. This shall not preclude Redeveloper from use of the current liquor license during the implementation of this Project so long as it is reserved for the Project for use in the Completed Project pursuant to this Agreement. This provision shall not survive the termination of this Agreement.

**ARTICLE 11**  
**NOTICES AND DEMANDS**

**11.1 Notices.** A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by national overnight courier with delivery confirmation, or by facsimile transmission (evidenced by printed confirmation of receipt specifying the receiving telephone number) or delivered personally (with written acknowledgment of receipt) to the Parties at the following respective addresses or facsimile numbers:

If to the Borough, to: Borough Clerk  
Borough of Flemington  
Borough Hall  
38 Park Avenue  
Flemington, New Jersey 08822

With a copy to: Robert Beckelman, Esq.  
Greenbaum Rowe Smith & Davis LLP  
99 Wood Avenue South  
Iselin, New Jersey 08830-2712

and if to Redeveloper, to: John J. Cust, Jr., CPA  
5 Bartles Corner Road  
Flemington, New Jersey 08822

with a copy to: George Dilts, Esq.  
Dilts and Koester  
167 Main Street  
Flemington, New Jersey 08822

Either party may from time to time by written notice given to the other pursuant to the terms of this Section 11.1 change the address, facsimile number or persons to which notices shall be sent.

**ARTICLE 12**  
**CONSTRUCTION AND PROJECT FINANCING**

**12.1 Redeveloper's Commitment to Finance Construction of the Project.**

Redeveloper represents that it has obtained or can obtain, and will commit the requisite equity in an amount necessary to purchase the Redevelopment Area on the terms and conditions set forth herein, and to perform all of Redeveloper's obligations hereunder in order to Commence Construction and to Complete Construction of the Project within the time periods required under this Agreement. Redeveloper shall provide the Borough with evidence that it has closed on the institutional financing and contributed equity required to complete construction of the Block 22 portion of the Project prior to the demolition of any structures required to be demolished for the Block 22 portion of the Project.

**12.2 Rights of Institutional Mortgagee.** Any financial institution lending money on the security of the real Redevelopment Area in the Project shall be entitled to the protection of *N.J.S.A. 55:17-1, et seq.* providing for notification, right to cure, right to possession, right to assume Control of mortgagor, right to enter into possession of and operate premises, right to the entry of a judgment of strict foreclosure, right to recover on the underlying loan obligation without first proceeding with Foreclosure, right to proceed to Foreclosure, separately from or together with suit on the underlying obligation, and such other rights all as specifically provided in *N.J.S.A. 55:17-8.*

(a) **Continuation.** This Agreement as a financial arrangement made by a Governmental Body or agency of the State of New Jersey pursuant to statutes in connection with a project for redevelopment, renewal or rehabilitation, shall continue in full force and effect beyond any Event of Default in or Foreclosure of any mortgage loan made to finance the project, as though such Event of Default or Foreclosure had not occurred, subject to the provision of *N.J.S.A. 55:17-1, et seq.*

(b) **Subordination and Attornment.** To the extent necessary, the Borough agrees to execute subordination and attornment documents that may reasonably be required by an institutional lender and further to make any technical, non-substantive, modifications to this Agreement that may be required by an institutional lender.

**12.3 Rights of Mortgagees.** Notwithstanding any other provision hereto, the Holder of any mortgage (including any such Holder who obtains title to the Redevelopment Area or any part thereof), or any other party who thereafter obtains title to the Redevelopment Area or such part from or through such Holder or any purchaser at Foreclosure sale or through other court proceedings or action in lieu thereof shall in no way be obligated by the provisions of this Agreement to construct or complete the Project except to secure and make the Project site and Redevelopment Area safe, or to guarantee such construction or completion; nor shall any covenant or any other provision in this Agreement or any Deeds conveying the Redevelopment Area to Redeveloper be construed to so obligate such Holder, provided that nothing in this Agreement shall be deemed or construed to permit or authorize any such Holder to devote the Redevelopment Area or any part thereof to any uses, or to construct any Improvements thereon,



other than those uses or Improvements provided, or permitted under the Redevelopment Plan or otherwise approved by the Borough.

**12.4 Notice to Mortgagee.** Whenever the Borough shall deliver any notice or demand to Redeveloper with respect to any Event of Default by Redeveloper of its obligations or covenants under this Agreement, the Borough shall at the same time forward a copy of such notice or demand to each Holder of any mortgage at the last known address of such Holder shown in the land records of the County. Notice that such Event of Default subsequently has been cured shall also be provided by the Borough to each such Holder of any mortgage.

**12.5 Mortgagee's Right to Cure Event of Default and Assume Redeveloper's Obligations.** After any Event of Default referred to in Section 7, each Holder shall have the right, at its option, to cure or remedy such Event of Default (if the Holder shall opt to cure or remedy the Event of Default, the times to cure provided herein shall be extended for such a period of time equal to the time otherwise applicable to Redeveloper for cure) and to add the cost thereof to its mortgage. If the Event of Default is with respect to construction of the Project or Phase, nothing contained in this Agreement shall be deemed to require the Holder to obtain the Borough's approval, either before or after Foreclosure or action in lieu thereof, to undertake or continue the construction or Completion of the Project or Phase. Any such Holder who shall properly Complete the Project or Phase shall be entitled, upon written request made to the Borough, to receive the Certificate of Occupancy for the Project, Phase or portion thereof and the Certificates of Completion as set forth in Section 4.3, and such Certificate shall mean and provide that any remedies or rights that Borough shall have or to be entitled to due to the failure of Redeveloper or any successor in interest to the Redevelopment Area, or any part thereof, to cure or remedy any Event of Default with regard to construction of the Project or Phase, or due to any other Event of Default by Redeveloper or such successor, shall not apply to the part or unit of the Redevelopment Area to which such Certificate relates.

**12.6 Mortgage Modifications.** If the Holder of any mortgage obtained by the Redeveloper under this Agreement reasonably requires any changes or modifications to the terms of this Agreement, the Borough shall reasonably cooperate with the Holder of any such mortgage(s).

**ARTICLE 13**  
**RESTRICTIONS ON TRANSFERS**

**13.1 Restrictions on Transfer.** The Redeveloper recognizes the importance of the Borough Lots to the general welfare of the community and that the reputation of the Redeveloper and its qualifications are critical to the Borough in entering into this Agreement. The Redeveloper recognizes that it is because of such qualifications and identity that the Borough is entering into this Agreement with the Redeveloper, and, in so doing, the Borough is relying on the obligations of the Redeveloper and not some other Person for the faithful performance of all undertakings and covenants to be performed by the Redeveloper hereunder. Accordingly, so long as the Agreement is effective, prior to the issuance of a Certificate of Completion for the Project or Phase, pursuant to *N.J.S.A. 40A:12A-9(a)*, except as otherwise permitted by this Agreement, Redeveloper shall be without power to sell, otherwise transfer title to or ownership of the Project or Phase, without the written consent of the Borough, which consent shall not be unreasonably withheld, delayed or conditioned. The prohibition in this Section 13.1 shall apply to any sale, transfer, pledge, or hypothecation by Redeveloper of all or substantially all of its assets “in bulk” (but not to sales in the ordinary course of business) or all or substantially all of its stock, or the sale, transfer, pledge, or hypothecation of fifty percent (50%) or more of the stock of Redeveloper if Redeveloper’s stock is not publicly traded; or the sale, transfer, pledge, or hypothecation of fifty percent (50%) or more of the beneficial ownership interest in Redeveloper if Redeveloper is a partnership, except in the event of the death of a partner or member. Any of the foregoing cases whether or not accomplished by one or more related or unrelated transactions, constitute a prohibited assignment. The foregoing shall not apply, however, to a change of form of the Redeveloper, provided that there is no change in the beneficial ownership of Redeveloper which is prohibited by the third sentence of this Section. The restrictions in this Section 13.1 shall not apply to conveyances set forth in Section 13.2 and these restrictions shall no longer apply to any individual unit or Phase for which a Certificate of Occupancy or Certificate of Completion has been issued.

As a result, prior to completion of the Project or Phase, as evidenced by the issuance of a Certificate of Completion, except with the express prior written consent of the Borough, which consent shall not be unreasonably withheld by the Borough, the Redeveloper agrees for itself and all successors in interest that there shall be no sale, transfer or assignment of (i) the Redevelopment Area; (ii) any equity interest in the Redeveloper, nor any direct or indirect change in Control of the Redeveloper as it exists on the Effective Date, whether by changes in capitalization, merger, or otherwise; or (iii) the Agreement. With respect to this provision, the Redeveloper and the persons signing the Redevelopment Agreement on behalf of the Redeveloper represents that each has authority to agree to this provision on behalf of the current members of the Redeveloper and to bind it with respect thereto.

**13.2 Consent to Permitted Transfers.** The Borough hereby consents, without the necessity of further approvals from the Borough, to the following transfers:

(a) a mortgage or related security granted by the Redeveloper to a mortgagee for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Agreement;

(b) a merger or consolidation of Redeveloper with another financially responsible Person;

(c) the sale and/or lease of the residential units and/or the commercial/industrial space built as part of the Project;

(d) the conveyance of driveways, roads, infrastructure, or open space;

(e) utility and other necessary easements;

(f) a conveyance of the Redevelopment Area or any portion thereof to the Holder of any mortgage authorized under this Agreement, whether through Foreclosure, deed-in-lieu of Foreclosure, or otherwise;

(g) a conveyance of any properties in the Redevelopment Area or an interest therein and/or assignment by the Redeveloper of its rights under this Agreement, but only upon the following conditions: (i) such conveyance or assignment must be to an Affiliate or an Person Controlling, Controlled by, or under common Control of the Redeveloper, including but not limited to an urban renewal entity formed by the Redeveloper pursuant to *N.J.S.A. 40A:20-4*; (ii) the successor and assignee of the Redeveloper shall assume all of the obligations of the Redeveloper hereunder, but the Redeveloper shall remain primarily liable for the performance of the Redeveloper's obligations; (iii) a copy of the written instrument of conveyance and assignment and assumption of this Agreement shall be delivered to the Borough for review; and (iv) such conveyance or assignment does not violate any of the Government Approvals; or

(h) the sale, transfer, pledge or hypothecation of any percent of stock or beneficial ownership interest so long as the original members of the Redeveloper shall maintain a Controlling management interest, including an Affiliated urban renewal entity.

**13.3 Prohibition Against Speculative Development.** Because of the importance of the development of the Redevelopment Area to the general welfare of the community, the Redeveloper represents and agrees that its acquisition of the Redevelopment Area and the Redeveloper's undertakings pursuant to this Redevelopment Agreement are, and will be used, for the purpose of the redevelopment or rehabilitation of the Redevelopment Area as provided herein, and not for speculation in land holding.

**13.4 Information as to Ownership of Redeveloper.** In order to assist in the effectuation of the purpose of this Article 13, simultaneously with the execution hereto and as a condition thereto, the Redeveloper shall submit to the Borough an incumbency

certificate of the Redeveloper as of the Effective Date, subscribed and sworn to by an officer of the Redeveloper, setting forth the name(s) and address(es) of all Persons owning at least a ten percent (10%), interest in the Redeveloper, and, as to each such Person, all Persons owning at least a ten percent (10%) interest therein, such disclosure being intended to be the same disclosure that the 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* and as is required under *N.J.S.A. 52:25-24.2*. Redeveloper shall provide an incumbency certificate for any Person affiliated with the Redeveloper.

(a) Notice of Change in Ownership. Redeveloper will immediately notify the Borough in writing of any change of ten percent (10%) or greater in the ownership of the Redeveloper, legal or beneficial change in ownership, 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 Persons in Control of the Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information.

(b) Provision of Statement of Ownership Upon Borough's Request. Redeveloper shall, at such time or times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by an officer of the Redeveloper, setting forth all owners of equity interests of Redeveloper and the extent of their respective holdings, and in the event any other Persons have a beneficial interest in Redeveloper, their names and the extent of such interest.

**13.5 Conveyance to a Qualified Entity.** Upon a conveyance of all rights and obligations hereunder to a Qualified Entity, pursuant to Section 2.6, Redeveloper shall be relieved of its right and obligations hereunder.

**13.6 Subsequent Conveyance by Redeveloper.** Upon issuance of a Certificate of Completion for the Project or any Phase, the Redeveloper shall have the right to sell, lease or otherwise transfer, convey or encumber any such Phase or the Project, as applicable, without the consent of the Borough and free of any restrictions imposed by this Agreement, except the Declarations that expressly survive such transfer or conveyance.

**ARTICLE 14**  
**MISCELLANEOUS**

**14.1 Term.** This Agreement shall terminate upon the sooner of (1) the Completion of the Project, evidenced by a Certificate of Completion for the entire Project, (2) seven (7) years and three (3) months from the Effective Date of this Agreement, inclusive of any events of Force Majeure, subject to a reasonable extension in the Boroughs sole discretion (3) termination by either Party as may be provided for in this Agreement. If there is a judicial determination that any property within the Redevelopment Area and included in the Redevelopment Plan does not qualify as an area in need of redevelopment under the Redevelopment Law or a Financial Agreement is not executed by the Parties after a reasonable period of time to be determined mutually by the Parties in good faith and the exercise of reasonable judgment, the Parties may mutually agree to terminate this Agreement.

**14.2 No Third-Party Beneficiaries.** The provisions of this Agreement are for the exclusive benefit of the Parties hereto and not for the benefit of any third person, nor shall this Agreement be deemed to have conferred any rights, express or implied, upon any third person.

**14.3 Amendment; Waiver.** No alteration, amendment or modification hereto shall be valid unless executed by an instrument in writing by the Parties to this Agreement with the same formality as this Agreement, including approval by Resolution of the Borough. The failure of the Borough or Redeveloper to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement or to exercise any election contained in this Agreement shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by the Borough or Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of the Borough or Redeveloper.

**14.4 Consents.** Unless otherwise specifically provided herein, no consent or approval by the Borough or Redeveloper permitted or required under the terms hereto shall be valid or be of any force whatsoever unless the same shall be in writing, signed by an authorized representative of the party by or on whose behalf such consent is given.

**14.5 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either Party to this Agreement shall be filed in either the Superior Court of New Jersey, Hunterdon County, or in the United States District Court for the District of New Jersey in accordance with their respective rules of court.

**14.6 Severability.** If any Article, Section, subsection, term or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Section, subsection, term or provision of this Agreement or the application of same to the Parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining Article, Section,

subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.

**14.7 Binding Effect.** Except as may otherwise be provided in this Agreement to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of Redeveloper, the Borough and their respective successors and assigns.

**14.8 Relationship of Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between Redeveloper and the Borough, their relationship being solely as contracting parties under this Agreement.

**14.9 Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute, in connection with each of such agreements, one and the same instrument.

**14.10 Prior Agreements Superseded.** This Agreement supersedes any prior understanding or written or oral agreements (express or implied) between the Parties respecting the within subject matter, including but not limited to the Initial Redevelopment Agreement. This Agreement, together with any other documents executed by the Parties contemporaneously herewith or therewith, contains the entire understanding between the Parties with respect thereto.

**14.11 Exhibits.** All Exhibits referred to herein shall be considered a part of this Agreement as fully and with the same force and effect as if such Exhibits had been included within the text of this Agreement in full.

**14.12 Affirmative Action.** Should Redeveloper use any public funding or financing for the Project which requires compliance with affirmative action requirements set forth in P.L. 1975, C. 127 (*N.J.S.A. 17:27*), Redeveloper agrees to comply with said requirements and cause its contractors and subcontractors to comply with same.

**14.13 Non-Discrimination.** The Redeveloper shall not discriminate against or segregate any person, a group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, sex, affectional or sexual orientation of the sale, lease, sublease, rental, transfer, use, occupancy, tenure or enjoyment of the Redevelopment Area; nor shall the Redeveloper itself, or any person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation, with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sub lessees or vendees on the Redevelopment Area.

**14.14 Construction.** Both of the Parties acknowledge that this Agreement has been extensively negotiated with the assistance of competent counsel for each Party and agree that no provision of this Agreement shall be construed in favor of or against either Party by virtue of the fact that such Party or its counsel have provided an initial or any subsequent draft of this Agreement or of any portion hereto.

**14.15 Cooperation.** The Parties 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 Borough further agrees to cooperate as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining financing for the Project. The Borough further agrees to take all actions reasonably requested by Redeveloper to expedite the Project, including without limitation agreeing to modify or amend this Agreement, designating Borough staff liaisons to assist the Redeveloper in interacting with Borough departments, commissions, boards, authorities and the like and granting of special meetings and other expedited processing of Redeveloper's applications, submissions and the like to the extent authorized under Applicable Law. Any costs incurred by the Borough in connection therewith shall be deemed Borough Costs, reimbursable pursuant to Section 4.6(a).

***[SIGNATURES ON NEXT PAGE]***

**IN WITNESS WHEREOF**, the Parties have executed this Agreement to be effective as of Effective Date.

**FLEMINGTON          CENTER          URBAN  
RENEWAL, LLC**

\_\_\_\_\_  
**Witness**

**By:**

\_\_\_\_\_  
**John J. Cust, Jr., CPA  
Managing Member**

**BOROUGH OF FLEMINGTON**

\_\_\_\_\_  
**Sallie Graziano, Borough Clerk**

**By:**

\_\_\_\_\_  
**Hon. Phil Greiner, Mayor**



**EXHIBIT LIST**

**Exhibit A: Concept Plan**

**Exhibit B: Project Schedule**

**Exhibit C: Ownership Structure of the Redeveloper**

**EXHIBIT A**  
**CONCEPT PLAN**

- Phase One: The development of the portion of the Project to be located on Block 22 on the Borough tax map.
- Phase Two: The development of the portion of the Project to be located on Block 24 on the Borough tax map.

\*The drawing attached in Exhibit A are for purposes of reference to the Project Concept and Design details but do represent any analysis or determination of compliance with any applicable zoning and development requirements and standards, such as parking, height, coverage, setbacks, density, etc., all of which shall be set forth and determined pursuant to the Redevelopment Plan and the Project will be required to comply with such zoning and development requirements and standards.

**EXHIBIT B**  
**PROJECT SCHEDULE**

The Project implementation tasks and completion dates set forth below shall be adhered to by Redeveloper and Borough, as applicable, in accordance with the terms and condition of this Redevelopment Agreement.

Execution of a Financial Agreement by the Parties shall be completed within 90 days of execution of this Agreement

Concept Plan Review Application for Phase One shall be submitted to the Borough pursuant to Section 3.2(c) of the Agreement within 60 days of the receipt of a final, non-appealable judicial determination concluding any and all litigation concerning the establishment of the Redevelopment Area, adoption of the Redevelopment Plan and amendments thereto, authorization and execution of the Redevelopment Agreement and the Financial Agreement related to the Project

Planning Board Application for Final Site Plan Approval for Phase One and applications for all other Governmental Approvals for Phase One shall be submitted to Planning Board and other applicable Governmental Bodies within 30 days after Borough's approval pursuant to Section 3.2(c) of the Agreement

Closing on Financing for Phase One shall be completed with 90 days of receipt of all Government Approvals and the expiration of all applicable appeal periods

Acquisition of Property required for Phase One shall be completed within 60 days of Closing on Financing

Application for demolition permits for Phase One shall be submitted within 30 days of closing on Acquisition of Property for Phase One

Application for building permits for Phase One shall be submitted within 30 days after completion of demolition for Phase One

Commencement of Construction of Phase One shall occur within 30 days after receipt of building permits for Phase One

Application for Certificate of Occupancy for Phase One shall be submitted to Borough within 24 months of Commencement of Construction for Phase One

Application for Certificate of Occupancy for Phase Two shall be submitted to Borough within 36 months of Commencement of Construction for Phase One

The entire Project shall be completed and eligible for a Certificate of Completion within seven (7) years and three (3) months from the Effective Date of this Agreement, inclusive of any events of Force Majeure, subject to a reasonable extension in the Boroughs sole discretion

In the event Redeveloper commences Phase Two at the same time as Phase One, then Phase Two shall be subject to the same schedule as applicable to Phase One as set forth above.

**EXHIBIT C**  
**OWNERSHIP STRUCTURE OF REDEVELOPER**

Flemington Center Urban Renewal, LLC is owned 100% by John J. Cust, Jr.