
REDEVELOPMENT AGREEMENT

BY AND BETWEEN

MONMOUTH SQUARE NJ LLC,

As Redeveloper

AND

THE BOROUGH OF EATONTOWN,

As Redevelopment Entity

Date: August __, 2023

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “Agreement”) dated as of the ____ day of _____, 2023, by and between **MONMOUTH SQUARE NJ LLC**, a New Jersey limited liability company having offices at 767 Fifth Avenue, Floor 50, New York, New York 10153 (including successors and assigns, the “Redeveloper”), and the **BOROUGH OF EATONTOWN**, a municipal corporation in the County of Monmouth and the State of New Jersey, acting as redevelopment entity pursuant to N.J.S.A. 40A:12A-1 et seq., having its principal office at 47 Broad Street, Eatontown, New Jersey 07724 (the “Borough”). The Redeveloper and the Borough may herein be referred to individually as a “Party” and together as the “Parties”.

RECITALS

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

WHEREAS, the Mayor and Borough Council (“Council”) of the Borough, by Resolution No. 208-2021 adopted on December 8, 2021, designated certain properties of the Borough, particularly Block 2201, Lots 1.01, 1.02, 2, 3, 4 and 5, and Block 2202 Lot 1 as identified on the tax maps of the Borough (collectively referred to as the “Redevelopment Area”) as a non-condemnation area in need of redevelopment, following the investigation and public hearing conducted by the Planning Board of the Borough of Eatontown pursuant to the Redevelopment Law; and

WHEREAS, the Mayor and Council adopted Ordinance No. 5-2023 on April 26, 2023 approving a redevelopment plan for the Redevelopment Area (as amended, the “Redevelopment Plan”); and

WHEREAS, pursuant to N.J.S.A. 40A:12A-8(f), the Borough is authorized to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

WHEREAS, the Redeveloper has proposed to develop, design, finance, permit, demolish certain existing improvements, undertake site preparation, construct, implement, and cohesively redevelop that portion of the Redevelopment Area known as Block 2201, Lots 1.01, 1.02, 2, 3, 4, and 5 (collectively, the “Redevelopment Project Site”) with a project comprised of a mixture of complimentary residential, retail, commercial, and medical office uses including (i) up to approximately one thousand (1,000) non-age restricted residential rental units, with twelve and one-half (12.5%) percent of the actual number of units built to be set aside for very low-, low-, and moderate-income households in furtherance of the Borough’s Settlement Agreement with Fair Share Housing Center, dated December 17, 2018, which settled Fair Share Housing Center’s intervention in litigation entitled In the Matter of the Borough of Eatontown, County of Monmouth, Docket No. MON-L-2522-15 (as amended, the “FSHC Settlement Agreement”, which provides for 700 units with a 12.5% set aside), (ii) approximately 900,000 square feet of total commercial and retail space, and (iii) public spaces, strategically placed parking, and a safe and efficient circulation system (collectively, the “Redevelopment Project”); and

WHEREAS, the Redevelopment Project Site, which is anticipated to be developed in four (4), or at Redeveloper’s sole option and discretion five (5), components (each, a “Component” and collectively, the “Components”), all of which are essential to achieving the overall development of the Redevelopment Area in a comprehensive manner that accomplishes the goals and objectives of the Redevelopment Plan, shall be completed pursuant to the provisions of this Agreement, the Redevelopment Plan, and in accordance with the concept plan attached hereto as **Exhibit A** (the “Concept Plan”); and

WHEREAS, the Components shall consist of the following: (i) the “Retail Component Project”, which Monmouth V Urban Renewal, LLC, an Affiliate of Redeveloper (the “Retail URE Affiliate”), shall undertake the following work: (1) [renovation of approximately 324,325 square feet of existing retail space] (the “General Retail Subcomponent Project”); (2) [an update to the façade of an existing approximately 264,601 square foot retail space] (the “Bosco’s Subcomponent Project”); (3) construction of approximately 40,000 square feet of grocery space and approximately 30,942 square feet of retail space (the “Whole Foods Subcomponent Project”), which Whole Foods Subcomponent Project shall also include the relocation of the existing Barnes & Noble store to another existing building and the retrofitting of such other existing building (the “Barnes & Noble Project”); and (4) if Redeveloper determines in its sole and absolute discretion

to undertake, upon satisfaction of conditions described in Section 2.03(c) hereof, [an update to the façade of an existing approximately 262,422 square foot retail space, including a new storefront, lighting, and signage] (the “Macy’s Subcomponent Project”); and which scope of work applicable to the Retail Component Project shall also include, without limitation, the demolition of approximately six hundred thousand (600,000) square feet of existing retail space, new vehicular roadways with a new surface parking lot along with the re-paving and re-striping of existing lots, refreshed tenant facades, a new interior food hall and new outparcel pad buildings, and the construction of a new pedestrian plaza and walkway, including new hardscape, landscape, lighting, seating and gathering areas; (ii) the “Phase 1 Residential Component Project”, which Monmouth V R1 Urban Renewal, LLC, an Affiliate of Redeveloper (the “Phase 1 Residential URE Affiliate”), shall construct or cause to be constructed [approximately 332 residential rental units in four (4) buildings]; (iii) the “Phase 2 Residential Component Project,” which Monmouth V R2 Urban Renewal, LLC, an Affiliate of Redeveloper (the “Phase 2 Residential URE Affiliate”) shall construct or cause to be constructed [approximately 332 residential rental units in four (4) buildings]; (iv) the “Phase 3 Residential Component Project,” which Monmouth V R3 Urban Renewal LLC, and Affiliate of Redeveloper (the “Phase 3 Residential URE Affiliate”, and together with the Retail URE Affiliate, the Phase 1 Residential URE Affiliate, and the Phase 2 Residential URE Affiliate, collectively, the “Affiliates”), shall construct or cause to be constructed [approximately 336 residential rental units in two (2) buildings] (the “Phase 3 Residential Component Project”); and (v) if Redeveloper determines in its sole and absolute discretion to undertake, Redeveloper shall construct or cause to be constructed [an approximately 33,000 square foot medical office building] (the “Optional MOB Component Project”, and together with the Retail Component Project, the Phase 1 Residential Component Project, the Phase 2 Residential Component Project, and the Phase 1 Residential Component Project, collectively, the “Component Projects” and individually a “Component Project”); and

WHEREAS, it is anticipated that, except for Block 2201, Lots 3 and 4 (the “Macy’s Subcomponent Project Site”), the other portions of the Redevelopment Project Site will be consolidated and subdivided such that each Component Project, including, if undertaken, the Optional MOB Component Project, will be located on its own lot or lots (or on a newly created lot) (including the Macy’s Subcomponent Project Site and that portion of Block 2201, Lot 1.02 that will be subdivided for the Optional MOB Component Project, whether or not such Optional

MOB Component Project is undertaken (the “Optional MOB Component Project Site”) each, a “Component Project Site”); and

WHEREAS, the Macy’s Subcomponent Project Site is currently, and will continue to be, owned by Macy’s East Federated Dept. Stores (“Macy’s”), who has determined not to seek a long term tax exemption and payments in lieu of taxes pursuant to the Long Term Tax Exemption Law, codified at N.J.S.A. 40A:20-1 et seq. (the “Exemption Law”), however upon satisfaction of the conditions set forth in Section 2.03(c) hereof, the Retail URE Affiliate will undertake the Macy’s Subcomponent Project as part of the Redevelopment Project and same will be subject to this Redevelopment Agreement; and

WHEREAS, the Optional MOB Component Project Site will also not seek a long term tax exemption and payments in lieu of taxes pursuant to the Exemption Law, however, if undertaken, will be undertaken as part of the Redevelopment Project and subject to this Redevelopment Agreement; and

WHEREAS, other than the Macy’s Subcomponent Project Site, the remainder of the Redevelopment Project Site may be owned in fee simple by and/or Transferred to each applicable Affiliate of Redeveloper as described above and in accordance with this Redevelopment Agreement in order for each such Affiliate to undertake, complete, and/or operate (as applicable) each Component Project; and

WHEREAS, the Parties anticipate effectuating an assignment of this Redevelopment Agreement as applicable to each Component Project to each relevant Affiliate of Redeveloper (other than the Macy’s Subcomponent Project, which shall remain owned by Macy’s), as further provided for in Sections 2.01 and 8.03 hereinbelow; and

WHEREAS, the Mayor and Council have determined that the Redeveloper (and each of its Affiliates that will be assignees for each Component Project) meets all necessary criteria, including financial capabilities, experience, expertise and project concept descriptions, and, as a result, the Borough has determined to designate Redeveloper as exclusive redeveloper of the Redevelopment Project Site under the Redevelopment Law and to engage exclusively in negotiations with Redeveloper for the purpose of entering into this Redevelopment Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and further, to implement the purposes of the Redevelopment

Law and the Redevelopment Plan, the Parties hereto agree as follows:

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

1.01. Definitions. Except as expressly provided herein to the contrary, all capitalized terms used in this Redevelopment Agreement and its exhibits shall have the following meanings:

- a. “2023 Payment Obligation” shall be as defined in Section 5.05(b)(i).
- b. “2024 Payment Obligation” shall be as defined in Section 5.05(b)(ii).
- c. “2024 Payment Obligation Net Amount Due” shall be as defined in Section 5.05(b)(ii).
- d. “2025 Payment Obligation” shall be as defined in Section 5.05(b)(iii).
- e. “2025 Payment Obligation Net Amount Due” shall be as defined in Section 5.05(b)(iii).
- f. “2026 Payment Obligation” shall be as defined in Section 5.05(b)(iv).
- g. “2026 Payment Obligation Net Amount Due” shall be as defined in Section 5.05(b)(iv).
- h. “2027 Payment Obligation” shall be as defined in Section 5.05(b)(v).
- i. “2027 Payment Obligation Net Amount Due” shall be as defined in Section 5.05(b)(v).
- j. “Affiliate” means with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.
- k. “Affordable” shall mean a rent within the means of a very low-, low- and/or

moderate-income household as defined in N.J.S.A. 52:27D-304.

l. “Affordable Units” shall mean the Affordable housing units to be constructed as part of the Redevelopment Project pursuant to this Redevelopment Agreement, the FSHC Settlement Agreement, and the Redevelopment Plan.

m. “Applicable Law” means all federal, state and local laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, the Redevelopment Law, the MLUL, the Borough Code, relevant construction codes including construction codes governing access for people with disabilities, and such other applicable zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations promulgated thereunder, and all applicable Environmental Laws and applicable federal and state labor standards.

n. “Bond Resolution” means the bond resolution to be adopted by the Borough authorizing the issuance, from time to time, of the RABs.

o. “Borough” means the Borough of Eatontown, New Jersey, a municipal corporation of the State of New Jersey, the designated Redevelopment Entity for the Redevelopment Area pursuant to N.J.S.A. 40A:12A-3. For the purposes of this Agreement, the “Borough” shall also mean the Borough Council of the Borough, from time to time.

p. “Borough Code” means the Ordinances and Regulations of the Borough as amended.

q. “Borough Indemnified Parties” means the Borough and its officers, agents, and employees.

r. “Boscov’s Subcomponent Project” shall be as defined in the recitals.

s. “Certificate of Completion and Compliance” means a certificate issued by the Borough in accordance with Section 2.11 of this Redevelopment Agreement.

t. “Certificate of Occupancy” means a document, whether temporary or permanent, issued by the Borough authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

u. “COAH Regulations” shall mean the prior round regulations of the New Jersey Council on Affordable Housing, codified at N.J.A.C. 5:91-1.1 et. seq. and N.J.A.C. 5:93-1.1 et.

seq.

- v. “Component” or “Components” shall be as defined in the recitals.
- w. “Component Project” or “Component Projects” shall be as defined in the recitals.
- x. “Component Project Site” shall be as defined in the recitals.
- y. “Concept Plan” shall be as defined in the recitals.
- z. “Conditions Precedent” shall be as defined in Section 2.03.
- aa. “Council” shall be as defined in the recitals.
- bb. “Covenants and Restrictions” shall be as defined in Section 7.01.
- cc. “Curable Non-Monetary Default” shall be as defined in Section 11.03(d).
- dd. “Cure Expiration Notice” shall be as defined in Section 11.03(c).
- ee. “Declaration” shall be as defined in Section 7.01.
- ff. “Defaults Requiring Possession” shall be as defined in Section 11.03(f).
- gg. “Effective Date” means the date of this Redevelopment Agreement, which shall be entered on the first page hereof upon the full execution hereof.
- hh. “Environmental Laws” means any present or future applicable federal, state or local law, rule, regulation, order, directive, judgment, arbitration award, settlement or agreement dealing with environmental protection and/or human health and safety.
- ii. “Environmental Remediation” shall be as defined in Section 2.05(f).
- jj. “Escrow Account” shall be as defined in Section 5.02(a).
- kk. “Escrow Agent” shall be as defined in Section 5.05.
- ll. “Event of Default” shall be as defined in Section 9.01.
- mm. “Exemption Law” shall be as defined in Section 5.03.
- nn. “Financial Agreements” shall be as defined in Section 5.03.
- oo. “FHA” shall mean the New Jersey Fair Housing Act, codified at N.J.S.A. 52:27D-301 to -329, as same may be amended.
- pp. “Force Majeure” shall be as defined in Section 9.04.

- qq. “FSHC Settlement Agreement” shall be as defined in the recitals.
- rr. “General Retail Subcomponent Project” shall be as defined in the recitals.
- ss. “Governmental Approvals” means all necessary reviews, consents, permits, licenses, leases, easements or grants or other approvals of any kind, including, but not limited to, final subdivision and site plan approvals, building permits, agreements for utility relocation and service legally required by or from any Governmental Body, permits and approvals for any Environmental Remediation, each of which must be final and non-appealable, in order to carry out the Redevelopment Project, including but not limited to those set forth in **Exhibit B** hereto.
- tt. “Governmental Body” or “Governmental Bodies” means any federal, state, county or local agency, department, commission, authority, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government, and any public utility, including, without limitation, the Borough and the State of New Jersey or any other quasi-governmental agency having jurisdiction of the subject matter.
- uu. “Guarantee Agreements” shall be as defined in Section 5.05(c).
- vv. “Macy’s Subcomponent Project” shall be as defined in the recitals.
- ww. “Macy’s Subcomponent Project Site” shall be as defined in the recitals.
- xx. “Mortgagee” shall be as defined in Section 11.01.
- yy. “Mortgaged Portion” shall be as defined in Section 11.02.
- zz. “Mortgages” shall be as defined in Section 8.03(h).
- aaa. “Net Amounts Due” shall be as defined in Section 5.05(b)(v).
- bbb. “NJDCA” means the New Jersey Department of Community Affairs.
- ccc. “NJDEP” means the New Jersey Department of Environmental Protection.
- ddd. “NJLFB” means the New Jersey Local Finance Board.
- eee. “Optional MOB Component Project” shall be as defined in the recitals.
- fff. “Optional MOB Component Project Site” shall be as defined in the recitals.
- ggg. “Party” or “Parties” shall be as defined in the Preamble.

- hhh. “Permitted Transfer” shall have the meaning given to it in Section 8.03 hereof.
- iii. “Person” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or Governmental Body, or any other entity.
- jjj. “Phase 1 Residential Component Project” shall be as defined in the recitals.
- kkk. “Phase 1 Residential URE Affiliate” shall be as defined in the recitals.
- lll. “Phase 2 Residential Component Project” shall be as defined in the recitals.
- mmm. “Phase 2 Residential URE Affiliate” shall be as defined in the recitals.
- nnn. “Phase 3 Residential Component Project” shall be as defined in the recitals.
- ooo. “Phase 3 Residential URE Affiliate” shall be as defined in the recitals.
- ppp. “PILOTs” shall be as defined in Section 5.03.
- qqq. “Planning Board” shall be as defined in the recitals.
- rrr. “Project Improvements” means all buildings, structures, improvements, site preparation work and amenities necessary for the implementation and completion of the Redevelopment Project.
- sss. “RABs” means the redevelopment area bonds, if approved and authorized by the NJLFB and the Borough in accordance with Section 2.03(a)(ii)hereof, to be issued by the Borough in order to finance a portion of the costs of the Redevelopment Project, which bonds will be repaid by PILOTs pursuant to the Financial Agreements. The RABs shall be issued in a par amount not to exceed \$500,000 for each of the Phase 1 Residential Component, the Phase 2 Residential Component, and the Phase 3 Residential Component, and \$1,500,000, in one or more series, for the General Retail Subcomponent, the Boscov’s Subcomponent, and the Whole Foods Subcomponent. The RABs shall comply with the criteria set forth in the resolutions, indentures or other agreements to be negotiated providing for and securing the issuance of the RABs. The RABs shall be non-recourse to the Borough and shall not in any way require the Borough to levy ad valorem taxes, whether to pay principal, interest, interest reserves or any other costs or expenses with respect to the RABs. The RABs will be issued on a taxable basis with an interest rate not to exceed five percent (5%), shall amortize over a period of thirty (30) years, and the net proceeds of

the RABs may be utilized for any cost of the Redevelopment Project, subject to the procedures and conditions set forth in the resolutions, indentures and agreements to be negotiated with respect to the RABs. Notwithstanding the foregoing, if the terms of the Financial Agreements, resolutions, indentures, or other agreements providing for and securing the issuance of the RABs differ from the foregoing, the terms in the Financial Agreements, resolutions, indenture, or other agreements shall control.

ttt. “Redeveloper” shall be as defined in the Preamble.

uuu. “Redeveloper Indemnified Parties” shall be as defined in Section 4.02.

vvv. “Redevelopment Agreement” or “Agreement” means this Redevelopment Agreement between the Borough and Redeveloper, and any written amendments and supplements hereto.

www. “Redevelopment Area” shall be as defined in the recitals.

xxx. “Redevelopment Law” shall be as defined in the recitals.

yyy. “Redevelopment Plan” shall be as defined in the recitals.

zzz. “Redevelopment Project” shall be as defined in the recitals.

aaaa. “Redevelopment Project Site” shall be as defined in the recitals.

bbbb. “Reimbursable Borough Costs” shall have the meaning given to it in Section 5.01 hereof.

cccc. “Replacement Agreement” shall be as defined in Section 11.03(g).

dddd. “Stipulations” shall be as defined in Section 5.05(a).

eeee. “Tax Appeals” shall be as defined in Section 5.05(a).

ffff. “Tax Court” shall be as defined in Section 5.05(a).

gggg. “Transfer” means any transaction, other than a Permitted Transfer, by which a Transferee obtains an interest in the Redevelopment Project Site, or any portion thereof and/or any or all of the Project Improvements, or in this Redevelopment Agreement by means or methods which include, but are not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

hhhh. “Transferee” means any third party to whom an interest in the Redevelopment

Project Site, the Project Improvements or rights in or under this Redevelopment Agreement is duly and validly conveyed, transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, foreclosure or otherwise, including through designation of a trustee in bankruptcy or assignee for the benefit of creditors, as further described in Article VIII.

iiii. “UHAC” shall mean Uniform Housing Affordability Controls, codified at N.J.A.C. 5:80-26.1, et seq., as same may be amended, or any successor laws or regulations.

jjjj. “Very Low Income Housing” shall take the meaning of such term as it is defined at N.J.S.A. 52:27D-304.

kkkk. “Whole Foods Subcomponent Project” shall be as defined in the recitals.

1.02 Term. The term of the Redevelopment Agreement (the “Term”) shall, unless otherwise extended further in accordance with the terms of this Redevelopment Agreement unless terminated sooner in accordance with the terms of this Redevelopment Agreement, be the period of time from the Effective Date of this Redevelopment Agreement through the date for the issuance of the final Certificate of Completion and Compliance, as generally set forth in the Redevelopment Project Schedule, attached hereto as **Exhibit C**, which may be modified in accordance with the terms of this Agreement.

ARTICLE 2

CONDITIONS PRECEDENT; IMPLEMENTATION OF PROJECT

2.01. Exclusive Redeveloper. The Redeveloper, subject to the provisions hereof, is the designated Redeveloper and shall have the exclusive right to carry out the Redevelopment Project in accordance with the Redevelopment Plan, the Redevelopment Law and this Redevelopment Agreement. For the term of this Redevelopment Agreement, except as provided hereinabove and subject to termination of this Agreement pursuant to its terms, the Borough shall not have the right to designate any person or entity other than the Redeveloper (which the Redeveloper has been so designated). Notwithstanding the foregoing, the Parties anticipate, acknowledge, and agree that the rights and obligations pursuant to this Redevelopment Agreement relating to each Component or Subcomponent, as applicable, will be assigned to and assumed by each applicable Affiliate in accordance with Section 8.03 hereof providing that such assignment shall be a “Permitted Transfer”. In the event that Redeveloper determines to undertake the Optional MOB

Component Project, Redeveloper shall provide written notice to the Borough of such determination no later than December 31, 2025, after which the terms of this Agreement shall apply to the Optional MOB Component Project and the Optional MOB Component Project Site.

2.02. Redeveloper's Interest in the Redevelopment Project Site. Redeveloper hereby represents that its Affiliates are, and its Affiliates will be, the owners of the Redevelopment Project Site.

2.03. Conditions Precedent. (a) Redeveloper's obligations to commence and complete construction of the Redevelopment Project (and each Component Project) is expressly conditioned upon and subject to the satisfaction (or modification or waiver, at Redeveloper's sole discretion) of the following conditions precedent (the "Conditions Precedent"):

(i) All Governmental Approvals shall have been duly issued or received in final, non-appealable form, including without limitation final subdivision and site plan approvals and building permits, with respect to the subject Component Project.

(ii) The Financial Agreements and issuance of the RABs shall have been duly authorized and non-appealable, including without limitation approval by the NJLFB of the Borough's issuance of the RABs and the Borough's due and final adoption of the Bond Resolution authorizing the Trust Indenture, Pledge Agreement, and related instruments required for the issuance of the RABs.

(iii) Financing for the Redevelopment Project (or subject Component Project) shall be unconditionally committed.

(iv) The Parties shall each have duly executed and delivered the Stipulations (as defined in Section 5.05(a)) into escrow, in accordance with the terms of Section 5.05(a) hereof.

(b) In the event that all of the foregoing Conditions Precedent are not satisfied or waived by Redeveloper no later than December 31, 2025, Redeveloper may elect to terminate this Redevelopment Agreement by providing Notice to that effect to the Borough. Except for rights and obligations arising or accruing prior to such termination and that otherwise survive termination of this Agreement as provided herein, following such termination, neither Party shall have any

further liability under this Agreement.

(c) Solely with respect to the Macy's Subcomponent Project, Redeveloper has been conditionally designated as Redeveloper. Upon satisfaction of the following conditions no later than December 31, 2025, Redeveloper's designation shall no longer be conditional and the terms of this Agreement shall apply to the Macy's Subcomponent Project and the Macy's Component Project Site:

(i) Redeveloper shall have obtained Macy's written consent to permit or comply with the applicable provisions of this Agreement and to the recording of the Declaration as applicable to the Macy's Subcomponent Project Site.

(ii) The Declaration shall have been recorded on the Macy's Subcomponent Project Site.

Redeveloper shall provide written notice to the Borough upon satisfaction of the foregoing conditions, or upon failure to satisfy such conditions by the aforementioned date.

2.04. Affordable Housing. (a) Redeveloper is permitted to construct up to one thousand (1,000) residential units on the Redevelopment Project Site pursuant to the Redevelopment Plan and this Redevelopment Agreement. Of the total number of residential units actually constructed, Redeveloper shall set aside and deed restrict twelve and one-half percent (12.5%) of the total number of residential units constructed as rental units for very low-, low-, and moderate-income households ("Affordable Units"). The construction, distribution, and marketing of the Affordable Units shall be in conformity with FHA, UHAC, COAH Regulations, and all other Applicable Law, with the exception that thirteen percent (13%) of the Affordable Units shall be set aside as Very Low Income Housing. Without limiting the foregoing, the affordable element to the Redevelopment Project shall be implemented consistent with N.J.A.C. 5:93-5.6(d), which will include a pro rata share of affordable units constructed as compared to the market rate units constructed, to be calculated on the basis of the Redevelopment Project as a whole. By way of example, upon completion of 220 market rate residential rental units (which comprises 25% of 875 market rate units plus 1 unit), Redeveloper shall have completed a combined 13 Affordable Units. Notwithstanding the foregoing, in the event that the FSHC Settlement Agreement provides for an alternative ratio of market to affordable units, the FSHC Settlement Agreement shall control. Furthermore, for the avoidance of doubt, completion of construction of the Affordable Units shall

be deemed satisfied when same are “ready to be occupied”, as opposed to actually being occupied. The Borough hereby represents, acknowledges, and agrees that the Redeveloper’s compliance with all requirements set forth in this Redevelopment Agreement pertaining to the Affordable Units shall constitute full compliance with all applicable Borough requirements under the FSHC Settlement Agreement pertaining to the Redevelopment Project Site.

(b) The requirement to construct the Affordable Units and the construction thereof will be tracked on an ongoing basis as Governmental Approvals are obtained and construction of the Redevelopment Project is implemented. The Redeveloper shall have an obligation to deed restrict the Affordable Units as Affordable Units for a period of at least thirty (30) years. The deed restriction shall be provided to the Borough for its review for compliance with the applicable affordable housing regulations, the FSHC Settlement Agreement, UHAC and this Redevelopment Agreement prior to recordation. Redeveloper’s obligation includes, but is not limited to, very low-, low-, and moderate-income split requirements, pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements and deed restriction requirements, all as set forth in the affordable housing regulations, UHAC and as further described herein.

2.05. Governmental Approvals.

(a) Attached hereto as **Exhibit B** is a list of all known Governmental Approvals that need to be obtained by the Redeveloper in order to satisfy its obligations under this Redevelopment Agreement. The Redeveloper shall be responsible, at its sole cost and expense, for obtaining all such Governmental Approvals and for any other Governmental Approval which may be required but which is not identified herein. The Redeveloper shall use diligent and commercially reasonable efforts to secure, or cause to be secured, any and all Governmental Approvals, and shall carry out the Redevelopment Project in conformance therewith and in accordance with the Redevelopment Project Schedule, as described in Section 2.09 hereof, and as set forth in **Exhibit B** attached hereto and made a part hereof.

(b) Redeveloper shall provide the Borough with copies of all Governmental Approvals for the Redevelopment Project upon request and shall keep the Borough apprised of the status of all Governmental Approvals. The Borough agrees to diligently and fully cooperate, to the extent that such cooperation is consistent with the terms and intent of the Redevelopment Plan, with the Redeveloper in obtaining the Governmental Approvals.

(c) Redeveloper shall proceed diligently to obtain all Governmental Approvals required for each Component Project from any Governmental Body having jurisdiction over such Component Project, including but not limited to any NJDEP and NJDOT approvals, if required.

(d) Upon receipt of all Governmental Approvals, except for building permits, for each Component Project, the Redeveloper shall prepare, or shall have already prepared, construction plans for such Component, as well as materials and an application for approval of the construction plans. The respective timing for the Redeveloper's submission of applications for Governmental Approvals, the Borough's (and Borough Planning Board's) review and responses, and obtaining Governmental Approvals shall be in accordance with the dates set forth in the Redevelopment Project Schedule in **Exhibit C**, as may be amended.

(e) Notwithstanding the foregoing, or anything to the contrary, the Parties acknowledge and agree that Redeveloper may commence demolition work on the vacant spaces and large boxes prior to receipt of all other Governmental Approvals; provided however, that at a minimum, site plan approval shall have been obtained and a demolition permit from the Borough Construction Official has been issued with all conditions therein having been satisfied . The grading, fencing, temporary plans, and other relevant plans for such demolition permits may and shall be reviewed and approved administratively by the Borough Engineer and the Borough Construction Official.

(f) To expedite the commencement of construction of each Component Project, the Borough shall, and the Borough shall cause the Planning Board to, use diligent efforts in the review Redeveloper's application for Preliminary and Final Major Site Plan and Preliminary and Final Major Subdivision approval for the Redevelopment Project, and the Borough shall use good faith diligent efforts in completing the review by the Borough's Department of Building and Construction of the Redeveloper's construction plans for compliance with all Applicable Law. The Redeveloper may submit plans and applications to the Borough and/or the Planning Board for informal reviews prior to formal submittals, which the Borough and/or the Planning Board, as applicable, shall expedite, and cause its staff and professionals to expedite, such review, and in all events respond with any written comments or sign-off to Redeveloper no later than thirty (30) calendar days following Redeveloper's submittal of such plans. The Borough shall at all times during the term of this Agreement be appropriately staffed, and shall cause the Planning Board to

be appropriately staffed, such that the Borough and the Planning Board, respectively, shall promptly commence and complete all reviews of all submissions made by Redeveloper and all inspections of Project Improvements, as required by this Agreement, in order to assure that such reviews and/or inspections do not cause a delay in the Redevelopment Project Schedule. The Parties acknowledge and agree that the Escrow Account, established and governed by Section 5.02 hereof, may be used for the Borough's professionals and the Planning Board's professionals to satisfy the obligations and timelines set forth in this Section 2.05(e). The Redeveloper may not commence construction of a Component Project until such time as the Redeveloper has satisfied all pre-construction requirements prescribed by all Applicable Law.

(g) The Borough acknowledges and agrees that the Barnes & Noble Project, which includes the relocation of the existing Barnes & Noble store to another existing building and the retrofitting of such other existing building, shall not require site plan approval or any other board or agency approval prior to issuance of a zoning permit and/or building permit for such work. Furthermore, the Parties acknowledge and agree that once the Project has obtained approval of the Preliminary and Final Major Site Plan and Preliminary and Final Major Subdivision application, any construction/demolition/renovation or changes to the interior or exterior of the Retail Component (including but not limited to façade treatment, signage, demising wall location, interior layout and unit size), in order to accommodate prospective tenants shall not require additional or new site plan approval, provided however, that such work shall not modify the footprint previously approved by the Planning Board or trigger the need for any new variances.

(h) The Redevelopment Project Site or any portion(s) thereof may require environmental remediation, mitigation or clean up including but not limited to the demolition of a portion of existing structures on the Redevelopment Project Site and the disposal of materials generated thereby, all in accordance with and as required by the NJDEP (collectively, the "Environmental Remediation"). The Parties agree that any Environmental Remediation, mitigation or cleanup process may be time consuming and may involve many of the same steps the Redeveloper must take for site preparation. To proceed with all of these related activities in as economical and efficient manner as possible, the Borough will use good faith efforts to have the Borough's staff and consultants authorize any local Governmental Approvals required by the Redeveloper, subject to all Applicable Law, under which the Environmental Remediation, mitigation or cleanup activities may proceed.

2.06. Governmental Approval Fees. The Redeveloper shall pay all the Borough's permit, application, escrow and approval fees (Borough Fees) and other non-Borough fees for Governmental Approvals, which include any application fees for Governmental Approvals payable by the Borough to all required Governmental Bodies other than the Borough in connection with the Redevelopment Project, or application fees for which the Borough is required to reimburse other Governmental Bodies in connection with Governmental Approvals.

2.07. Project Construction. All construction shall be performed strictly in accordance with all Applicable Law and Governmental Approvals and the Redeveloper shall diligently pursue completion of the construction of the Project Improvements in accordance with the Redevelopment Project Schedule. The Redeveloper may proceed with the Redevelopment Project in phases and with one or more concurrent Component Projects at a time as it determines; provided however, that Redeveloper shall commence the Retail Component Project first and will continue pursuing same while commencing one or more of the Phase 1 Residential Component, the Phase 2 Residential Component, and/or the Phase 3 Residential Component; and provided, further, however, that (a) prior to and as a condition to the Borough's issuance of any Certificate of Occupancy for the final building in the Phase 2 Residential Component, Redeveloper shall have achieved substantial completion for at least 70% in the aggregate of the Retail Component, and (b) prior to and as a condition to the Borough's issuance of any Certificate of Occupancy for the final building in the Phase 3 Residential Component, Redeveloper shall have achieved substantial completion for at least 85% in the aggregate of the Retail Component. The Redeveloper shall develop the Central Green Space, as depicted on the site plans, concurrently with the Phase 1 Residential Component.

2.08. Independent Component Projects. The Borough acknowledges that, pursuant to Section 2.11 hereof, a Certificate of Completion and Compliance may be issued in connection with each Component Project or Subcomponent Project, independent of the status of construction of any other Component Project or Subcomponent Project, and that upon the issuance of any such Certificate of Completion and Compliance for a Component Project or Subcomponent Project, such Component Project and Component Project Site, or Subcomponent Project and Subcomponent Project Site, shall no longer be subject to this Agreement or the Declaration. Further, and for the avoidance of doubt, an Event of Default by an Affiliate with respect to its obligations in connection with its Component or Subcomponent shall not constitute or be deemed

an Event of Default by any other Affiliate in respect of any other Component or Subcomponent, and the Borough shall exercise its remedies under this Agreement or at law or in equity against the defaulting Affiliate solely with respect to its relevant Component or Subcomponent. Following the commencement of construction of any Component Project or Subcomponent Project, an Event of Default by any other Affiliate with respect to such other Component Project or Subcomponent Project shall not constitute or be deemed an Event of Default by any other Affiliate in respect of its relevant Component Project or Subcomponent Project.

2.09. Redevelopment Project Schedule. The Parties agree and acknowledge that the Redevelopment Project Schedule shall set forth Governmental Approvals for each Component Project, on a phased basis, and is intended to provide a commercially reasonable and general framework for the orderly entitlement and construction of the Redevelopment Project and Component Projects. Although Redeveloper shall make good faith and commercially reasonable efforts to adhere as closely as possible to the Redevelopment Project Schedule, the time periods and deadlines contained therein are intended to be “target” dates and may be adjusted accordingly, based upon delays caused by matters outside of Redeveloper’s reasonable control, including, without limitation, timing for obtaining Governmental Approvals. Therefore, time shall not be of the essence with respect to the Redevelopment Project Schedule, but instead the Redevelopment Project Schedule shall be adhered to the extent commercially reasonable and in good faith. Redeveloper shall notify the Borough of modifications of the dates set forth in the Redevelopment Project Schedule within fourteen (14) calendar days of any such changes.

2.10. Amendment of Redevelopment Plan; Modification of Project Improvements.

(a) Upon request by the Redeveloper, the Borough agrees that it will consider for approval a request by the Redeveloper to amend the Redevelopment Plan in order to accommodate variations to the Redevelopment Project, provided such variations are generally consistent with the intent and purpose of the Redevelopment Plan, such approval shall not be unreasonably withheld.

(b) The Parties agree that if the Redevelopment Plan needs to be amended for any reason in the future, that the Party making the request shall do so in writing with supporting documentation reasonably satisfactory to the other Party, and the other Party shall provide a response within fourteen (14) calendar days. The reply will address only the conceptual response and any formal application to change the Redevelopment Plan must follow the requirements of

Applicable Law.

(c) Notwithstanding the foregoing, the Borough shall not amend the Redevelopment Plan still applicable to portions of the Redevelopment Project that have not yet received a Certificate of Completion and Compliance without the prior express written consent from Redeveloper.

2.11. Certificate of Completion and Compliance. Upon completion of each Component Project (or a portion thereof, as applicable), as evidenced by the issuance of a Certificate of Occupancy therefor (which issuance may be subject to the posting of a performance bond for completion of improvements not covered by the Certificate of Occupancy, e.g., public improvements, landscaping, etc.), the Redeveloper shall provide a certificate from an authorized representative of the Redeveloper and from the Redeveloper's engineer and architect stating that: (a) construction and redevelopment of the subject Component Project (or portion thereof) has been substantially completed in accordance with the approved final site plan approval(s) and all labor, services, materials and supplies used in such construction and installation have been paid for or a bond or surety has been established in an amount sufficient to cover all outstanding claims; (b) all other facilities necessary in connection with the subject Component Project (or portion thereof) have been constructed or improved in accordance with the final site plan approval(s) and all costs and expenses incurred in connection therewith have been paid free of any construction liens or a bond or surety has been established in an amount sufficient to cover all outstanding claims; (c) all improvements, and all equipment and components thereof, which are necessary for the full operation of the subject Component Project (or portion thereof) have been installed to the Redeveloper's satisfaction, and as so installed are suitable and sufficient for the efficient operation of the subject Component Project (or portion thereof) for its intended purposes; (d) a Certificate of Occupancy, and any other permissions required, if any, of governmental authorities or agencies having jurisdiction over the subject Component Project (or portion thereof), for the occupancy and use of all portions of the subject Component Project (or portion thereof) for the purposes contemplated by this Redevelopment Agreement and the Redevelopment Plan, have been obtained; (e) the subject Component Project (or portion thereof) is complete and ready for use as intended and approved; and (f) in the case of the Retail Component, all Net Amounts Due (including any Net Amounts Due that are not yet payable) shall have been paid or provision thereof has been made in accordance with Section 5.05(c) hereof, upon which time the Redeveloper shall

be entitled to receive a Certificate of Completion and Compliance within thirty (30) calendar days of Redeveloper's submission of a request for such Certificate of Completion and Compliance. The Certificate of Completion and Compliance shall be in a form substantially as set for in **Exhibit D** attached hereto and made a part hereof. The Certificate of Completion and Compliance shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Redevelopment Agreement and in the Redevelopment Plan with respect to the Redeveloper's obligation to construct the Redevelopment Project, the subject Component Project, or portion thereof, as applicable, in accordance herewith. Upon issuance of the Certificate of Completion and Compliance, the conditions determined to exist at the time the applicable Component Project Site (or portion thereof) was determined to be an area in need of redevelopment shall be deemed to no longer exist. In the event the Borough shall fail or refuse to provide such Certificate of Completion and Compliance within thirty (30) calendar days of Redeveloper's written request, the Borough shall promptly provide the Redeveloper with a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the subject Component Project (or portion thereof) in accordance with the provisions of this Agreement or is otherwise in default under this Agreement and what measures or acts will be necessary in the opinion of the Borough for the Redeveloper to be entitled to such Certificate of Completion and Compliance.

ARTICLE 3

EXISTENCE OF UTILITIES; INFRASTRUCTURE

3.01 Existing and Public Utility Rights and Improvements. The Redeveloper acknowledges that local public utility providers may have certain rights with respect to the Redevelopment Project Site and may own certain facilities located therein. The Redeveloper agrees that it is the Redeveloper's sole responsibility, at its sole cost and expense, to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefor, in order to complete the Redevelopment Project as provided by this Redevelopment Agreement, provided that the Borough shall provide any appropriate letter of support to accomplish such relocation, consistent with the provisions of N.J.S.A. 40A:12A-10. The Redeveloper shall consult local public utility providers with respect to

all Redevelopment Project preparation and construction, and shall take all precautions to prevent personal injury, property damage and other liabilities related to utilities above, at or under the Redevelopment Project Site, including, but not limited to, assuring uninterrupted utility service to all properties during construction.

3.02 Water and Sewer Connection Fees. The Redeveloper shall be responsible for any infrastructure improvements required to accommodate full development of the Redevelopment Project, including but not limited to streets, sanitary sewers, storm sewers, utility lines and drainage facilities. The Borough shall reasonably utilize any authority which it may have under Applicable Law to assist the Redeveloper in the approval and construction of infrastructure improvements required for the Redevelopment Project. The Borough shall also cooperate with the Redeveloper as an applicant or in any other capacity to assist the Redeveloper in obtaining approvals for any infrastructure improvements required for the Redevelopment Project. In furtherance of same, the Redeveloper shall pay all water and sewer connection fees due to the Borough or other agency, subject to applicable credits for existing connections as offset against new connection fees.

3.03 Refuse and Recycling. The Redeveloper shall be solely responsible for all costs associated with the removal of trash, refuse and recycling generated by the Redevelopment Project, and shall make all arrangements with a private waste hauler of its choosing for the removal of same. The Borough will not be responsible for the removal of trash, refuse and recycling generated by the Redevelopment Project and shall not be required to provide any type of financial reimbursement to the Redeveloper for the costs associated with such removal.

3.04 Cooperation. Both Parties shall fully cooperate with each other as necessary to accomplish the Redevelopment Project, including entering into additional agreements that may be required provided, however, that such actions shall not result in a material increase in the Parties' respective obligations hereunder or material decrease in the Parties' respective rights hereunder.

ARTICLE 4

PROJECT OVERSIGHT

4.01 Access to Property. Upon reasonable prior notice and accompaniment by a representative of the Redeveloper, the Borough and its authorized representatives shall have the right to enter the Redevelopment Project Site to inspect the site and any and all work in progress

for the purpose of furthering its interest in this Redevelopment Agreement; provided, however, that Borough hereby acknowledges that the Redevelopment Project Site will be an active construction site. Such entrance shall be for informational purposes and shall not relieve the Redeveloper from its obligation to implement the Redevelopment Project in accordance with this Redevelopment Agreement. In no event shall the Borough's inspection of the Redevelopment Project be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement.

4.02. Borough Indemnification. Borough hereby agrees to indemnify, protect, defend, and hold harmless Redeveloper and Redeveloper's partners, shareholders, agents, employees, and representatives (collectively, the "Redeveloper Indemnified Parties") from and against any and all actual losses, damages (excluding special, consequential, punitive and indirect damages), claims (including, without limitation, claims for mechanic's liens or materialmen's liens), liabilities, causes of action, demands, obligations, judgments, out-of-pocket costs and expenses of any kind whatsoever actually suffered, incurred, or sustained by any of the Redeveloper Indemnified Parties in connection with or arising out of (i) any inspections or any action taken by Borough or Borough's representatives, consultants or agents at the Redevelopment Project Site carried on by or on behalf of Borough, or (ii) the breach of the terms and conditions of this Article 4 of this Agreement relating to the access of Borough's representatives to the Redevelopment Project Site.

ARTICLE 5

REDEVELOPER AND BOROUGH FINANCIAL OBLIGATIONS

5.01 Reimbursable Borough Costs. The Redeveloper shall provide the Borough with the reimbursement of out-of-pocket costs incurred by the Borough in connection with the Redevelopment Project ("Reimbursable Borough Costs"). Reimbursable Borough Costs shall include the reasonable fees and costs of any attorney, engineer, traffic consultant, architect, planner or other consultant(s) retained by the Borough in connection with the preparation and drafting of the Redevelopment Plan and all Amendments thereto, this Redevelopment Agreement, and the Financial Agreements, and professional fees associated with compliance and review of the implementation of this Redevelopment Agreement, the Financial Agreements, and any amendments thereto, but shall not include the costs of wages, salaries and benefits paid to employees of the Borough providing services in furtherance of the Redevelopment Project.

5.02 Payment of Reimbursable Borough Costs. (a) The Parties acknowledge and agree

that the Redeveloper has previously funded an escrow account (the “Escrow Account”) established by the Borough’s Chief Financial Officer exclusively for the Reimbursable Borough Costs solely relating to the Redevelopment Project, having an initial balance of Fifteen Thousand (\$15,000.00) Dollars to cover the Reimbursable Borough Costs. The Parties acknowledge and agree that such Escrow Account and any remaining funds therein shall be applied and continue under this Redevelopment Agreement in accordance with this Section 5.02.

(b) Prior to and as a condition to the Borough’s withdrawal of funds from the Escrow Account for the payment of Reimbursable Borough Costs, the Borough shall provide the Redeveloper with a copy of each invoice reflecting the Reimbursable Borough Costs to be paid. Unless the Redeveloper provides a written objection within twenty (20) calendar days of its receipt of any such copy of an invoice stating that any invoiced item is not a valid Reimbursable Borough Cost pursuant to the terms of this Redevelopment Agreement, the Borough shall be free to withdraw funds from the Escrow Account for the payment of such invoiced services; provided, however, that the Redeveloper’s failure to object within such twenty (20) calendar days shall not be a waiver of Redeveloper’s rights to dispute such payment pursuant to the provisions of N.J.S.A. 40:55D-53.2 et seq. If, when and as often as may occur that, the Escrow Account is drawn down to or below Three Thousand (\$3,000.00) Dollars, the Borough shall so notify the Redeveloper and the Redeveloper shall promptly thereafter provide to the Borough an amount sufficient to replenish the Escrow Account to Ten Thousand (\$10,000.00) Dollars for use in accordance with the terms of this Redevelopment Agreement. The Redeveloper shall also have the right to request a decrease in the balance required on the Escrow Account as the Redevelopment Project progresses, which request shall not be unreasonably denied by the Borough.

5.03 Financial Agreements. Redeveloper has applied to the Borough for approval of one or more financial agreements (collectively, the “Financial Agreements”) providing for, among other things, a long term tax exemption and payments in lieu of taxes (“PILOTs”) pursuant to the Long Term Tax Exemption Law, codified at N.J.S.A. 40A:20-1 et seq. (the “Exemption Law”) on a portion of the Redevelopment Project Site. If and to the extent available under Applicable Law, and as requested by Redeveloper, the Borough agrees to consider Redeveloper’s application for the Financial Agreements in good faith, but Redeveloper acknowledges that the Borough retains full discretion whether to grant its approval of same. In the event that the Borough fails to duly approve and execute the Financial Agreements, and/or if the NJLFB does not approve the RABs,

Redeveloper may elect to terminate this Redevelopment Agreement by providing Notice to that effect to the Borough. Upon such termination, this Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder, except for those rights and obligations that have accrued prior to such termination and by their nature are intended to survive.

5.04 Project Costs and Financing. The Redeveloper will, at its sole cost and expense, construct the Redevelopment Project as required by the terms of the Redevelopment Agreement and the Governmental Approvals. Redeveloper agrees that all costs associated with the acquisition, development and financing of the Redevelopment Project are the sole responsibility of Redeveloper. Redeveloper represents that it either has obtained or will obtain financing for the Redevelopment Project. Upon request, the Redeveloper shall submit to the Borough evidence of financing commitments for construction financing.

5.05 Settlement of Tax Appeals. (a) The Parties acknowledge and agree that the Redeveloper (via its affiliates owning the Redevelopment Area) has tax appeals pending in the Tax Court of New Jersey (the “Tax Court”) for the years 2018 through 2023 as detailed in **Exhibit E** hereto (the “Tax Appeals”). The Parties have agreed to settle all issues and claims involved in the Tax Appeals in accordance with those certain Stipulations of Settlement (“Stipulations”), to be entered into by and between the Borough and each of the various land-owning affiliates of Redeveloper as set forth on **Exhibit E**. The Parties and Affiliates shall execute and deliver in escrow the duly executed Stipulations to be held in escrow by [REDACTED] (the “Escrow Agent”) until such time that (i) final subdivision and site plan approval have been obtained, and all items for the site plan approving resolution compliance have been satisfied, and (ii) the Financial Agreements and issuance of the RABs shall have been duly authorized and non-appealable, including without limitation approval by the NJLFB of the Borough’s issuance of the RABs and the Borough’s due and final adoption of the Bond Resolution authorizing the Trust Indenture, Pledge Agreement, and related instruments required for the issuance of the RABs. Upon satisfaction or waiver, as applicable, of the foregoing conditions, the Parties shall submit a joint written direction to the Escrow Agent directing it to file the Stipulations with the Tax Court.

(b) In further consideration of the Parties’ settlement of the Tax Appeals and of the Parties’ respective rights and obligation hereunder, upon the Tax Court’s final and non-appealable

approval of the Stipulations, as provided in Section 5.05(a) above, the Redeveloper shall be obligated to pay to the Borough the following payments in this Section 5.05(b).

(i) For the calendar year 2023, Redeveloper shall be obligated to pay to the Borough the amount equal to Four Million Five Hundred Seventy Thousand Three Hundred Thirty-Eight Dollars (\$4,570,338.00) (the “2023 Payment Obligation”), minus ordinary taxes paid in the year 2023 for the Redevelopment Area excepting out the Macy’s Subcomponent Project Site, minus any PILOTs (if any) paid for any portion of the Redevelopment Project Site in the year 2023. The Parties acknowledge and agree that by the time Tax Court approves the Stipulations, the ordinary taxes already paid by the land-owning affiliates of Redeveloper in the Redevelopment Area will be in excess of the 2023 Payment Obligation. As such, the Parties agree that the difference between (A) the amount of ordinary taxes paid in the year 2023 for the Redevelopment Area (excepting out the Macy’s Subcomponent Project Site) and (B) the 2023 Payment Obligation, shall be credited against the 2024 Payment Obligation (as hereinafter defined).

(ii) For the calendar year 2024, Redeveloper shall be obligated to pay to the Borough the amount equal to Four Million Five Hundred Seventy Thousand Three Hundred Thirty-Eight Dollars (\$4,570,338.00) (the “2024 Payment Obligation”), minus ordinary taxes paid in the year 2024 for the Redevelopment Area excepting out the Macy’s Subcomponent Project Site, minus any PILOTs (if any) paid for any portion of the Redevelopment Project Site in the year 2024 (the “2024 Payment Obligation Net Amount Due”). The calculation of the 2024 Payment Obligation Net Amount Due shall be made on a quarterly basis, after the quarterly payments of ordinary taxes are made and the quarterly payment of PILOTs (if any) are paid. The 2024 Payment Obligation Net Amount Due shall be paid no later than fifteen (15) day after ordinary taxes are paid, subject to adjustment for over payment or underpayment within thirty (30) Days after the close of each calendar year.

(iii) For the calendar year 2025, Redeveloper shall be obligated to pay to the Borough the amount equal to Four Million Three Hundred Thirty Five Thousand Five Hundred Dollars (\$4,335,500.00) (the “2025 Payment Obligation”), minus ordinary taxes paid in the year 2025 for the Redevelopment Area excepting out the Macy’s Subcomponent Project Site, minus any PILOTs (if any) paid for any portion of the Redevelopment Project Site in the year 2025 (the “2025 Payment Obligation Net Amount Due”). The calculation of the 2025 Payment Obligation

Net Amount Due shall be made on a quarterly basis, after the quarterly payments of ordinary taxes are made and the quarterly payment of PILOTs are paid. The 2025 Payment Obligation Net Amount Due shall be paid no later than fifteen (15) day after ordinary taxes are paid, subject to adjustment for over payment or underpayment within thirty (30) Days after the close of each calendar year.

(iv) For the calendar year 2026, Redeveloper shall be obligated to pay to the Borough the amount equal to Four Million One Hundred Thirty-Five Thousand Five Hundred Dollars (\$4,135,500.00) (the “2026 Payment Obligation”), minus ordinary taxes paid in the year 2026 for the Redevelopment Area excepting out the Macy’s Subcomponent Project Site, minus any PILOTs paid for any portion of the Redevelopment Project Site in the year 2026 (the “2026 Payment Obligation Net Amount Due”). The calculation of the 2026 Payment Obligation Net Amount Due shall be made on a quarterly basis, after the quarterly payments of ordinary taxes are made and the quarterly payment of PILOTs are paid. The 2026 Payment Obligation Net Amount Due shall be paid no later than fifteen (15) day after ordinary taxes are paid, subject to adjustment for over payment or underpayment within thirty (30) Days after the close of each calendar year.

(v) For the calendar year 2027, Redeveloper shall be obligated to pay to the Borough the amount equal to Three Million Eight Hundred Thirty Five Thousand Give Hundred Dollars (\$3,835,500.00) (the “2027 Payment Obligation”), minus ordinary taxes paid in the year 2027 for the Redevelopment Area excepting out the Macy’s Subcomponent Project Site, minus any PILOTs paid for any portion of the Redevelopment Project Site in the year 2027 (the “2027 Payment Obligation Net Amount Due”, together with the 2024 Payment Obligation Net Amount Due, the 2025 Payment Obligation Net Amount Due, and the 2026 Payment Obligation Net Amount Due, collectively, the “Net Amounts Due”). The calculation of the 2027 Payment Obligation Net Amount Due shall be made on a quarterly basis, after the quarterly payments of ordinary taxes are made and the quarterly payment of PILOTs are paid. The 2027 Payment Obligation Net Amount Due shall be paid no later than fifteen (15) day after ordinary taxes are paid, subject to adjustment for over payment or underpayment within thirty (30) Days after the close of each calendar year.

(vi) From and after January 1, 2028, Redeveloper shall not be obligated to pay any further amounts pursuant to this Section 5.05(b).

(c) (i) Simultaneously with execution and delivery of this Agreement, Redeveloper shall cause the Affiliates of Redeveloper that own the Redevelopment Project Site, VM Kushner LLC and Eatontown Monmouth Mall LLC, to execute and deliver to the Borough payment guaranty agreements, in form reasonably acceptable to the Parties hereto (the “Guarantee Agreements”). The Guarantee Agreements will secure the obligations of Redeveloper to make payments of the Net Amounts Due. Upon perfection of the subdivision of the Redevelopment Project Site and conveyance of the Retail Component Project Site to the Retail URE Affiliate, the Redeveloper shall assign the obligations set forth in Section 5.05(b) above to the Retail URE Affiliate and the Retail URE Affiliate shall assume same. In the event that the Retail URE Affiliate thereafter further assigns the General Retail Subcomponent Project, the Boscov’s Subcomponent Project, and/or the Whole Foods Subcomponent Project to appropriate Affiliates, then the Retail URE Affiliate shall assign the obligations set forth in Section 5.05(b) above to the Affiliates undertaking the General Retail Subcomponent Project, the Boscov’s Subcomponent Project, and the Whole Foods Subcomponent Project in accordance with the following pro rata shares: Seventy-Five (75%) Percent to the Affiliate undertaking the General Retail Subcomponent Project, Twelve (12%) Percent to the Affiliate undertaking the Whole Foods Subcomponent Project, and Thirteen (13%) Percent to the Affiliate undertaking the Boscov’s Subcomponent Project.

(ii) The Parties acknowledge and agree that upon completion of the Retail Component (and/or the General Retail Subcomponent Project, the Boscov’s Subcomponent Project, or the Whole Foods Subcomponent Project, as applicable), such that the Retail Component (or the General Retail Subcomponent Project, the Boscov’s Subcomponent Project, or the Whole Foods Subcomponent Project, as applicable) would be eligible for a Certificate of Completion and Compliance in accordance with Section 2.11 hereof, but for any outstanding obligations to make payments of the Net Amounts Due, then upon request by the Retail URE Affiliate (or the applicable Affiliate undertaking the General Retail Subcomponent Project, the Boscov’s Subcomponent Project, or the Whole Foods Subcomponent Project, as applicable), the Borough shall issue a conditional Certificate of Completion and Compliance acknowledging that the Retail Component (and/or the General Retail Subcomponent Project, the Boscov’s Subcomponent Project, or the Whole Foods Subcomponent Project, as applicable) has been completed and is otherwise eligible for a Certificate of Completion and Compliance but for the outstanding obligations to make payments of the Net Amounts Due. Upon completion of payments of all Net

Amounts Due, the Borough shall promptly issue a Certificate of Completion and Compliance.

(iii) Notwithstanding the foregoing in Section 5.05(c)(ii), the Redeveloper, the Retail URE Affiliate, or the applicable Affiliate undertaking the General Retail Subcomponent Project, the Boscov's Subcomponent Project, or the Whole Foods Subcomponent Project, as applicable, may at any time, in its sole discretion, determine to provide payment security reasonably acceptable to the Borough in order to obtain a Certificate of Completion and Compliance, notwithstanding any Net Amounts Due that remain unpaid. The Parties acknowledge and agree that the Borough Administrator may, in his or her reasonable determination, approve and accept the type and amount of security to be provided by the Redeveloper or the Retail URE Affiliate, provided that the Parties agree that a letter of credit, note secured by a subordinate mortgage on the Retail Component Project Site, General Retail Subcomponent Project Site, the Boscov's Subcomponent Project Site, or the Whole Foods Subcomponent Project Site, as applicable, or guaranty from a sufficiently capitalized entity, in each case, in amounts equal to the estimated Net Amounts Due remaining unpaid, shall be considered reasonable security. Upon provision of such reasonably acceptable security securing the then-outstanding obligations to make payments of the Net Amounts Due, the Borough shall promptly issue a Certificate of Completion and Compliance for the Retail Component (and/or the General Retail Subcomponent Project, the Boscov's Subcomponent Project, or the Whole Foods Subcomponent Project, as applicable).

ARTICLE 6

INDEMNIFICATION; INSURANCE

6.01. Redeveloper Indemnification. Redeveloper agrees to defend, indemnify, and hold the Borough and the Borough Indemnified Parties harmless, and the Redeveloper shall pay any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, including but not limited to, any and all claims by workmen, employees and agents of the Redeveloper and unrelated third parties, which claims arise from the Redevelopment Project, which the Borough and/or the Borough Indemnified Parties may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, in connection with the condition, use, possession, conduct, management, planning, design, construction installation,

financing, marketing, leasing, or sale of the Redevelopment Project or based upon or arising out of the actual breach of contract by the Redeveloper of contracts entered into by the Redeveloper, which directly relate to the Redevelopment Project, except for any claim or suit arising from the gross negligence or intentional and willful acts of the Borough and/or the Borough Indemnified Parties.

6.02. Insurance Coverage. (a) At all times during the construction of a particular Component Project, the Redeveloper shall maintain or cause to be maintained at its own cost and expense, with responsible insurers, the following kinds and the following amounts of insurance for such Component Project, with such variations as shall reasonably be required to conform to customarily insurance practice.

(i) Builder's Risk Insurance for the benefit of the Redeveloper during the term of construction of the subject Component Project which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief. The limits of liability will be equal to one hundred (100%) percent of the insurable value of the subject Component Project, except where sub-limited, including items of labor and materials connected therewith, whether in or adjacent to the structure insured, and materials in place or to be used as part of the permanent construction.

(ii) Comprehensive General Liability Insurance (including coverage for any construction on or about each Component Project Site) against claims for bodily injury, death or property damage occurring on, in or about the subject Component Project Site, in amounts not less than Three Million (\$3,000,000.00) Dollars for each claim with respect to any bodily injury or death, with respect to any one occurrence and Three Million (\$3,000,000.00) Dollars with respect to all claims for property damage relating to any one (1) occurrence, which may be satisfied with combined General and Excess Liability coverages;

(iii) Worker's Compensation Insurance coverage in the amount of the full statutory liability of the Redeveloper.

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

environmental liability.

(b) Prior to the commencement of construction of a particular Component Project, the Redeveloper shall submit to the Borough proof of all applicable insurance(s). Redeveloper shall provide such proof of insurance which indicates that the policy(ies) name the Borough, its elected and appointed officials, officers, agents, servants, representatives, employees and/or its assigns and Borough's consulting engineers, its officers, agents, servants, representatives, employees, successors and assigns, as additional insureds with respect to their interest in work performed by the above named insured for the subject Component Project (except for Worker's Compensation or Automobile Coverage, if applicable, insurance). The policy(ies) shall indemnify and hold harmless the Borough, its elected and appointed officials, officers, agents, servants, representatives, employees, and/or its assigns, Borough's consulting engineers, its officers, agents, servants, representatives, employees, successors and assigns, and its designated engineering consultants and their assigns and employees against any claims, liabilities, damages, costs or expenses of every kind and nature arising from Redeveloper's performance of Redeveloper's obligations pursuant to this Agreement pertaining to such Component Project, the failure by Redeveloper to perform such obligations, any action or failure to act by Redeveloper with respect to the such Component Project or in connection with any allegation of any of the foregoing. Upon each anniversary date of this Redevelopment Agreement, the Redeveloper shall submit the aforementioned proofs of insurance until the Borough's issuance of the Certificate of Completion and Compliance for the subject Component Project(s), as applicable.

ARTICLE 7

COVENANTS AND RESTRICTIONS

7.01. Declaration of Covenants and Restrictions. The covenants and restrictions set forth in Section 7.02 hereof shall hereinafter be referred to as the "Covenants and Restrictions". As soon as practicable after full execution of this Redevelopment Agreement, the Redeveloper shall record a Declaration of Covenants and Restrictions, in the form attached hereto as Exhibit G (hereinafter referred to as the "Declaration"), with respect to the Redevelopment Project Site, which, subject to the terms hereof, shall run with the land to all Transferees, imposing upon said lands the Covenants and Restrictions pursuant to Section 7.02, until such time that a Certificate of Completion and Compliance is issued for each Component Project Site. Upon subdivision of the

Redevelopment Project Site and transfer of each Component Project Site or Subcomponent Project Site to the applicable Affiliate, except for the Macy's Subcomponent Project Site (unless the conditions in Section 2.03(c) are satisfied) and the Optional MOB Component Project Site (unless Redeveloper determines to undertake same), the Borough shall execute and deliver a Discharge of Declaration, in the form attached hereto as **Exhibit G-1** and Redevelopers shall be entitled to record same. Following the recording of the Discharge of Declaration, each applicable Affiliate Transferee shall record a separate Declaration for each Component Project Site or Subcomponent Project Site, as applicable, in the form attached hereto as **Exhibit G** with respect to the applicable Component Project Site or Subcomponent Project Site, which, subject to the terms hereof, shall run with the land to all Transferees, imposing upon said lands the Covenants and Restrictions pursuant to Section 7.02, until such time that a Certificate of Completion and Compliance is issued for each Component Project Site or Subcomponent Project Site.

7.02. Description of Covenants and Restrictions. The Covenants and Restrictions to be imposed upon the Redeveloper, and its Transferee(s), and recorded in the Declaration, shall set forth that the Redeveloper and its Transferees shall:

(a) Devote the Redevelopment Project Site to the uses specified in the Redevelopment Plan and shall not devote the Redevelopment Project Site to any other uses without the approval of the Borough.

(b) To the extent provided for by Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status in the sale, lease, use or occupancy of the Redevelopment Project Site or any Improvements, buildings or structures erected or to be erected thereon, or any portion thereof. This shall survive the termination of this Redevelopment Agreement.

(c) To the extent provided for by Applicable Law, in the sale, lease or occupancy of the Redevelopment Project Site or any portion thereof, not effectuate or execute any covenant, lease agreement, conveyance or other instrument whereby the land or any Improvement, building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status, and the Redeveloper, its successors and Transferee(s) shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion,

ancestry, national origin, sex or marital status. This shall survive the termination of this Redevelopment Agreement.

(d) Not sell, lease or otherwise Transfer the Redevelopment Project Site, or any portion thereof, without the written consent of the Governing Body, as set forth in Section 8.02 hereof, other than those Transfers deemed to be Permitted Transfers pursuant to Section 8.03 hereof.

(e) The Redeveloper and its Transferees covenant and agree that they shall be solely responsible for the costs associated with the collection, storage, removal and disposal of all waste and recyclables associated with the Redevelopment Project Site and its uses despite or notwithstanding the provisions under N.J.S.A. 40:66-1.3. Redeveloper and its Transferees covenant, agree, and acknowledge that despite the Borough's provision of waste collection services given to residents of the Borough and the Redeveloper's right to reimbursement of its cost of waste collection service or receipt of the Borough's services, Redeveloper and its Transferees are and shall be nevertheless responsible for all costs related to the collection, storage, removal and disposal of all waste and recyclables associated with the Redevelopment Project Site and its uses. Redeveloper and its Transferees shall provide notice of the identity of the contractor or responsible entity for the waste removal to the Director of the Department of Public Works for the Borough. As such, Redeveloper and its Transferees hereby affirmatively and expressly waive and forgo, in perpetuity, any and all rights, claims, and/or damages available to them, in law or otherwise, which they may assert against the Borough related to cost reimbursement or waste collection service, including, but not limited to, the circumstances described in this section, and accept and agree that Redeveloper and its Transferees are solely responsible for the collection, storage, removal and disposal of all waste and recyclables associated with the Redevelopment Project Site and its uses.

7.03. Effect and Term of Covenants and Restrictions. The Parties acknowledge and agree, and the Declaration shall so expressly provide, that the Covenants and Restrictions set forth in Section 7.02 hereof shall be covenants running with the land until a Certificate of Completion and Compliance is issued for each subject Component Project Site or Subcomponent Project Site, as applicable, 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 the Applicable Law, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, against the Redeveloper, or its Transferee(s). It is further intended and agreed that the Covenants and Restrictions set forth in Section 7.02 hereof shall remain in effect until the issuance by the Borough of a Certificate of Completion for each subject Component Project Site or Subcomponent Project Site, as applicable, as provided for in Section 2.11 hereof, at which time all terms, conditions, obligations, including the Covenants and Restrictions set forth in this Agreement, shall cease and terminate as to the subject Component Project Site or Subcomponent Project Site, as applicable, except, however, that the Covenants and Restrictions provided for in Section 7.02(b) and Section 7.02(c) hereof, shall remain in effect without limitation as to time, subject to any changes in Applicable Law.

ARTICLE 8

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER; PERMITTED TRANSFERS

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

8.02. Prohibition Against Transfers. The Parties to this Redevelopment Agreement acknowledge that pursuant to Section 7.02(d) hereof, the Redeveloper has covenanted not to effectuate any Transfer without first having obtained the consent of the Borough to such Transfer, which consent shall not be unreasonably withheld, conditioned or delayed, except for those Transfers deemed to be a Permitted Transfer under Section 8.03, for which no consent is necessary.

8.03. Permitted Transfers. Notwithstanding anything to the contrary, including without limitation the covenants and restrictions contained in Section 7.02 and Section 8.02, the following Transfers are deemed to be “Permitted Transfers” and shall serve as exceptions to the general prohibition set forth in Section 7.02(d) and in Section 8.02 hereof and shall not require approval of the Borough, shall not require prior written notice to the Borough, and shall not be subject to the conditions of Transfer set forth in Section 8.06:

(a) A public offering statement filing with the State of New Jersey, Department of Community Affairs;

(b) Utility and other development easements, which shall be exempt from notice requirements set forth in Section 8.04;

(c) Conveyances, purchase and sale contracts or leases to an ultimate user or tenant of any portion of the Redevelopment Project Site or the Project Improvements, which shall be exempt from notice requirements set forth in Section 8.04;

(d) A change in the membership of the Redeveloper or any of its Affiliates;

(e) Transfer of any interest in the Redevelopment Project Site, the Redevelopment Project, the Project Improvements and/or this Redevelopment Agreement to an Affiliate, or a Transferee controlled by, or controlling, the Redeveloper (or controlled by, or controlling, one or more members of the Redeveloper with control of the Redeveloper), or a joint venture partner or development partner, provided such joint venture partner or development partner qualifies under Section 8.06 hereof;

(f) Transfer of any interest in the Redevelopment Project Site, the Redevelopment Project, the Project Improvements and/or this Redevelopment Agreement to a qualified urban renewal entity, with membership that may be different from Redeveloper, provided such Transferee qualifies under Section 8.06 hereof;

(g) Transfer to any spouse or issue of any Member of Redeveloper or to a trust created for any one of their benefits;

(h) Financing encumbrances for any purpose related to any portion of the Redevelopment Project Site or the Redevelopment Project (“Mortgages”), including but not limited to construction financing, bridge loans, purchase financing and/or mortgages placed upon the Redevelopment Project Site or the Project Improvements, which shall be exempt from notice requirements set forth in Section 8.04;

(i) Transfer by foreclosure; and

(j) Execution of any contract or agreement with respect to any of the foregoing exceptions, which shall be exempt from notice requirements set forth in Section 8.04.

8.04. Notice of Permitted Transfers. Unless otherwise exempted from providing notice under Section 8.03, above, with respect to any of the Permitted Transfers listed in Section 8.03 hereof, the Redeveloper shall provide the Borough with written notice within thirty (30) days of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the

name(s) and address(es) of the Transferee(s) involved. No notice shall be required to effectuate any Permitted Transfers listed in Section 8.03 and Permitted Transfers shall become effective immediately upon consummation. Failure to provide notice of a Permitted Transfer shall not constitute an Event of Default.

8.05. Transfers in Violation of this Redevelopment Agreement. Any Transfer not constituting a Permitted Transfer under Section 8.03 shall be deemed to be a Redeveloper Event of Default and shall be null and void *ab initio*, except if such Transfer is approved by the Borough in accordance with Section 8.06. The occurrence of such Redeveloper Event of Default shall entitle the Borough to seek all available remedies under the terms of this Redevelopment Agreement, including the right to terminate this Redevelopment Agreement and all other remedies available under Applicable Law.

8.06. Other Transfers. As to Transfers other than Permitted Transfers set forth in Section 8.03, the Borough may approve such Transfers upon written request of the Redeveloper and may require, as a condition to its approval of such Transfer, that:

(a) The proposed Transferee will have qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken in this Redevelopment Agreement with respect to the Transferred portion of the Redevelopment Project and other obligations pursuant to Governmental Approvals or any part of such obligations that may pertain to the Transferred interest or the Transferred portion of the Redevelopment Project Site, as determined from the following items:

(1) Audited financial statements indicating (a) net worth or (b) unencumbered lines of credit; or evidence of loan commitments sufficient to carry out the relevant aspect of the Redevelopment Project; and

(2) Submission of letters of recommendation from reputable parties for whom the prospective Transferee has undertaken a comparable development, stating that the proposed Transferee of the relevant aspect of the Redevelopment Project possesses the competence and integrity to undertake same.

(b) Any proposed Transferee, by instrument in writing reasonably acceptable to the Borough, will have expressly assumed all of the relevant obligations of the Redeveloper under this Redevelopment Agreement relating to such Transferred portion of the Redevelopment Project and

agrees to be subject to all the Covenants and Restrictions to which the Redeveloper is subject, expressly for the benefit of the Borough.

(c) Any Transferee under this Article 8 will absolutely release the Redeveloper from any and all relevant obligations under this Redevelopment Agreement which relate to the portion of the Redevelopment Project subject to the Transfer, except as to any liability or obligation of the Redeveloper as to which the Redeveloper has incurred or defaulted prior to such Transfer.

(d) The Transferee will comply with such other reasonable conditions as the Borough may find necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

(e) Notwithstanding anything to the contrary contained herein, the Borough's consent to any Transfer shall not be unreasonably withheld, conditioned or delayed. The Borough shall notify the Redeveloper whether the Borough consents to a Transfer within thirty (30) calendar days after Redeveloper's request to the Borough for such consent. If the Borough does not deliver a written response to the Redeveloper's request within said thirty (30) calendar day period, then the Borough shall be deemed to have consented to any requested Transfer.

ARTICLE 9

EVENTS OF DEFAULT AND REMEDIES

9.01. Redeveloper's Default. The Borough shall have the right to declare the Redeveloper in default of this Agreement in the event of the occurrence of any of the following (each, an "Event of Default"):

(a) The Redeveloper's failure to substantially perform any of its obligations under the terms of this Agreement;

(b) A final and unappealable determination by a court of competent jurisdiction that the Redeveloper is insolvent;

(c) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) the Redeveloper has made a general assignment for the benefit of creditors, has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations

of a petition in any bankruptcy or insolvency proceeding; (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of sixty (60) consecutive days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of sixty (60) consecutive days; or (ix) the Redeveloper shall have suspended the transaction of its usual business for the period of sixty (60) consecutive days.

(d) Failure by the Redeveloper to make any payments owed to the Borough when due pursuant to this Agreement.

9.02. Borough Default. The Redeveloper shall have the right to declare the Borough in default of this Agreement in the event of the failure by the Borough to substantially perform any covenant or condition under this Agreement.

9.03. Right to Cure Default. Upon written notice of any Event of Default pursuant to Section 9.01 or Section 9.02, either Party shall have sixty (60) calendar days to cure such Default, provided that if such Event of Default cannot reasonably be cured within sixty (60) calendar days then, providing that the Party is diligently proceeding to cure such default, the Party will have such time as is reasonably required to cure the default.

9.04. Force Majeure. Failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute an Event of Default or breach of this Agreement: labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, extreme weather conditions, accidents, war (whether or not declared), terrorism, riots, acts of God, acts (including, but not limited to, a delay in acting or a failure to act) of government (including without limitation any agency, subdivision or department of the United States of America or the State of New Jersey), denial of any Governmental Approval, pandemics, states of emergency declared or otherwise by the State of New Jersey, states of emergency declared or otherwise by the United States of America, or other causes which are beyond the reasonable control of the Party asserting an

excusable delay (the “Force Majeure”).

9.05. Default Rights and Remedies. Except as may otherwise be provided in this Agreement, including without limitation the provision of Article 11 hereof regarding Mortgagee Rights, upon the occurrence of an Event of Default not cured pursuant Section 9.03 hereof, the non-defaulting Party may terminate this Agreement by court order and avail itself of any and all remedies at law or in equity, or institute such proceedings as may be necessary or desirable in its sole discretion to exercise self-help and cure and remedy such default or breach. In the event that this Agreement is terminated by court order, the Redeveloper’s designation as the redeveloper of the Redevelopment Area shall immediately terminate, together with the Redeveloper’s rights as the Redeveloper, and the Borough shall have all rights under Applicable Law including, without limitation, the right to appoint a new redeveloper, as set forth in the Redevelopment Law. In no event shall either Party have any liability for consequential or punitive damages.

9.06. Rights and Remedies of Parties Cumulative; No Waiver by Delay. The rights and remedies of the Parties whether provided by this Agreement or by law, shall be cumulative, and except as otherwise specifically provided by this Agreement, the exercise by the Parties of any one or more of such rights or remedies shall not preclude the exercise, at the same or at different times, of any other such rights or remedies for the same default, or for the same failure in respect to any of the terms, covenants, conditions or provisions of this Agreement or any of its remedies for any other default or breach. No delay by either Party in asserting any rights or exercising any remedy shall operate as a waiver of such rights or remedy or otherwise deprive it of, or limit such rights and remedies in any way (it being the intent of this provision that a Party shall not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver by a Party with respect to any specific Event of Default by the other Party under this Section be considered or treated as a waiver of the rights of the Party with respect to any other defaults by the other Party under this Section or with respect to the particular default except to the extent specifically waived in writing.

ARTICLE 10

REPRESENTATIONS AND WARRANTIES

10.01 Borough Representations. The Borough represents and warrants to Redeveloper as follows:

(a) The Borough (i) is a public body corporate and politic of the State of New Jersey and is duly organized, validly existing and in good standing under the laws of the State of New Jersey; and (ii) has all requisite corporate power to execute, deliver and perform its obligations under this Redevelopment Agreement.

(b) The execution, delivery and performance of this Redevelopment Agreement and the transactions contemplated hereby (i) have been duly authorized by all necessary official proceedings by the Borough; (ii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which the Borough is subject or any judgment, order, writ, injunction, license or permit applicable to the Borough or its properties; and (iii) do not conflict with any provision of its charter documents, bylaws, or any material agreement or other material instrument binding upon the Borough. The Borough is not in violation of any provision of its charter documents, bylaws, or any agreement or instrument to which it is subject or by which it or any of its properties are bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could reasonably be expected to materially adversely affect the ability of the Borough to perform its obligations under this Redevelopment Agreement.

(c) The execution and delivery of this Redevelopment Agreement will result in valid and legally binding obligations of the Borough enforceable against it in accordance with the respective terms and provisions hereof, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefor may be brought.

(d) There are no pending, or to the knowledge of the Borough, threatened actions or proceedings by or before any court or administrative agency or arbitrator against or affecting the Borough that involve the Borough's execution or performance of this Redevelopment Agreement or the transactions contemplated hereby that, if adversely determined, are reasonably likely, either individually or in the aggregate, to materially adversely affect the ability of the Borough to

perform its obligations under this Redevelopment Agreement.

(e) The Borough represents and agrees to the following: it has properly designated the Redevelopment Area as an area in need of redevelopment pursuant to the Redevelopment Law; has properly adopted the Redevelopment Plan pursuant to the Redevelopment Law; the Redevelopment Area shall remain subject to the Redevelopment Plan until issuance of a Certificate of Completion and Compliance; the Borough shall not, without the prior written consent of the Redeveloper, amend or modify the Redevelopment Plan affecting any portion of the Redevelopment Project Site or Redevelopment Project for which a Certificate of Completion and Compliance has not yet been issued; and, the Borough has properly designated the Redeveloper as the redeveloper of the Redevelopment Project in accordance with the Redevelopment Law. If there is any actual or alleged defect, deficiency, error, mistake or improper exercise of authority with regard to the approval and/or content of the matters that are the subject of the representations set forth in this Section, the Borough shall take all necessary actions to rectify same and to ensure that this Agreement between the Borough and the Redeveloper is effective and shall remain in place, including adoption of any ordinance, resolution or any other rule, regulation or official action; execution of any documents necessary to ensure that same complies with the Redevelopment Law, as amended; and any other action necessary to cure any alleged defect so that the terms of the Agreement remain in place as agreed upon between the Borough and the Redeveloper.

(f) This Section 10.01 in its entirety shall survive the issuance of a Certificate of Completion and Compliance and/or the expiration or termination of this Agreement.

10.02. Redeveloper Representations. Redeveloper represents and warrants to the Borough as follows:

(a) Redeveloper (i) is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of New Jersey; and (ii) has all requisite power to execute, deliver and perform its obligations under this Redevelopment Agreement.

(b) The execution, delivery and performance of this Redevelopment Agreement and the transactions contemplated hereby; (i) have been duly authorized by Redeveloper; (ii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which Redeveloper is subject or any judgment, order, writ, injunction, license or permit applicable to Redeveloper or its properties; and (iii) do not conflict with any provision of

its governing documents, or any material agreement or other material instrument binding upon Redeveloper. Redeveloper is not in violation of any provision of its charter documents, or any agreement or instrument to which it is subject or by which it or any of its properties are bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could reasonably be expected to materially adversely affect the ability of Redeveloper to perform its obligations under this Redevelopment Agreement.

(c) The execution and delivery of this Redevelopment Agreement will result in valid and legally binding obligations of Redeveloper enforceable against it in accordance with the respective terms and provisions hereof, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefore may be brought.

(d) There are no pending or, to the knowledge of Redeveloper, threatened actions or proceedings by or before any court or administrative agency or arbitrator against or affecting Redeveloper or any of its affiliates or that involve Redeveloper's execution or performance of this Redevelopment Agreement or the transactions contemplated hereby that, if adversely determined, are reasonably likely, either individually or in the aggregate, to materially adversely affect the ability of Redeveloper to perform its obligations under this Redevelopment Agreement.

(e) Redeveloper shall not use the Redevelopment Project Site, or permit the Redevelopment Project Site to be used, in any manner which violates any Applicable Law.

(f) Redeveloper acknowledges that (i) Redeveloper shall construct only the uses established in the Redevelopment Plan; (ii) Redeveloper shall develop the Redevelopment Project in accordance with the terms of this Redevelopment Agreement; (iii) Redeveloper shall comply with the Redevelopment Law and all Applicable Law; and (iv) until such time that a Certificate of Completion and Compliance has been issued for a particular Component Project, Redeveloper shall be without power to sell that portion of the Redevelopment Project Site without the written consent, which consent shall not be unreasonably withheld, conditioned or delayed, of the Borough, except as otherwise set forth herein.

ARTICLE 11

MORTGAGEE RIGHTS

11.01 Mortgagee Rights. If Redeveloper enters into a Mortgage in accordance with the provisions of Section 8.03(h) hereof and the Borough is provided notice of such Mortgage, then the provisions of Section 11.02 through Section 11.05 hereinbelow shall apply with respect to, and inure to the benefit of, the holder of such Mortgage (“Mortgagee”). Each such holder shall be referred to herein as a “Mortgagee”.

11.02 Assignment of this Agreement. Redeveloper shall have the right to (i) pledge its interest in this Agreement to a Mortgagee without limit as to amount and on any terms Redeveloper may deem desirable, and (ii) assign Redeveloper’s interest under this Agreement to any Mortgagee as additional collateral for the payment of the indebtedness secured by the Mortgage. Any Mortgage shall only encumber that portion of the Redevelopment Project Site, or particular Component Project Site, covered by such Mortgage (such portion, the “Mortgaged Portion”). However, subject to Section 11.05 hereof, any Mortgage always shall be subject and subordinate in all respects to this Agreement. So long as the Mortgagee is not given actual physical possession of the Mortgaged Portion contemporaneously with the creation of a Mortgage, the making and delivery of any Mortgage shall not be deemed to constitute any assignment or transfer of this Agreement or of the interest of Redeveloper under this Agreement. No Mortgagee shall be deemed to be an assignee or transferee of this Agreement or of the interest of Redeveloper under this Agreement so as to require such Mortgagee to assume the performance of, or be bound to perform, any of the terms, covenants or conditions under this Agreement. However, subject to the provision of this Article, any Mortgagee may become the legal owner and holder of Redeveloper’s interest under this Agreement with respect to the Mortgaged Portion by foreclosure of its Mortgage or as a result of the assignment to it of this Agreement in lieu of foreclosure or otherwise. Upon so becoming the legal owner and holder, the Mortgagee, subject to the provisions of Section 11.05 hereof shall assume the performance of, and be bound to perform, all of the terms, covenants or conditions on the part of Redeveloper under this Agreement to be performed with respect to the Mortgaged Portion.

11.03 Certain Rights.

(a) No cancellation, surrender and acceptance of surrender, modification or

amendment of this Agreement shall be binding upon any Mortgagee, or affect the lien of its Mortgage, without the prior written consent of the Mortgagee (which shall not be unreasonably withheld or delayed), except for any termination of this Agreement by the Borough as a result of an Event of Default by Redeveloper, provided that the Borough shall have complied with the provisions of this Section 11.03.

(b) At the same time it serves notice to the Redeveloper of a Default pursuant to the provisions of this Agreement, the Borough shall serve a copy of such notice upon each Mortgagee in the manner contemplated in this Agreement. No such notice of Default shall be deemed to have been duly given to Redeveloper unless and until a copy thereof shall have been given to each Mortgagee.

(c) Upon the expiration of the period of time given to Redeveloper under the provisions of this Agreement to remedy the Default or cause it to be remedied or to commence an action to remedy a Default, the Borough shall give each Mortgagee notice (the “Cure Expiration Notice”) of the expiration of such period specifying whether or not the Default has been cured.

(d) In the event of a monetary Event of Default, the Mortgagee shall have the right to remedy such Event of Default by paying all amounts due within sixty (60) days after its receipt of the Cure Expiration Notice; (ii) in the case of a non-monetary Event of Default which is susceptible of a cure by the Mortgagee (a “Curable Non-Monetary Default”), the Mortgagee shall have the right to remedy such Event of Default within ninety (90) days after receipt of the Cure Expiration Notice or if such Event of Default cannot reasonably be cured within such ninety (90) day period despite diligent efforts, within a reasonable time thereafter; and (iii) in the event of a Non-Monetary Default which is not susceptible to cure, the provisions of subparagraph (g) below shall apply.

(e) The Parties agree that the Event of Default shall have been cured if before the expiration of the sixty (60) day grace or cure period within which a monetary Event of Default may be remedied, the Mortgagee shall have paid to the Borough all amounts due that are then in default hereunder with respect to the Mortgaged Portion. In the case of any other Event of Default, the Parties agree that the Event of Default shall have been cured if within the ninety (90) day grace or cure period set forth in Section 11.03(d) hereof, a Mortgagee shall have cured or shall be engaged in curing all Events of Default hereunder and shall diligently complete such cure or

comply with the provisions of this Section within the time periods set forth in this Section. If such Mortgagee shall (i) fail to cure (in the case of monetary Events of Default) or fail to commence to cure (in the case of non-monetary Events of Default) such Event of Default within the applicable cure period provided in the immediately preceding sentence, or (ii) notify the Borough, in writing, that it has relinquished its claims in respect of the Mortgaged Portion or that, it will not institute foreclosure proceedings, or, if such proceedings shall have been commenced, that it has discontinued such proceedings, the Borough shall have the right to terminate this Agreement and to take any other action it deems appropriate by reason of any Event of Default by Redeveloper unless Redeveloper shall have cured the Event of Default prior to the Borough's delivery to Redeveloper of notice of termination of this Agreement. The Borough shall accept performance by or on behalf of the Mortgagee who has complied with the provisions of this Section 11.03 as if the same had been performed by Redeveloper. Such acceptance shall not thereby create any rights against the Borough in favor of such Mortgagee, nor shall such Mortgagee thereby be subrogated to any interest or right of the Borough.

(f) The Parties acknowledge that (i) there are certain types of Events of Default by Redeveloper under this Agreement which may not be capable of being cured by a Mortgagee within the time periods specified above (including, without limitation, failure by Redeveloper to perform work required to be performed or acts required to be done or to correct conditions which violate laws, ordinances, order, rules, regulations or other legal requirements) and which may only be cured if the Mortgagee shall obtain possession of the Mortgaged Portion ("Defaults Requiring Possession"). Anything herein contained to the contrary notwithstanding, upon the occurrence of any Default Requiring Possession, the Borough shall take no action to effect termination of this Agreement without first giving each Mortgagee, from and after the date that each Mortgagee shall have received notice from the Borough that such a Default Requiring Possession has occurred, a reasonable time within which to institute, and thereafter diligently prosecute, steps to obtain possession of the Mortgaged Portion and thereafter promptly commence and act diligently to cure such Default Requiring Possession, provided that the Mortgagee keeps all payments hereunder current until such Default Requiring Possession is cured. Notwithstanding the foregoing, no Mortgagee shall be obligated to continue such possession (once obtained) or to continue such foreclosure proceedings (once commenced) after any Default Requiring Possession shall have been cured, and nothing herein contained shall preclude the Borough, subject to the provisions of

this Article, from exercising any rights or remedies under this Agreement with respect to any other Event of Default by Redeveloper during the pendency of such foreclosure proceedings or the period when the Mortgagee is taking steps to obtain possession of the Mortgaged Portion.

(g) In case of the termination of this Agreement which occurs under circumstances such that the Mortgagee has not been given the opportunity to cure under the preceding provisions, the Borough shall give prompt notice thereof to each Mortgagee. Such notice shall include a statement of all sums which would then be due under this Agreement but for such termination and all other Events of Default then known to the Borough. On written request of the Mortgagee, made at any time within thirty (30) days after the giving of such notice by the Borough, the Borough shall enter into a new redevelopment agreement with respect to the Mortgaged Portion (the “Replacement Agreement”) with such Mortgagee, or a Successor Entity (as defined in Section 11.07 hereinbelow), within ninety (90) days after receipt of such request. The Replacement Agreement shall be effective as of the date of termination of this Agreement for the remainder of the term of this Agreement, upon the same terms, covenants, conditions and agreements as are herein contained; provided, however, that the Mortgagee or a Successor Entity, as the case may be, shall (i) contemporaneously with the execution of a Replacement Agreement, pay to the Borough all amounts with respect to the Mortgaged Portion which the Borough has specified as due in the notice given pursuant to this Section 11.03(g) including any past due amounts, (ii) at the time of execution and delivery of the Replacement Agreement, pay to the Borough any and all sums which would have been due hereunder with respect to the Mortgaged Portion from the date of termination of this Agreement (had this Agreement not been terminated) to and including the date of the execution and delivery of the Replacement Agreement, together with all actual and reasonable expenses, including, without limitation, reasonable attorney’s fees and disbursements incurred by the Borough in connection with the termination of this Agreement and with the execution and delivery of the Replacement Agreement and (iii) on or prior to the execution and delivery of the Replacement Agreement, agree in writing that promptly following the execution and delivery of the Replacement Agreement, such Mortgagee, subject to the provisions of Section 11.05 below, shall perform or cause to be performed all of the other covenants and agreements herein contained on Redeveloper’s part to be performed with respect to the Mortgaged Portion which are susceptible of being cured by the Mortgagee to the extent that Redeveloper shall have failed to perform the same to the date of execution and delivery of the Replacement Agreement.

Nothing herein contained shall be deemed to impose any obligation on the part of the Borough to deliver physical possession of the Mortgaged Portion to the Mortgagee, unless the Borough at the time of the execution and delivery of the Replacement Agreement shall have obtained physical possession thereof. Except as specifically set forth herein, until the Replacement Agreement is executed and delivered by the Mortgagee, or a Successor Entity, such Mortgagee or, Successor Entity, shall have no liability hereunder or under the Replacement Agreement.

(h) Subject to Section 11.05 hereof, the Mortgagee shall not be liable for the performance of Redeveloper's obligations under this Agreement unless such Mortgagee has succeeded to and has possession of the interest of Redeveloper under this Agreement.

11.04. Liability of Mortgagees. Provided that (i) a Replacement Agreement shall have been granted to a Mortgagee, or a Successor Entity, pursuant to Section 11.03 hereof, or (ii) the Mortgagee, or a Successor Entity, shall have become the legal owner and holder of Redeveloper's interest under this Agreement with respect to the Mortgaged Portion, then the Mortgagee, subject to the provisions of Section 11.05 below, shall be liable for the performance of all of Redeveloper's covenants under such Replacement Agreement or this Agreement, as the case may be, with respect to the Mortgaged Portion, from and after the effective date of such Replacement Agreement or the acquisition of such interest; provided, however, that from and after the time (a) the Mortgagee, or a Successor Entity, shall have assigned the interest of Redeveloper (in the event that the Mortgagee, or a Successor Entity, shall have become the legal owner and holder of such interest) or the Replacement Agreement (in the event that the Mortgagee, or a Successor Entity, shall have been granted a Replacement Agreement) and (b) such Successor Entity shall have delivered to the Borough an agreement in form reasonably acceptable to the Borough, pursuant to which the Successor Entity assumes and agrees, subject to the provisions of Section 11.05 below, to perform all of the terms, covenants and conditions of this Agreement or such Replacement Agreement, as the case may be (including, without limitation, obligations thereunder that accrued prior to the date of such agreement), the Mortgagee, or a Successor Entity, shall be automatically and entirely released and discharged from the performance of all terms, covenants and conditions of Redeveloper under this Agreement, or of the Redeveloper under the Replacement Agreement, as the case may be, thereafter accruing.

11.05. Mortgagees Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, including, but not limited to, those which are or are intended to be covenants

running with the land, any Mortgagee who obtains title to a Mortgaged Portion as a result of foreclosure proceedings, or an action in lieu thereof shall not be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion, and any deed delivered to any such party shall contain a covenant or other provision to that effect. Any construction or other action by a Mortgagee which is undertaken solely to protect or preserve buildings that are partially completed (such as completion of roofs or exterior siding) and which are undertaken by the Mortgagee solely to protect its security interest in such property, shall not be deemed to be an assumption by the Mortgagee of the obligation to complete construction. The foregoing shall also apply to (i) any other party who thereafter obtains title to such Mortgaged Portion from or through such holder or (ii) any other purchaser at a foreclosure sale other than the holder of the mortgage itself; provided, however, that (a) any such party or purchaser shall qualify as a Successor Entity (as defined in Section 11.07 hereinbelow), and (b) any such Improvements shall be constructed in accordance with this Redevelopment Agreement. However, nothing in this Article 11 or any other Article or Section of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Mortgaged Portion or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Redevelopment Plan.

11.06. Reasonable Changes Requested by Mortgagee. The Borough agrees to make reasonable changes to this Agreement that may be requested by a Mortgagee provided that the same do not materially affect the Borough's rights or obligations under this Agreement.

11.07. Successor Entity. Notwithstanding anything to the contrary contained herein, and in addition to all other rights and remedies of Mortgagees set forth in this Redevelopment Agreement, the provisions of N.J.S.A. 55:17-1 to -11 shall apply to this Redevelopment Agreement to protect the interests of any Mortgagee. Any assignee of this Redevelopment Agreement from a Mortgagee shall first qualify as a "Transferee" pursuant to Section 8.06 hereof (a "Successor Entity").

ARTICLE 12

MISCELLANEOUS

12.01. Notices. Formal notices, demands and communications between the Borough and

the Redeveloper and from the Redeveloper to the Borough (as required herein) shall be deemed sufficiently given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Notices may also be sent by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designated by written notice.

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

To the Borough:

Borough of Eatontown
Attn: Borough Clerk and Borough Administrator
47 Broad Street
Eatontown, New Jersey 07724

With a copy to:

Andrew Bayer, Esq.
Pashman Stein Walder Hayden, PC
Bell Works
101 Crawford Corners Road, Suite 4202
Holmdel, New Jersey 07733

To the Redeveloper:

Michael Sommer

c/o Kushner

767 Fifth Avenue, Floor 50

New York, New York 10153

With a copy to:

Adam L. Peterson, Esq.

Pearlman & Miranda, LLC

110 Edison Place, Suite 301

Newark, New Jersey 07102

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

12.03 Non-Liability of Officials and Employees of Redeveloper. No member, officer, shareholder, director, partner, agent or employee of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or its successor, on any obligation under the terms of this Redevelopment Agreement.

12.04 Estoppel Certificate. Within thirty (30) calendar days following written request therefore by a party hereto, the other party shall issue a signed estoppel certificate either stating that this Redevelopment Agreement is in full force and effect and that there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Redevelopment Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

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

indemnifying party.

12.06 No Consideration For Redevelopment Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

12.07 Successors and Assigns. This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors, assigns and Affiliates of the Parties hereto, and their heirs, executors, and administrators. This Redevelopment Agreement shall not be assigned except as otherwise provided or permitted herein.

12.08 Exhibits and Schedules. All Exhibits and Schedules attached hereto and/or referred to in this Redevelopment Agreement are incorporated herein as though set forth in full.

12.09 Titles of Articles and Sections. The titles of the several **Articles** and **Sections** of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

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

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

12.12 Execution of Counterpart. This Redevelopment Agreement may be executed in one or more counterparts and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such

counterparts shall constitute one and the same instrument.

12.13 Drafting Ambiguities; Interpretation. In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

12.14 Waivers and Amendments in Writing. All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper. The waiver by either party of a default or of a breach of any provision of this Redevelopment Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach.

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

12.16 Governing Law. This Redevelopment Agreement shall be governed by and construed in accordance with the Applicable Law of the State of New Jersey.

12.17 Return of Escrows. Upon any termination of this Agreement for any reason whatsoever, all escrows and other amounts deposited with the Borough under this Agreement shall be promptly returned to Redeveloper, after payment of any costs and/or permitted damages for which Redeveloper is then liable under the terms of this Agreement.

[The Remainder of this Page Intentionally Left Blank. Signatures Follow on Next Page.]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be properly executed and their corporate seals (where applicable) affixed and attested to as of the day and year first above written.

BOROUGH OF EATONTOWN,

A Municipal Corporation of the State of New Jersey

By:_____

Anthony Talerico, Jr., Mayor

Dated:

MONMOUTH SQUARE NJ LLC,

A New Jersey limited liability company

By:_____

Michael Sommer, Authorized Signatory

Dated:

EXHIBIT A
CONCEPT PLAN

[attached]

EXHIBIT B

GOVERNMENTAL APPROVALS

1. Preliminary and Final Major Site Plan and Preliminary and Final Major Subdivision approval
2. Permits or Approvals, if any, from NJDEP or other Governmental Authority with regard to Remediation, if any
3. Permits or Approvals, if any, from NJDOT or other Governmental Authority with regard to traffic improvements, if any
4. Permits or Approvals, if any, from applicable utilities or utility authorities or the like, if any
5. Building Permits and other Construction Approvals
6. And any other reviews, consents, permits, licenses, easements, agreements or other approvals of any kind which may be required by any Governmental Body with jurisdiction over the Redevelopment Project

EXHIBIT C
REDEVELOPMENT PROJECT SCHEDULE

<u>Task</u>	<u>Anticipated Completion Date*</u>
Building Permits & Approvals	July 2024
Retail Component Commencement of Construction	June 2024
Retail Component Completion of Construction	December 2026
Phase 1 Residential Component Commencement of Construction	April 2024
Phase 1 Residential Component Completion of Construction	December 2026
Phase 2 Residential Component Commencement of Construction	October 2025
Phase 2 Residential Component Completion of Construction	December 2027
Phase 3 Residential Component Commencement of Construction	July 2026
Phase 3 Residential Component Completion of Construction	August 2028

* Projections; subject to change and extension due to circumstances outside of Redeveloper's control.

EXHIBIT D

FORM CERTIFICATE OF COMPLETION AND COMPLIANCE

Record and Return to:

Patricia J. Ryou, Esq.
Pearlman and Miranda, LLC
110 Edison Place
Suite 301
Newark, New Jersey 07102

CERTIFICATE OF COMPLETION AND COMPLIANCE

Pursuant to Section 2.11 of the Redevelopment Agreement by and between the Borough of Eatontown (the "Borough") and Monmouth Square NJ LLC (and its Transferees or Assigns, the "Redeveloper"), dated as of [_____] (the "Redevelopment Agreement"), the undersigned, as of the date hereof, certifies that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

- (i) based upon the Redeveloper's certificate and letters of the Redeveloper's engineer and architect, Redeveloper has represented that the [Redevelopment Project] [_____] Component Project] [_____] Subcomponent Project] in its entirety has been Substantially Completed as of [_____] in accordance with the Redevelopment Agreement and in compliance with Applicable Laws (including the approved final site plan approval(s)), and all labor, services, materials and supplies used in such construction and installation have been paid for or a bond or surety has been established in an amount sufficient to cover all outstanding claims, so that the [Redevelopment Project] [_____] Component Project] [_____] Subcomponent Project] in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;
- (ii) based upon the Redeveloper's certificate and letters of the Redeveloper's engineer and architect, Redeveloper has represented that all permits, licenses and approvals that are required in order for the Redeveloper to Substantially Complete the [Redevelopment Project] [_____] Component Project] [_____] Subcomponent Project] or such other work or action to which such term is applied are, to the extent so required, in full force and effect;
- (iii) such Substantial Completion has been further evidenced by a written certificate of the Redeveloper, a letter of the Redeveloper's engineer, and a letter of the Redeveloper's architect evidencing Substantial Completion of the [Redevelopment Project] [_____] Component Project] [_____] Subcomponent Project], which certificate and letters are attached hereto as Exhibit A, A-1, and A-2 respectively;
- (iv) based upon the Redeveloper's certificate and letters of the Redeveloper's engineer and architect, Redeveloper has represented that the [Redevelopment Project] [_____] Component Project] [_____] Subcomponent Project] is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws; [and]
- (v) a copy of any Temporary Certificate of Occupancy issued with respect to the [Redevelopment Project] [_____] Component Project] [_____] Subcomponent Project] for which a Temporary Certificate of Occupancy is on file with the Borough[.] [;and]

- (vi) [in the case of the Retail Component, all Net Amounts Due (including any Net Amounts Due that are not yet payable) (as defined in the Redevelopment Agreement) have been paid or provision thereof has been made in accordance with Section 5.05(c) thereof.]

The conditions determined to exist at the time the [Redevelopment Project Site] [_____] Component Project Site] [_____] Subcomponent Project Site] was determined to be an area in need of redevelopment no longer exist. The [Redevelopment Project Site] [_____] Component Project Site] [_____] Subcomponent Project Site] shall no longer be subject to any covenant running with the land covered by this Certificate of Completion and Compliance for the benefit of the Borough.

The Declaration of Covenants and Restrictions recorded in the office of the Monmouth County Clerk on [____], in Deed Book [___] Page [___] is hereby discharged of record and is void and of no further force and effect.

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

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion of and Compliance to be executed as of the _____ day of _____, 20____.

WITNESS OR ATTEST:

BOROUGH OF EATONTOWN

By: _____

By: _____

Acknowledgment

STATE OF NEW JERSEY:

:SS

COUNTY OF MONMOUTH:

On this _____ day of _____, 20____ before me, personally appeared _____ the _____ of the Borough of Eatontown, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the corporation and that s/he was authorized to execute the foregoing instrument on behalf of the corporation.

Notary Public

Exhibit A

REDEVELOPER'S CERTIFICATE

Pursuant to Section 2.11 of the Redevelopment Agreement by and between the Borough of Eatontown (the "Borough") and Monmouth Square NJ LLC (the "Redeveloper"), dated as of [____], 2023 (the "Redevelopment Agreement"), the Redeveloper certifies as follows to the best of its knowledge information and belief (capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Redevelopment Agreement):

- (i) the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project] in its entirety has been Substantially Completed as of [____], in accordance with the approved final site plan approval(s) and the Borough building and construction code, the Redevelopment Agreement, the Redevelopment Plan and in compliance with Applicable Laws so that the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project] in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;
- (ii) all labor, services, materials and supplies used in such construction and installation have been paid for or a bond or surety has been established in an amount sufficient to cover all outstanding claims;
- (iii) all other facilities necessary in connection with the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project] have been constructed or improved in accordance with the final site plan approval(s) and all costs and expenses incurred in connection therewith have been paid free of any construction liens or a bond or surety has been established in an amount sufficient to cover all outstanding claims;
- (iv) all improvements, and all equipment and components thereof, which are necessary for the full operation of the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project] have been installed to the Redeveloper's satisfaction, and as so installed are suitable and sufficient for the efficient operation of the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project] for its intended purposes;
- (v) all permits, licenses and approvals that are required in order for Redeveloper to Substantially Complete the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project] or such other work or action to which such term is applied are, to the extent so required, in full force and effect;
- (vi) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project];
- (vii) a Certificate of Occupancy, and any other permissions required, if any, of governmental authorities or agencies having jurisdiction over the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project], for the occupancy and use of all portions of the [Redevelopment Project] [____ Component Project] [____ Subcomponent Project] for the purposes contemplated by the Redevelopment Agreement and the Redevelopment Plan, have been obtained;

- (viii) the [Redevelopment Project] [_____ Component Project] [_____ Subcomponent Project] is complete and ready or use as intended and approved;
- (ix) [all Net Amounts Due (including any Net Amounts Due that are not yet payable) have been paid or provision thereof has been made in accordance with Section 5.05(c) of the Redevelopment Agreement;]¹
- (x) attached hereto as Exhibit A-1 is a letter from [_____], of [_____], evidencing Substantial Completion of the Project and attached hereto as Exhibit A-2 is a letter from [_____], of [_____], evidencing Substantial Completion of the Project; and
- (xi) the [Redevelopment Project] [_____ Component Project] [_____ Subcomponent Project] is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Laws.

By: _____

¹ Applicable to Retail Component, General Retail Subcomponent, Boscov's Subcomponent, and Whole Foods Subcomponent

Exhibit A-1
LETTER OF ENGINEER
[attached]

Exhibit A-2
LETTER OF ARCHITECT
[attached]

Exhibit B
TEMPORARY CERTIFICATE OF OCCUPANCY
[attached]

EXHIBIT E
DESCRIPTION OF TAX APPEALS

<u>Docket Number</u>	<u>Case Title</u>
007504-2018	EATONTOWN MONMOUTH MALL LLC
007381-2019	LT PROPCO V BOROUGH OF EATONTOWN
002326-2019	EATONTOWN MONMOUTH MALL LLC V BOROUGH OF EATONTOWN
007789-2020	EATONTOWN MONMOUTH MALL LLC V BOROUGH OF EATONTOWN
009353-2020	LT PROPCO V BOROUGH OF EATONTOWN
008264-2021	EATONTOWN MONMOUTH MALL LLC V BOROUGH OF EATONTOWN
008269-2021	LT PROPCO V BOROUGH OF EATONTOWN
006828-2022	EATONTOWN MON. MALL C/O ALTUS GROUP V BOROUGH OF EATONTOWN
006831-2022	EATON. MON MALL BROOKFIELD PROP RET V BOROUGH OF EATONTOWN
006833-2022	VM KUSHNER LLC BROOKFIELD PROP RET V BOROUGH OF EATONTOWN
006834-2022	EATONTOWN MON MALL, LLC C/O KUSHNER V BOROUGH OF EATONTOWN
006835-2022	LT PROPCO LLC BROOKFIELD PROP RET V BOROUGH OF EATONTOWN
000197-2022	EATONTOWN MON MALL, LLC C/O KUSHNER V BOROUGH OF EATONTOWN
000198-2023	EATONTOWN MONMOUTH MALL, LLC C/O KUSHNER
000199-2023	LT PROPCO LLC BROOKFIELD PROP RET V BOROUGH OF EATONTOWN
000200-2023	VM KUSHNER LLC BROOKFIELD PROP RET V BOROUGH OF EATONTOWN
006824-2023	EATON. MON MALL BROOKFIELD PROP RET V BOROUGH OF EATONTOWN

EXHIBIT F
[intentionally omitted]

EXHIBIT G
FORM DECLARATION

Record and Return to:

Andrew Bayer, Esq.
Pashman Stein Walder Hayden, PC
Bell Works
101 Crawford Corners Road, Suite 4202
Holmdel, New Jersey 07733

Block 2201, Lots 1.01, 1.02, 2, and 5
In the Borough of Eatontown (the “Redevelopment Project Site”)

DECLARATION OF COVENANTS AND RESTRICTIONS

THE BOROUGH OF EATONTOWN, NEW JERSEY (the “Borough”), a public body corporate and politic of the State of New Jersey having its offices at 47 Broad Street, Eatontown, New Jersey 07724, in its capacity as redevelopment entity pursuant to N.J.S.A. 40A:12A-4(c);

and

MONMOUTH SQUARE NJ LLC (“Redeveloper”), a New Jersey limited liability company having its principal place of business at 767 Fifth Avenue, Floor 50, New York, New York 10153;

W I T N E S S E T H

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

WHEREAS, the Governing Body duly adopted a resolution determining that a portion of the Borough was an “area in need of redevelopment” in accordance with the procedures and criteria in N.J.S.A. 40A:12A-14 of the Redevelopment Law; and

WHEREAS, the Governing Body adopted by ordinance a redevelopment plan for the redevelopment area (the “Redevelopment Plan”) in accordance with N.J.S.A. 40A:12A-7 of the Redevelopment Law; and

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

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

WHEREAS, the Redevelopment Agreement contains such a covenant by the Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as a perpetual covenants by the Redeveloper and its successor or assigns not to unlawfully discriminate upon the basis of age, race color creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any building or structures erected thereon, to comply with Applicable Laws, Governmental Approvals, the Redevelopment Agreement and the Redevelopment Plan and to maintain in good condition any improvements made on the Redevelopment Project Site (as defined above) in accordance with Article 7 of the Redevelopment Agreement; and

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

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

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

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

Section 2. Redeveloper and its Transferee(s) covenant and agree as follows:

(a) It shall devote the Redevelopment Project Site to the uses specified in the Redevelopment Plan and shall not devote the Redevelopment Project Site to any other uses without the approval of the Borough.

(b) To the extent provided for by Applicable Law, Redeveloper and its Transferee(s) shall not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status in the sale, lease, use or occupancy of the Redevelopment Project Site or any Improvements, buildings or structures erected or to be erected thereon, or any portion thereof. This shall survive the termination of this Redevelopment Agreement.

(c) To the extent provided for by Applicable Law, in the sale, lease or occupancy of the Redevelopment Project Site or any portion thereof, Redeveloper and its Transferee(s) shall not effectuate or execute any covenant, lease agreement, conveyance or other instrument whereby the land or any Improvement, building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status, and the Redeveloper, its successors and Transferee(s) shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or marital status. This shall survive the termination of this Redevelopment Agreement.

(d) Redeveloper and its Transferee(s) shall not sell, lease or otherwise Transfer the Redevelopment Project Site, or any portion thereof, without the written consent of the Governing Body, as set forth in Section 8.02 of the Redevelopment Agreement, other than those Transfers deemed to be Permitted Transfers pursuant to Section 8.03 thereof.

(e) The Redeveloper and its Transferees covenant and agree that they shall be solely responsible for the costs associated with the collection, storage, removal and disposal of all waste and recyclables associated with the Redevelopment Project Site and its uses despite or notwithstanding the provisions under N.J.S.A. 40:66-1.3. Redeveloper and its Transferees covenant, agree, and acknowledge that despite the Borough's provision of waste collection services given to residents of the Borough and the Redeveloper's right to reimbursement of its cost of waste collection service or receipt of the Borough's services, Redeveloper and its Transferees are and shall be nevertheless responsible for all costs related to the collection, storage, removal and disposal of all waste and recyclables associated with the Redevelopment Project Site and its uses. Redeveloper and its Transferees shall provide notice of the identity of the contractor or responsible entity for the waste removal to the Director of the Department of Public Works for the Borough. As such, Redeveloper and its Transferees hereby affirmatively and expressly waive and forgo, in perpetuity, any and all rights, claims, and/or damages available to them, in law or otherwise, which they may assert against the Borough related to cost reimbursement or waste collection service, including, but not limited to, the circumstances described in this section, and accept and agree that Redeveloper and its Transferees are solely responsible for the collection, storage, removal and disposal of all waste and recyclables associated with the Redevelopment Project Site and its uses.

Section 3. The Covenants and Restrictions set forth in this Declaration shall be covenants running with the land until a Certificate of Completion and Compliance is issued for each subject Component Project Site or Subcomponent Project Site, as applicable, and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement, be binding, to the fullest extent permitted by the Applicable Law, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, against the Redeveloper, or its Transferee(s). It is further intended and agreed that the Covenants and Restrictions set forth in this Declaration shall remain in effect until the issuance by the Borough of a Certificate of Completion for each subject Component Project Site or Subcomponent Project Site, as applicable, as provided for in Section 2.11 of the Redevelopment Agreement, at which time all terms, conditions, obligations herein, as well as the Covenants and Restrictions set forth in the Redevelopment Agreement, shall cease and terminate as to the subject Component Project Site or Subcomponent

Project Site, as applicable, except, however, that the Covenants and Restrictions provided for in Section 2(b) and Section 2(c) hereinabove, shall remain in effect without limitation as to time, subject to any changes in Applicable Law.

[Signature page follows.]

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

WITNESS:

MONMOUTH SQUARE NJ LLC

By: _____
Authorized Signatory

ACKNOWLEDGMENT

STATE OF :
: SS
COUNTY OF :

BE IT REMEMBERED, that on this ____ day of _____, 2023 before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared _____, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is _____ of **MONMOUTH SQUARE NJ LLC**, Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by Redeveloper, and said Instrument was signed and delivered by _____ as and for the voluntary act and deed of said Redeveloper.

Notary Public of New Jersey

EXHIBIT G-1
FORM DISCHARGE OF DECLARATION

Record and Return To:

Patricia J. Ryou
Pearlman & Miranda, LLC
110 Edison Place, Suite 301
Newark, New Jersey 07102

DISCHARGE OF DECLARATION OF COVENANTS

Know all men by these presents, that the BOROUGH OF EATONTOWN, Monmouth County, New Jersey, 47 Broad Street, Eatontown, New Jersey 07724 ("Borough"), does hereby certify that that certain Declaration of Covenants and Restrictions, bearing the date [____, 20__], made and executed by MONMOUTH SQUARE NJ LLC, to and in favor of the Borough, on real property located in Monmouth County, State of New Jersey, recorded in the clerk's office in the County of Monmouth County, in Mortgage Book: [____], Page: [____] on [____, 20__], is released, and does hereby consent that the same be discharged of record.

Dated this [_____, 20__].

Municipality: Borough of Eatontown, County of Monmouth, New Jersey.

Description/Additional Information: Block 2201, Lots 1.01, 1.02, 2, and 5. See Schedule A for legal description.

Property Address: NJ Route 35 & NJ Route 36, Eatontown, NJ

BOROUGH OF EATONTOWN

By: _____

Its: _____

STATE OF NEW JERSEY, MONMOUTH COUNTY

On _____, 20__, before me, the undersigned, a notary public in and for said state, personally appeared _____, the _____ of the BOROUGH OF EATONTOWN personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public