REDEVELOPMENT AGREEMENT

BY AND BETWEEN

NEW HORIZON PROPERTIES LLC,

Redeveloper

AND

THE TOWNSHIP OF PEMBERTON,

Township

Date: September 23, 2022

REDEVELOPMENT AGREEMENT
FOR BLOCK 775 LOTS 18 & 19 IN THE TOWNSHIP OF PEMBERTON, NEW JERSEY

THIS REDEVELOPMENT AGREEMENT (this "Agreement") dated as of the ___ day of September, 2022, by and between **NEW HORIZON PROPERTIES LLC,** a New Jersey limited liability company with offices at 79 Route 520, Suite 200, Englishtown NJ 07726 (the "Redeveloper") and the **TOWNSHIP OF PEMBERTON**, a municipal corporation in the County of Burlington and the State of New Jersey, having its principal office at 500 Pemberton-Browns Mills Road, Pemberton, New Jersey 08068 (the "Township"). Either the Entity or the Township is separately a "Party" and together, they are the "Parties".

PREAMBLE

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 Council ("Council") of the Township, by Resolution No. 43-1994, designated certain properties of the Township, particularly Block 775 Lots 18 & 19 as identified on the tax maps of the Township ("Redevelopment Area" or "Property") as a condemnation area in need of redevelopment, following the investigation and public hearing conducted by the Planning Board of the Township of Pemberton pursuant to the Redevelopment Law; and

WHEREAS, the Mayor and Council adopted Ordinance No. 8-1995 implementing a redevelopment plan for the Redevelopment Area, which has been amended from time to time as set forth below (collectively, the "Redevelopment Plan"); and

WHEREAS, the Mayor and Council adopted Ordinance No. 12-2011, approving a Redevelopment Plan for the Property and expanded the study area; and

WHEREAS, the Mayor and Council adopted Ordinance No. 13-2018, amending the Redevelopment Plan; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-8(f), the Township 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 undertake the planning, design, construction and rehabilitation of certain improvements on the Property, including (i) an approximately 18,000 square foot grocery store (the "**Grocery Store**"), (ii) an approximately 12,450 square foot retail space, (iii) an approximately 5,000 square foot convenience store with associated gas station, and (iv) associated site improvements such as stormwater management, ingress and egress driveways, internal roadways, parking, lighting, and landscaping, all shown in additional detail on the Concept Plan attached hereto as Exhibit A (the "**Project Improvements**"); and

WHEREAS, the project, which includes the obtaining of governmental approvals, the site preparation of the Property, construction, completion, and management of all Project Improvements contemplated under this Agreement ("**Project**"), shall be completed pursuant to the provisions of this Agreement and the Redevelopment Plan, and will be completed in phases, with each phase being eligible for a Certificate of Completion with respect to such subdivided lot and portion of the Project; and

WHEREAS, Rocco and Antonia Berardi (the "**Berardis**") are the former owners of the Property, which has been contaminated with the presence or release of certain hazardous substances in the soil and groundwater, including, but not limited to tetrachloroethene ("**PCE**") due to discharges associated with a former dry-cleaning facility prior to the Township's ownership of the Property which was also identified by the New Jersey Department of Environmental Protection ("**NJDEP**") as Area of Concern 16, as such conditions are described in the Brockerhoff Environmental Services LLC Environmental Records Review Summary Letter, dated April 11, 2022 (the "**Environmental Report**").

WHEREAS, the Berardis retained Marc Selover, PG, of Environmental Resolutions, Inc. as the licensed site remediation professional (the "**LSRP**") on February 28, 2012, to oversee the environmental investigation and remediation of the Property (the "**Remediation Activities**") in accordance with Jersey Department of Environmental Protection ("**NJDEP**") statutes and regulations including but not limited to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. ("**Spill Act**"); the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the New Jersey Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq.; the New Jersey Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq.; the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21 et seq. and Hazardous Discharge Site Remediation Act, N.J.S.A. 58:10B-1 et seq. (all such laws, ordinances, rules, regulations and policies collectively referred to herein as **"Environmental Laws"**); and

WHEREAS, the Berardis and the Township entered into a Remediation Agreement, dated December __, 2021 (the "**Remediation Agreement**") authorizing and obligating the Berardis to complete the investigation, remediation, monitoring and sampling of the contaminated soil and groundwater associated on or about the Property and Area of Concern 16 as required by the NJDEP;

WHEREAS, the Township currently owns the Property, and pursuant to an executed Letter of Intent to Purchase Commercial Real Estate, dated May 4, 2022, by and between Redeveloper and the Township, the Township has agreed to sell, transfer and convey the Property to Redeveloper, on the terms set forth herein.

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:

1. Acquisition of Property and Conveyance of the Property

a. The Redeveloper agrees to acquire the Property from the Township for the Purchase Price and the terms as defined herein below. The Township has taken all necessary action and has approved the sale of the Property to Redeveloper, subject to the terms and execution of this Agreement. Any portion of the Property acquired by Redeveloper shall only be developed pursuant to the Redevelopment Plan and this Agreement.

b. **Due Diligence**.

i. Prior to the acquisition of the Property, the Redeveloper and its agents and consultants (at the Redeveloper's sole cost and expense) shall have the right to access the Township Property from time to time for the purpose of undertaking surveys and engineering, geodetic, environmental, soil, wetlands and other similar tests and studies (the "**Studies**").

ii. The Township hereby authorizes Redeveloper and/or its representatives, agents, contractors or consultants to enter upon the Property to undertake the Studies based on the terms and conditions set forth herein.

iii. Redeveloper and/or its representatives, agents, contractors or consultants are authorized to enter upon the Property during reasonable business hours, provided that notice of the intended entry is sent to the Township and its counsel by facsimile and/or electronic transmission at least twenty-four (24) hours prior to the date of entry.

iv. No Studies shall be made on Property in which there exists a pipeline or other underground utility, except after providing appropriate notice to any relevant public utility owning or using the same. Prior to performing the Studies, Redeveloper and/or its representatives, agents, contractors or consultants shall undertake such reasonable inquiry as Redeveloper deems necessary in order to determine the location of underground pipelines or other underground utilities within the Property.

v. The Redeveloper agrees that any testing performed by Redeveloper and/or its representatives, agents, contractors or consultants in the course of performing the Studies shall be performed in a safe and workmanlike manner and in accordance with applicable laws, ordinances, rules and regulations. Redeveloper hereby indemnifies and agrees to hold the Township harmless from and against liabilities, losses, claims, demands, costs, expenses (including reasonable attorneys' fees and expenses), construction, mechanic's and/or materialman's liens and judgments directly attributable to the negligence, recklessness or willful misconduct of Redeveloper, or its representatives, agents, contractors or consultants during the course of such entry; provided that Redeveloper will not be obliged to indemnify and hold the Township harmless for the portion of the liabilities, losses, claims, demands, costs, expenses (including attorneys' fees and expenses) and judgments that are determined to be attributable to, or the result of, any negligence, recklessness or willful misconduct of the Township.

vi. As a condition of entry onto the Property, Redeveloper and/or its representatives, agents, contractors or consultants agrees to provide satisfactory evidence of liability insurance in an amount not less than One Million Dollars ($1,000,000.00), insuring against claims for bodily injury, death and property damage directly attributable to the negligence, recklessness or willful misconduct of Redeveloper and/or its representatives, agents, contractors or consultants during the course of such entry. The policy of insurance shall require thirty (30) days' notice of cancellation prior to termination. Redeveloper and/or its representatives, agents, contractors or consultants shall obtain and supply to the Township certificates of insurance, naming the Township as an additional insured, and evidencing that the above insurance coverage is in force and effect.

vii. Redeveloper shall, at its cost and expense, upon the completion of the Studies, but no later than the termination of this Agreement, if so terminated in accordance with this Agreement, restore the Property which has been entered pursuant to this Agreement to the condition which existed prior to any entry thereon by Redeveloper and/or its representatives, agents, contractors or consultants.

viii. Redeveloper may elect to cancel this Agreement at any time, for any reason, or for no reason, on or prior to expiration of the ninetieth (90^{th}) day following execution hereof (the "**Due Diligence Expiration Date**"), in which event the Deposit (as defined below) shall be returned to Redeveloper, this Agreement shall terminate and the parties shall have no further liabilities hereunder.

c. **Deposit**. Within five (5) business days after receiving a fully-executed copy of this Agreement, Redeveloper will deposit an amount equal to Fifty Thousand Dollars ($50,000.00) (the "Deposit") with Township's attorney (the "Escrow Agent"). The Escrow Agent will deposit the Deposit and all subsequent deposits deposited by Redeveloper in accordance with this Agreement in its attorney trust account located in the State of New Jersey. The Escrow Agent will hold the Deposit and all subsequent deposits deposited by Redeveloper in accordance with this Agreement. A portion of the Deposit equal to Forty Thousand Dollars ($40,000.00) shall be fully-refundable to Redeveloper in the event this Agreement is terminated in accordance with its terms,, and a portion of the Deposit equal to Ten Thousand Dollars ($10,000.00) (the "Non-Refundable Deposit") shall be non-refundable to Redeveloper if this Agreement is terminated for any reason after the Effective Date. The Non-Refundable Deposit is provided in lieu of an escrow agreement for professional services rendered on behalf of the Township related to this Agreement only. The Deposit will be applicable to the Purchase Price at Closing.

d. **Conveyance of the Property**

i. The Township shall convey its fee simple ownership interest in the Property to the Redeveloper, and upon satisfaction (or waiver by the Township or the Redeveloper, as the case may be) of each of the conditions precedent set forth in this Article, by the date set forth in the Project Schedule.

ii. The consideration for the Township's conveyance of the Property to the Redeveloper shall be: (i) the Redeveloper's agreement to design, permit, construct and operate the Project in accordance with the Redevelopment Plan, this Redevelopment Agreement, and the Governmental Approvals, and observance of and compliance with all of the terms and conditions of this Redevelopment Agreement; and (ii) payment of the Purchase Price as further defined herein below.

e. **Purchase Price**. The Redeveloper agrees to pay the Township Two Million Seven Hundred Thousand Dollars ($2,700,000.00) for the purchase of the Property.

f. **"AS-IS" Sale**. Redeveloper acknowledges and agrees that the conveyance by the Township of the Property to Redeveloper will be made in an "AS IS" condition as of the date of closing, subject to any conditions set forth herein.

g. **Environmental Remediation**.

i. The Parties recognize that there is environmental contamination on the Property currently being investigated and remediated by the Berardi's, in accordance with the Remediation Agreement. At Closing and to the extent permitted by its terms, the Township shall assign its rights under the Remediation Agreement to the Redeveloper; provided, that in the event the Remediation Agreement cannot be assigned to Redeveloper, the Township acknowledges and agrees that it will use commercially reasonable efforts and cooperate with Redeveloper to ensure the Berardis obligations thereunder are satisfied in full. The Township shall release the Redeveloper as of the date of closing from any and all responsibility, liability and claims for or arising out of the presence on or about the Property being conveyed (including in the soil, air, structures and surface and subsurface water) of materials, wastes or substances that are or become regulated under or that are or become classified as toxic or hazardous, under any Environmental Laws, including without limitation, petroleum, oil, gasoline or other petroleum products, byproducts or waste.

ii. Following the Due Diligence Expiration Date, but prior to Closing, Redeveloper shall use commercially reasonable efforts to obtain any and all necessary approvals, permits and other authorizations to undertake a partial demolition of the existing improvements at the Property (the "**Existing Improvement Demolition**"). At this time, the parties contemplate that the Existing Improvement Demolition will include the demolition of the portions of the existing improvements as shown on Exhibit E attached hereto; provided, that prior to commencement of the Existing Improvement Demolition, the parties shall consult with the Berardis and their environmental consultants to ensure that the Existing Improvement Demolition is sufficient to allow the Berardis to complete all Active Remediation (as defined below) required pursuant to the Remediation Agreement. The Township shall be required to ensure that all gas, electric and other utilities are shut off in advance of the Existing Improvement Demolition, and that the plan proposed by Redeveloper is appropriate in light of the then-current status of utilities to the Property. Redeveloper shall use commercially reasonable efforts to collaborate with the Township and Berardis and its LSRP to ensure that upon completion of the Existing Improvement Demolition in accordance with approved plans, specs and permits, the Berardis can complete all Active Remediation, as set forth in the Remediation Agreement. Prior to engaging contractors and/or subcontractors for the Exiting Improvement Demolition, Redeveloper shall share at least three (3) bids from qualified persons for such work. The Township shall be permitted to make a selection among such bids, and Redeveloper shall utilize the bid selected by Township to perform the Existing Improvement Demolition. The Existing Improvement Demolition shall be done at the cost and expense of Redeveloper, subject to Section 1(k) below.

iii. Following the Existing Improvement Demolition, the Township shall compel the Berardis, in accordance with the terms of the Remediation Agreement, to complete all Active Remediation, as set forth in the Remediation Agreement, including, but not limited to, remediation of the Property caused by excavation and offsite disposal of contaminated soil in accordance with the requirements of Federal and State law. For the purposes hereof, the term "Active Remediation" shall refer to any and all remediation activities required by the Berardis pursuant to the Remediation Agreement, including excavation and relocation of contaminated soils and installation of new groundwater monitoring wells (if any), but specifically excluding: (1) ongoing monitoring, reporting and maintenance requirements related to groundwater monitoring wells at the Property by the Berardis; and (2) the continued use of groundwater monitoring wells at the Property (the locations of which remain subject to Section 1(b) of the Remediation Agreement). For clarity, the intent of the parties is that the term "Active Remediation" refers to the installation of new Groundwater Monitoring Wells, if necessary, but specifically excludes (1) any ongoing maintenance and/or compliance obligations, as well as (2) any relocation of such Groundwater Monitoring Wells as may be necessitated by the Project. To the extent the Berardis do not timely commence and/or complete their obligations under the Remediation Agreement (i.e., within 90 days in accordance with Section 6 thereof), the Township and Redeveloper shall cooperate to perform such Active Remediation themselves, with the Berardis being responsible for indemnification and reimbursement for such costs incurred by Township and/or Redeveloper in accordance with Section 6 and Section 7 of the Redevelopment Agreement.

iv. It shall be a condition precedent to Closing hereunder that the Berardis and Township have completed the Active Remediation, as described in the Remediation Agreement, as determined by Redeveloper and its environmental consultants in their reasonable discretion (such completion being referred to herein as the "**Remediation Completion**"). The Remediation Completion shall be commenced immediately upon the Existing Improvement Demolition, and completed within one hundred twenty (120) days thereafter.

v. Following the date of Remediation Completion, Redeveloper shall have thirty (30) days to conduct additional investigation and testing of the Property, all in accordance with Section 1(b) herein (the "**Additional Due Diligence Period**"). To the extent Redeveloper identifies any new environmental condition which was not previously identified by the Studies, Environmental Report or by Redeveloper's consultant's reports and studies obtained prior to the Due Diligence Expiration Date, Redeveloper shall be permitted to terminate this Agreement, in which event the Deposit (as defined below) shall be returned to Redeveloper, this Agreement shall terminate and the parties shall have no further liabilities hereunder. For the avoidance of doubt, the installation and ongoing monitoring and compliance obligations related to Groundwater Monitoring Wells shall not be cause for termination pursuant to this subsection (v).

h. **Quality of Title**. The Township shall convey the Property by Deed with Covenants Against Grantor's Acts, subject to any Permitted Exceptions. Permitted Exceptions shall include any defect, lien, encumbrance or other objection to title that does not affect the use of the Property in the Project and/or the construction or operation of the Project, including any such exception waived by or insured by the title insurance policy. Permitted Exceptions do not include monetary liens or encumbrances. Any such monetary liens or encumbrances shall be paid by the Township at Closing as necessary to have such lien or encumbrance removed as an exception not title. Title to the Property shall be insurable at regular rates by Redeveloper's title company doing business in the State of New Jersey subject only to the Permitted Exceptions. Permitted Exceptions shall include, but not be limited to:

i. Covenants, conditions, building and use restrictions required by this Agreement or as specified in the Redevelopment Plan, as they relate to the Property or the use and/or occupancy of same or the final Site Plan;

ii. Any facts disclosed by a survey provided the same do not materially or adversely affect the ability of the Redeveloper to construct, operate and maintain the Project, or do not adversely affect the use and occupancy for its intended purposes, as contemplated by the Redevelopment Plan;

iii. Applicable Law, restrictions, legal requirements and orders of any federal, state, county or municipal government or other public authority relating to the Property or the use thereof, provided same do not prohibit the development or the intended use of the Property in the manner contemplated by this Agreement or by the Redevelopment Plan;

iv. Statutory liens for real estate taxes not due and payable;

v. The conditions, covenants and restrictions set forth or referred to elsewhere in this Agreement;

vi. The provisions of the Local Redevelopment and Housing Law;

vii. Such other title exceptions as may be consented to or approved by the Redeveloper, or the Title Insurer, in writing; and

viii. The rights of utility companies to maintain pipes, poles, cables and wires over, on and under the street, the parts of the Property next to the street or running to any Project improvement upon the Property provided the maintenance, installation or operation of same do not adversely affect or unreasonably interfere with the Property or the intended use and/or occupancy of same.

i. **Title Objections**. Redeveloper shall furnish to Township no later than ninety (90) days after the date hereof, a copy of a title commitment with respect to the Property prepared by the Title Company together with a statement specifying any defects in title ("Redeveloper's Statement"). Not later than fifteen (15) days after Township receives Redeveloper's Statement, Township shall notify Redeveloper which of the objections Township shall cure prior to or at Closing, including when and in what manner said items are to be cured. If Redeveloper is dissatisfied with Township's response, Redeveloper shall have fifteen (15) days from receipt of Township's response to either (i) terminate this Agreement, in which event the Deposit shall be returned to Redeveloper and thereafter neither party shall have any further rights or liabilities hereunder or (ii) agree to accept the exceptions which appear on Redeveloper's Statement and which are not identified as those which are to be cured by Township prior to or at Closing and proceed under this Agreement. If Township agrees to cure but fails to do so, Redeveloper shall have the right to (i) delay Closing to a date specified by Redeveloper so that Township or Redeveloper removes or cures such objections at Township's expense or (ii) proceed to Closing and pay the Purchase Price; however, sufficient sums from the proceeds due Township at Closing, as determined by the Title Company, shall be placed into escrow with the Title Company, and shall be used by Redeveloper to cure or clear such objections at Township's expense, with Township being obligated to satisfy any deficiency and

Redeveloper refunding any portion remaining after curing said defect or (iii) terminate this Agreement, in which event the Deposit shall be returned to Redeveloper, and thereafter neither party shall have any further rights or liabilities hereunder. Following the date of this Agreement, Township shall not permit any further encumbrance to appear of record on the Property without Redeveloper's prior written approval.

j. **Township's Representations and Warranties**. In order to induce Redeveloper to enter into this Agreement and to purchase the Property, and with full knowledge that Redeveloper is relying thereon, Township hereby warrants and represents to Redeveloper as follows:

i. Power to Perform. Township has full power and authority to enter into and fulfill Township's obligations under this Agreement and the execution, delivery and performance of this Agreement by Township constitutes a valid and binding obligation of Township enforceable in accordance with its terms. No consent, waiver, or approval by any other party is required in connection with the execution and delivery by Township of this Agreement or the performance by Township of its obligations hereunder or any instrument contemplated thereby. Neither the entering into of this Agreement nor the consummation of such sale will constitute a violation or breach by Township of any contract or other instrument to which Township is a party or to which Township is subject or by which any of Township's assets or properties may be affected, or of any judgment, order, writ, injunction or decree issued against or imposed upon Township, nor will the said sale result in a violation of any applicable law, order, rule, or regulation of any governmental authority.

ii. Foreign Person. Township is not a foreign person as defined in Section 1445 of the Internal Revenue Code and Township shall execute an Affidavit at Closing confirming the accuracy of such representation.

iii. Assessments for Public Improvements. The Township is unaware of any assessments against the Property for public improvements which remain unpaid or which will be imposed on the Property.

iv. Violations. There is not pending, or to Redeveloper's actual knowledge, threatened from any federal, state, county or local authority any proceeding, notice, suit or judgment relating to any violation at the Property of zoning, building, fire, air-pollution, health, soils conservation or other law, order, ordinance or regulation, or seeking or requiring any improvement, alteration, addition, correction or other work on or about the Property, whether related to the Property or to the activities of any owner or occupant thereof. In the event any such proceeding, notice, suit or judgment arises or exists prior to or as of the scheduled date of Closing, Township shall take all action required to resolve and eliminate same and, in the event any such proceeding, notice, suit or judgment continues as of the scheduled date of Closing, the date for Closing shall, at Redeveloper's option, be postponed until the applicable proceeding, notice, suit or judgment has been resolved and eliminated.

v. Litigation. There is no litigation or proceeding pending, or to Township's knowledge, threatened before any court or administrative agency which will adversely affect the validity or enforceability of this Agreement, or which relates to the Property or any activities of Township or its agents, employees or contractors at, on or about the Property, or which will result in a lien, charge, encumbrance or judgment against any part of or any interest in the Property.

vi. Development Restrictions. To Township's actual knowledge, there exists on the Property no endangered species, historical artifacts, gravesites or other physical conditions which could impair or delay development of the Property as contemplated by this Agreement.

vii. No-Fill Etc. To the best of Township's knowledge, no rock exists beneath the surface of the Property, which would require removal in order to construct the Project, no landfill has occurred on the Property and no debris has been buried or placed on the Property except as set forth in the Remediation Agreement.

k. **Conditions Precedent to the Conveyance of the Property**. The obligation to convey and purchase the Property shall be subject, without limitation, to the satisfaction, on the Closing Date, of each of the following conditions:

i. All of the representations and warranties of the Redeveloper and Township contained in this Agreement shall be true and correct in all material respects on and as of the Closing Date.

ii. No Redeveloper or Township Event of Default shall have occurred and remain outstanding.

iii. The Redeveloper has obtained all governmental approvals (excluding building permits) required for the construction of the Project or applicable Phase, as set forth in this Agreement.

iv. The Redeveloper has provided the Township with acceptable evidence of its ability to construct the Project or applicable Phase, as set forth in this Agreement.

v. Title to the Property shall be in the form required by this Article 1 of this Agreement.

vi. The Remediation Completion has occurred and the Additional Due Diligence Period has elapsed without this Agreement having been terminated.

In the event that the conditions precedent to Closing set forth in this Agreement have not been satisfied by the date which is twenty-four (24) months from the date of this Agreement (or such sooner timeline as set forth in this Agreement and applicable to any particular condition precedent) and Redeveloper is not then in default under this Agreement, Redeveloper shall be permitted to terminate this Agreement, in which event the Deposit shall immediately be refunded to Redeveloper, the Township shall, within thirty (30) days, reimburse Redeveloper for any and all costs and expenses associated with the Existing Improvement Demolition, and thereafter neither party shall have any further liability to one another hereunder.

l. **Township Closing Deliveries**. At the Closing, the Township shall deliver the following items, validly executed and attested, acknowledged and/or notarized as appropriate:

i. A Bargain and Sale Deed for the Property subject to a condition subsequent that title to the Property (or a subdivided portion thereof) shall revert to the Township (on terms as the Parties mutually agree upon) if the Property is not developed and used in accordance with the Redevelopment Plan and this Agreement. Notwithstanding the foregoing, any portion of the Property which has been redeveloped in accordance with this Agreement and the Redevelopment Plan shall not be subject to reversion.

ii. An Affidavit of Title.

iii. An Affidavit of Consideration.

iv. The Township's Non-Residency Certification.

v. A Foreign Investment in Real Property Act ("FIRPTA") Affidavit.

vi. Evidence of the authority of the Township to enter into and effectuate the transactions set forth in this Redevelopment Agreement and of the due authorization of the persons acting on behalf of the Township with respect hereto, as the Redeveloper and the Title Insurer may reasonably request.

vii. Any other documents and instruments that are reasonably requested by the Redeveloper to consummate the conveyance of the Property provided that such documents and instruments are consistent with the Parties' intent, as expressed in this Redevelopment Agreement, do not materially and adversely affect the rights or liabilities of the Parties hereunder and are within the powers and authority of the Township under Applicable Law.

m. **Redeveloper Closing Deliveries**. At the Closing, the Redeveloper shall deliver the following items, validly executed and attested, acknowledged and/or notarized, as follows:

i. Two (2) copies of an Affidavit of Consideration.

ii. A certificate restating and reaffirming the representations, warranties and covenants of the Redeveloper set forth in this Agreement.

iii. Evidence of the corporate existence and good standing of the Redeveloper, of the authority of the Redeveloper to enter into and effectuate the transactions set forth in this Redevelopment Agreement and of the due authorization of the persons acting on behalf of the Redeveloper, in form and content reasonably acceptable to the Township.

iv. Evidence in form and substance satisfactory to the Township that all insurance required to be provided under this Agreement has been provided and remains in full force and effect.

v. **Relocation Assistance**. The Parties recognize and acknowledge that to the extent, if at all, that persons or business entities are displaced by the Township's condemnation of the Property and applicable laws require that the Township provide those displaced persons/business entities with relocation assistance. The Redeveloper shall use commercially reasonable efforts to maintain the current tenants of the Property in the 12,450 square foot retail building to be constructed pursuant to this Redevelopment Agreement, which shall be accomplished by Redeveloper offering such tenants a right of first offer to lease the new retail space at then-current market rents. However, to the extent the existing tenants do not sign such lease and require relocation assistance, at Closing, the Redeveloper shall be solely responsible to reimburse the Township for all reasonable and necessary relocation assistance that the Township is obligated to pay to displaced persons/business entities and to also reimburse the Township for all of its reasonable professional fees incurred in filing a Workable Relocation Assistance Plan with the New Jersey Department of Community Affairs, with providing relocation assistance to displaced persons/business entities and in successfully litigating any appeals filed by displaced persons/business entities regarding the relocation assistance obligations of the Township.

vi. Any other documents and instruments that are reasonably required by the Township to consummate the transactions contemplated by this Redevelopment Agreement, provided that such documents and instruments are consistent with the Parties' intent as expressed in this Redevelopment Agreement, do not materially and adversely affect the rights or liabilities of the Parties hereunder and are within the power and authority of the Redeveloper under Applicable Law.

n. **Closing Costs.** Each party shall be responsible for its own closing costs. All real estate taxes, if applicable, shall be adjusted pro rata as of the date of Closing. All realty transfer taxes, if any, imposed on or in connection with Closing that are customarily or required by statute to be paid by a seller shall be paid by Township. The 1% tax imposed upon grantees by P.L. 2005, c.19 (C.46-15-5 et seq.) (also known as the "Mansion Tax"), if applicable, will be paid by Redeveloper.

o. **Possession at Closing**. Possession of the Property shall be delivered to Redeveloper at closing free of any leases, licenses or rights of use by others subject to Redeveloper entering leases with former tenants and/or paying Relocation Expenses as noted above. Until delivery of the Property at each closing, all risks of loss with respect to the Property, except with respect to Redeveloper's activities on the Property, shall be the Township's, provided Redeveloper is in compliance with the requirements of this Agreement.

p. **Township Default**. In the event that, unless due to a Redeveloper Default, Township shall fail to complete Closing under this Agreement or otherwise fail to perform any of its obligations under this Agreement, in each case within the time frames set forth herein, any of which failure is not cured within sixty (60) days following written notice from Redeveloper, such failure shall be deemed a "Township Default" hereunder, and Redeveloper shall be entitled to terminate this Agreement and receive immediate refund of the Deposit posted at the time of the Township Default, reimbursement for the cost of the Existing Improvement Demolition, to specific performance or, if specific performance is not available, to pursue damages or to exercise any other remedy available at law or in equity. Notwithstanding anything to the contrary contained hereunder, the election of Redeveloper to effect Closing hereunder shall not constitute or be construed as a waiver of any of Redeveloper's rights by reason of any misrepresentations or other inaccuracies in Township's warranties and representations or failure of Township to comply with all of its agreements hereunder.

q. **Redeveloper Default**. In the event that, unless due to a Township Default, Redeveloper shall fail to complete Closing under this Agreement or otherwise fail to perform any of its obligations under this Agreement, in each case within the time frames set forth herein, any of which failure is not cured within sixty (60) days following written notice from Township, such failure shall be deemed a "Redeveloper Default" hereunder, and Township shall be entitled to terminate this Agreement and retain the Deposit posted by Redeveloper. In lieu of terminating the Agreement and retaining the Deposit, Township shall be permitted to pursue any remedy available to it pursuant to Article 6 hereof. Notwithstanding anything to the contrary contained hereunder, the election of the Township to effect Closing hereunder shall not constitute or be construed as a waiver of any of the Township's rights by reason of any misrepresentations or other inaccuracies in Redeveloper's warranties and representations or failure of Redeveloper to comply with all of its agreements hereunder.

r. **Closing Date and Time**. Within thirty (30) Days after Redeveloper's receipt of all governmental approvals and the satisfaction of all other preconditions to closing set forth in this Agreement, closing of title to the Property (the "Closing") shall take place upon a date mutually agreeable to the Parties following the satisfaction of all conditions precedent set forth in this Agreement. Closing shall take place at 10:00 a.m. at the offices of Redeveloper's attorney, Title Company, or such other location and time as reasonably agreed upon by the parties, including without limitation, a closing through delivery-by-mail by each party to the Title Company of all documents and instruments required to be delivered by such party, pursuant to this Agreement, not later than one (1) business day prior to the scheduled Closing date (excluding the balance of the Purchase Price, which shall be delivered to the Title Company on the Closing date).

2. Township Responsibilities.

a. Project Support. The Township agrees to join in or support any applications which are consistent with the terms of the Redevelopment Plan and this Agreement, and to execute any documents required in connection with obtaining such approvals and otherwise to cooperate with the Redeveloper with respect thereto. Notwithstanding the foregoing or any other reference in this Agreement to cooperation by the Township, nothing herein shall be deemed to impose restrictions on the Township in the exercise of its police powers as a public entity nor shall such reference be construed as a restriction on the Township's rights, duties and obligations to enforce any agreement in favor of the Township in connection with the Project Improvements.

b. Financial Incentive.

The Redeveloper and the Township acknowledge and agree that the Redeveloper will be eligible to apply for and to participate in the tax exemption and abatement program set forth in Section 162-1 et. seq. of the Pemberton Township Code.

c. Affordable Housing. The Parties expressly understand and agree that the Redeveloper is obligated to comply with and pay a non-residential development fee in accordance with the Statewide Non-Residential Development Fee Act N.J.S.A. 40:55D-8.1 et seq., and Pemberton Township Ordinance Section 62-14. The Project is not otherwise subject to any obligations related to low or moderate or other low cost or subsidized housing as required by the Fair Housing Act/Mount Laurel decisions and that Redeveloper shall not be required to construct any affordable housing (including low and moderate or other low cost or subsidized housing).

3. Redeveloper Responsibilities.

a. Agreement to Undertake Project. The Redeveloper agrees to undertake the Project and to construct the Project Improvements on the Property in accordance with this Agreement, and the Redevelopment Plan; provided, that if external factors, including but not limited to market conditions and economic conditions, make the development of the Project as set forth herein no longer feasible, Redeveloper shall present an alternative development plan to the Township, and assuming same is consistent with the existing Redevelopment Plan, the Township's consent to same shall not be unreasonably withheld, conditioned or delayed.

b. Scope of Undertaking. The services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development and construction of the Project, including, without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project and each component thereof, arrangements for interim and final inspections and any other actions required to satisfy the requirements of any applicable Approvals, as hereinafter defined, (all of the foregoing undertakings and the work product thereof being referred to collectively in this Agreement as the "Work"), the administration, operation and management, or contracting for the administration, operation and management of the Project and all components of the Project.

c. Standards of Construction. Without limitation, all Work on the Project shall be performed in a good and workmanlike manner, with the best quality materials called for under the applicable Approvals. All construction shall be in accordance with the Uniform Construction Code codified at N.J.A.C. 5:23-1 et seq., or as appropriate.

d. Compliance with Law. The Project and all Work performed and materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Federal, State, County or Local statutes, regulations, ordinances, resolutions or other applicable laws.

e. Approvals and Permits. The Redeveloper shall be responsible to obtain any and all governmental approvals that are necessary, as reasonably determined by Redeveloper, in order to commence construction and complete the Project or applicable phase, including but not limited to site plan approvals, water and sewer allocation and connection permits ("Approvals"), pursuant to the Redevelopment Plan and this Agreement. The Township will use its best efforts to assist the Redeveloper in obtaining such Approvals.

f. Use of Subcontractors. The Redeveloper will use its best judgment to engage reputable contractors to perform the construction of the Project Improvements on the Property. By way of example, and not by way of limitation, the Redeveloper may hire carpenters, electricians, heating and air conditioning specialists, plumbers, masons, painters and general contractors. If applicable, each contractor must be licensed with the State of New Jersey. In addition, each contractor must guarantee the quality of their workmanship for a period of time that is standard in the particular industry. In addition, each contractor must have liability insurance in full force and effect in amounts that are standard in the particular industry. The Redeveloper shall use its reasonable discretion to determine guarantees and liability insurance that are standard to a particular profession.

g. Cost of the Project.

i. Cost Estimate. The Redeveloper shall provide the Township with plans and specifications for construction of the Project Improvements in accordance with the Redevelopment Plan and this Redevelopment Agreement ("Plans and Specifications"). A preliminary Cost Estimate of the Project is attached hereto as Exhibit C. The Redeveloper will use its best efforts to complete the Project in accordance with the Plans and Specifications. The cost of construction of the Project and all other costs of the Project shall be borne by the Redeveloper. The Redeveloper shall pay or cause to be paid when due all costs and expenses, including, without limitation, all contractors requisitions and the cost of materials and equipment incurred in connection with the Work and all fees and expenses of any consultants and professionals and like providers acting for or on behalf of the Redeveloper.

h. Financial Commitment. The Redeveloper represents and warrants that it has obtained or can obtain and will commit the requisite equity in an amount necessary to implement and complete the Project, subject to obtaining all necessary financing.

i. Schedule; Delays and Extensions. The Redeveloper shall apply for a construction building permit for the vertical improvements on the site within ninety (90) days after the later to occur of (1) receipt of all necessary Governmental Approvals, or (2) Redeveloper's (or the Berardis, as applicable) completion of demolition and the completion of the environmental remediation in accordance with the Remediation Agreement, for the applicable phase to permit commencement of construction. The Redeveloper shall commence and diligently prosecute to completion the development of the site improvements for the applicable phase necessary to support the Project in accordance with the Governmental Approvals. The Redeveloper shall have thirty-six (36) months from the receipt of the building permit for vertical construction in which to complete the Project. The end date of this period shall be referred to as the "Project Completion Date." The time for commencement and completion can be extended for a period of time equal to any delay in construction due to any of the causes set forth in Section 13 hereof or as a result of any pending or threatened administrative procedures or litigation which will interfere with the Redeveloper's ability to commence or complete the Project Improvements. If, for reasons beyond the Redeveloper's control, the Redeveloper needs an extension beyond the Project Completion Date, the Redeveloper may apply to the Township in writing before the Project Completion Date stating in detail the reasons for requesting the extension. The Township shall not unreasonably condition, withhold or delay its consent to the Redeveloper's timely request. Notwithstanding the timeline set forth above, in the event that a prospective tenant for the Grocery Store has not been approved by the Township in advance of Closing, then the aforementioned timeline shall be applicable to all Project Improvements other than the Grocery Store, and with respect to the Grocery Store the following schedule shall apply: (1) commencement of construction to occur within sixty (60) days following the later to occur of (A) Township's approval of the Grocery Store Tenant, and (B) receipt of any and all governmental approvals (excluding building permits) necessary for the Grocery Store tenant's build-to-suit construction; (2) completion of construction within thirty-six months following commencement of construction.

i. The Redeveloper shall be responsible for the letting of contracts, supervision of construction and all other matters incidental to performance of the duties and powers expressly granted herein in connection with the construction of the Project.

j. Certificate(s) of Occupancy. Upon substantial completion of the Project, which is then suitable by law for occupancy, the Redeveloper shall apply to the appropriate governmental officer or body for a temporary Certificate of Occupancy or a permanent Certificate of Occupancy, as appropriate under the circumstances according to the appropriate law or regulation. The Certificate of Occupancy, when issued, together with the construction of the Project Improvements in accordance with the terms of this Redevelopment Agreement and substantially in accordance with the Plans and Specifications, shall constitute evidence that the Redeveloper has fully performed its obligations under applicable laws with respect to the construction of the Project.

k. Certificate of Completion. Upon evidence (as reasonably required by the Township) of Substantial Completion of the Project (or a phase thereof), the Redeveloper may request and the Township will issue a Certificate of Completion, in recordable form, which shall acknowledge that the Redeveloper has completed performance of all of its duties and obligations under this Agreement and all other agreements referred to herein and/or annexed hereto with respect to the Project (or phase, as applicable) and has completed the Project (or phase, as applicable), in accordance with the requirements of this Agreement. Upon issuance and recording of a Certificate of Completion with respect to the Project, the Redeveloper shall be released from all obligations under this Agreement (except for those that expressly survive pursuant to the terms hereof) with respect to the Project. Upon issuance of a Certificate of Completion, the conditions determined to exist at the time the area was determined to be in need of redevelopment shall be deemed to no longer exist.

l. Involuntary Delays. Notwithstanding anything in this Agreement to the contrary, if, with respect to the Project or applicable phase or any portion thereof (i) any government entity declares or effects (whether it be de jure, de facto or otherwise) any moratorium on, or other impediment to, the Project or applicable phase, that in any way prohibits or impairs the Redeveloper in any respect from developing or building, selling or renting, the units in the Project or applicable phase, or (ii) any litigation is brought seeking or challenging the Project and/or applicable phase in any regard or any Governmental Approvals are denied, the Redeveloper shall have the right to suspend its obligation under this Agreement for up to twelve (12) months, per occurrence. In the event any moratorium or litigation or other impediment causing the Redeveloper to invoke its rights hereunder has not expired within twelve (12) months of the applicable occurrence, then either party hereto may terminate this Agreement.

4. Restrictions on Use and Encumbrances.

a. Required Covenant. The Redeveloper shall execute and record a Declaration of Covenants and Restrictions setting forth that the Redeveloper and its successors and assigns shall construct only those uses contemplated in the Redevelopment Plan.

b. Prohibition Against Transfers. The Redeveloper recognizes that the Township regards both the Project and the qualifications and identity of the Redeveloper and its principals as being of great importance to the general welfare of the Township. The Township and the Redeveloper each acknowledges and agrees that a change in ownership of the Redeveloper or any other act or transaction involving or resulting in a significant change with respect to the identity of the parties in control of the Redeveloper is, for practical purposes, a transfer or disposition of the Project then owned by the Redeveloper, including the right to redevelop the Property, and that no voluntary or involuntary successor in interest of the Redeveloper shall acquire any interest in or rights or powers under this Agreement, except as expressly set forth herein. The Redeveloper shall not, without the prior written consent of the Township: (a) effect or permit any change, directly or indirectly, in the ownership or control of the Redeveloper (provided, that Redeveloper may transfer an aggregate of ten percent (10%) of the equity in Redeveloper without first obtaining the Township's consent), (b) assign or attempt to assign this Agreement or any rights herein or in the Property, or (c) make any total sale, lease, transfer or conveyance of greater than 10% of its interest in the Project or the Property (collectively a "Transfer"). The written consent required pursuant to this paragraph shall not be unreasonably withheld, delayed or conditioned.

c. Transfers Void. Any Transfer of the Redeveloper's interest in violation of this Paragraph 4 shall be an Event of Default of the Redeveloper and shall be null and void ab initio. The Township shall notify the Redeveloper of such default and provide thirty (30) days in which the Redeveloper shall have an opportunity to cure such default. Any such Event of Default shall entitle the Township to seek all remedies available under the terms hereof, and those available at law or in equity, including termination of this Agreement. In the absence of specific written consent by the Township, no such sale, Transfer, conveyance or assignment of the Property or Project, or any part thereof, shall be deemed to relieve the Redeveloper from any obligations under this Agreement.

d. Term of Covenants and Restrictions. The covenants and restrictions imposed upon the Redeveloper, its successors and assigns, pursuant to this Agreement, shall be deemed satisfied and/or of no further force and effect and this Agreement shall terminate upon the issuance of a Certificate of Completion; provided that any covenants contained in the recorded Declaration of Covenants and Restrictions shall survive until termination or expiration of any Financial Agreement executed pursuant to Paragraph 5 below.

5. Intentionally Omitted.

6. Indemnification.

a. The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Township and its officers, elected officials, agents, employees, contractors and consultants (individually a "Township Indemnified Party", collectively the "Township Indemnified Parties") harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including reasonable attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from (i) the condition, use, possession, conduct, management, acquisition, construction, installation, financing or leasing of the Property after the acquisition thereof by Redeveloper and/or (ii) the performance or any failure or delay of performance of this Agreement, any of which is the result of action or inaction by the Redeveloper, its agents, servants, employees or contractors, including but not limited to the death of any person or any accident, injury, loss, and damage whatsoever to any Person or to the property of any Person that shall occur on or adjacent to the Property and that results, wholly or partially, from any negligence or willful misconduct of the Redeveloper, its agents, servants, employees or contractors. In no event will Redeveloper be responsible to indemnify or hold harmless any Township Indemnified Party if such liability, loss, damage, demand, cost, claim, lawsuit, administrative proceeding, fine, penalty, or expense arises out of or relates to a Township Indemnified Party's gross negligence or willful misconduct. The Redeveloper and the Township shall consult with respect to any claims or litigation as to which the Township demands indemnification by the Redeveloper.

b. In any situation in which a Township Indemnified Party is entitled to receive indemnification by the Redeveloper, the Redeveloper shall resist and defend any action or proceeding on behalf of the Township Indemnified Party. The Township Indemnified Party shall have the obligation to consent to any reasonable settlement negotiated by the Redeveloper. These obligations of the Redeveloper may be performed by an insurer of the Redeveloper to the extent coverage has been acquired. The Redeveloper shall have the right, without the consent of the Township Indemnified Party, to settle any such action on terms the Redeveloper deems appropriate, provided that the Redeveloper obtains a full release of the Township Indemnified Party and no admission of liability by the Township Indemnified Party is required.

c. The Redeveloper reserves the right to select, at its sole discretion, counsel for any claim or litigation as to which the Township requires indemnification.

d. This indemnity shall survive until the earlier to occur of (1) the one-year anniversary of the termination of this Agreement or (2) the one year anniversary of the date on which a Certificate of Completion is issued.

7. **Default and Remedies.**

a. Events of Default. Either Party's failure to perform any of its obligations hereunder and/or the material breach of any warranty or representation by any party shall constitute an Event of Default. In addition, the failure to pay any real estate taxes and/or make any payments required pursuant to the Financial Agreement described in Paragraph 5 above on the Property or the Project Improvements, or any part thereof or any payments in lieu thereof when due unless same was done in error in or protest, or any Transfer in violation of this Agreement shall also constitute and Event of Default by the Redeveloper.

b. In General: Right to Cure. Except as otherwise provided in this Agreement, should an Event of Default, as defined in Paragraph 7.a above, occur, the non-breaching party shall provide notice of the same and an opportunity to cure within sixty (60) days of receiving written notice. Failure to cure within ninety (90) days shall entitle the non-breaching party to any remedy provided for herein.

c. Termination by Redeveloper. In the event that the Township does not cure its Event of Default within sixty (60) days after the Redeveloper's notice of the same pursuant to Paragraph 7.b above, then this Agreement shall, at the option of the Redeveloper, be terminated by written notice thereof to the Township, at which point neither the Township nor the Redeveloper shall have any further rights against, or obligations or liability to, the other under the Agreement, with respect to the Agreement.

d. Termination by the Township. In the event that the Redeveloper does not cure its Event of Default within sixty (60) days after the Redeveloper's notice of the same pursuant to Paragraph 7.b above, then this Agreement shall, at the option of the Township, be terminated by written notice thereof to the Redeveloper, at which point neither the Township nor the Redeveloper shall have any further rights against, or obligations or liability to, the other under the Agreement, with respect to the Agreement.

e. Other Rights and Remedies. In addition to termination, the non-breaching party shall have the right to institute whatever action, at law or in equity, it may deem desirable, to cure and remedy such default, including the seeking of damages and specific performance. Nothing herein shall permit either party to recover any damages other than actual damages as a result of the event of default. Consequential, incidental or punitive damages shall not be recoverable. The failure of either Party to avail itself of any remedy provided for in this Agreement, or any delay in seeking such remedy, shall not be deemed a waiver of the rights to be enforced thereby or of any right of enforcement that may accrue in the future.

f. Rights and Remedies Cumulative. The rights and remedies of the Parties to this Agreement, whether provided by law or by the Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach, or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof or any obligation of the other party shall limit the party's rights and remedies otherwise provided by law or by this Agreement.

8. Notices and Demands.

Any notice, approval, waiver, objection or other communication (for convenience, referred herein as a "Notice") required or permitted to be given hereunder or given in regard to this Agreement by one party to the other shall be in writing and the same shall be given and be deemed to have been delivered, served and given (a) if delivered in person, via a nationally-recognized overnight courier, or by facsimile when received by the person to whom notice is given, or (b) if mailed, (except where actual receipt is specified in this Agreement) three (3) days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed to the party at the address specified below:

a. When sent by the Township to the Redeveloper:

NEW HORIZON PROPERTIES LLC
79 Route 520, Suite 200
Englishtown, New Jersey 07726
Attn: Felix Bruselovsky and Jeff Mendelson

With a copy to:

Giordano, Halleran & Ciesla, P.C.
125 Half Mile Road, Suite 300
Red Bank, New Jersey 07701
Attn: Brian Shemesh, Esq.

b. When sent by the Redeveloper to the Township:

Township Clerk and Township Administrator
Township of Pemberton
500 Pemberton-Browns Mills Road
Pemberton, New Jersey 08068
Telephone: (609) 652-3700 x237
Facsimile: (609) 652-1967

Any party may change its address for notices by notice theretofore given in accordance with this Paragraph 8 and shall be deemed effective only when actually received by the other party.

9. Waiver. No waiver made by any such party with respect to the performance, or manner or time thereof, or any obligation of any other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of any other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of any other party.

10. Implementation of Agreement and Redevelopment Plan. The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions of this Agreement and the Redevelopment Plan. The Township further agrees to take such action as may be reasonably requested by any lender of Redeveloper in connection with obtaining financing for the Project Improvements; provided, however, that the reasonable cost of such action shall be borne by the Redeveloper.

11. Representations.

a. Legal Capacity. Each party represents that they have the legal capacity to enter into this Agreement and perform each of its undertakings herein set forth and as set forth in the Redevelopment Plan existing on the date of this Agreement.

b. Duly Organized. Each party is duly organized and a validly existing legal entity under the laws of the State of New Jersey or the laws of such other jurisdictions of incorporation or formation, and necessary resolutions have been duly adopted, authorizing the execution and delivery of this Agreement and authorizing and directing the persons executing this Agreement to do so for and on their behalf.

c. No Pending Litigation. To the best of their respective knowledge, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist that questions the validity of this Agreement, the redevelopment area designation or the

Redevelopment Plan, or any action or act taken or to be taken pursuant to this Agreement.

d. No Violation of Agreements. The execution and delivery of this Agreement and the performance hereunder by each party will not constitute a violation of any partnership agreement, articles of incorporation, limited liability company operating agreement, and/or stockholder agreement of such entity, or of any entity which holds an ownership interest therein, or of any agreement, mortgage, indenture, instrument or judgment to which it is a party.

e. Commercially Reasonable Efforts. Each party will use its commercially reasonable efforts to assure the completion of the Project as specified in this Agreement.

12. Assignment of Rights.

a. Neither party to this Agreement may assign its rights hereunder to another person or entity without the prior written consent of the other party. Redeveloper may only be relieved of its rights and obligations under the terms of this Agreement, if it obtains the consent of the Township as contemplated in this Paragraph 12.a, and said entity agrees in writing to the assume all rights and obligations of Redeveloper under the terms of this Agreement.

b. This Agreement may not be assigned to a lender providing acquisition and construction financing for the Redevelopment Project and/or any purchaser at foreclosure of any such financing without the consent of the Township, which shall not be unreasonably withheld, delayed or conditioned.

13. Delays: Force Majeure. For the purposes of any of the provisions of this Agreement, neither the Township nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or default in, its obligations hereunder in the event of any enforced delay in the performance of such obligations due to or arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to (i) acts of God, acts of public enemies, acts or omissions of the other parties (including litigation by third parties), fires, floods, epidemics, pandemics, viruses, quarantine restrictions (or similar governmental restrictions that restrict the parties ability to perform their respective obligations hereunder), strikes, freight, energy shortages, embargoes, unusual or severe weather as determined by the Governor, Freeholder Director and/or Mayor via a State of Emergency declaration, or (ii) delays of subcontractors due to actions or inactions by any federal, state or local governmental or quasi-governmental authority with respect to any required governmental approvals for the development of the Project (excluding, without limitation, a failure of the Township to perform in accordance with the terms of this Agreement). It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Township or the Redeveloper shall be extended for the period of the enforced delay.

14. Severability. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof.

15. Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their successors by merger, liquidation or other reorganization.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any principal of choice of laws, and any actions arising from this Agreement shall be commenced and prosecuted in the Superior Court of New Jersey, Burlington County vicinage.

17. **Title of Agreement Provisions.** The titles of the provisions of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

18. **Counterparts.** This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

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

20. **Entire Agreement.** This Agreement, and any Financial Agreement the Parties may enter into pursuant to Paragraph 5, and the Declaration of Covenants and Restrictions constitutes the entire agreement between the Parties hereto and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof, except as otherwise provided herein.

21. **Effective Date.** Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date upon which all of the Parties hereto have executed and delivered this Agreement.

22. **Drafting Ambiguities; Interpretation.** In interpreting any provision of this Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by or construed in favor of or against either party due to the fact that counsel for one of the Parties drafted this Agreement. Each party acknowledging that it and its' counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

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

24. **Signage Requirement.** As soon as practicable, but in any event within twenty (20) days from the date hereof, Redeveloper shall post a conspicuous sign at the Property, which shall include the identity of the Redeveloper, a rendering of the concept plan, and the words "COMING SOON". For the avoidance of doubt, the concept plan included in the signage shall not be required to identify tenants by name, logo, architectural features, or otherwise.

[Signature Page Follows]

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.

Witness:

Name: Jeffrey Mendelson
Title: manager

NEW HORIZON PROPERTIES LLC

By:
Name: Felix Bruselovsky
Title: PRES

ATTEST:

Amy Cosnoski, RMC/CMR
Township Clerk

TOWNSHIP OF PEMBERTON

By:
David A. Patriarca, Mayor

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Township Clerk

TOWNSHIP OF PEMBERTON

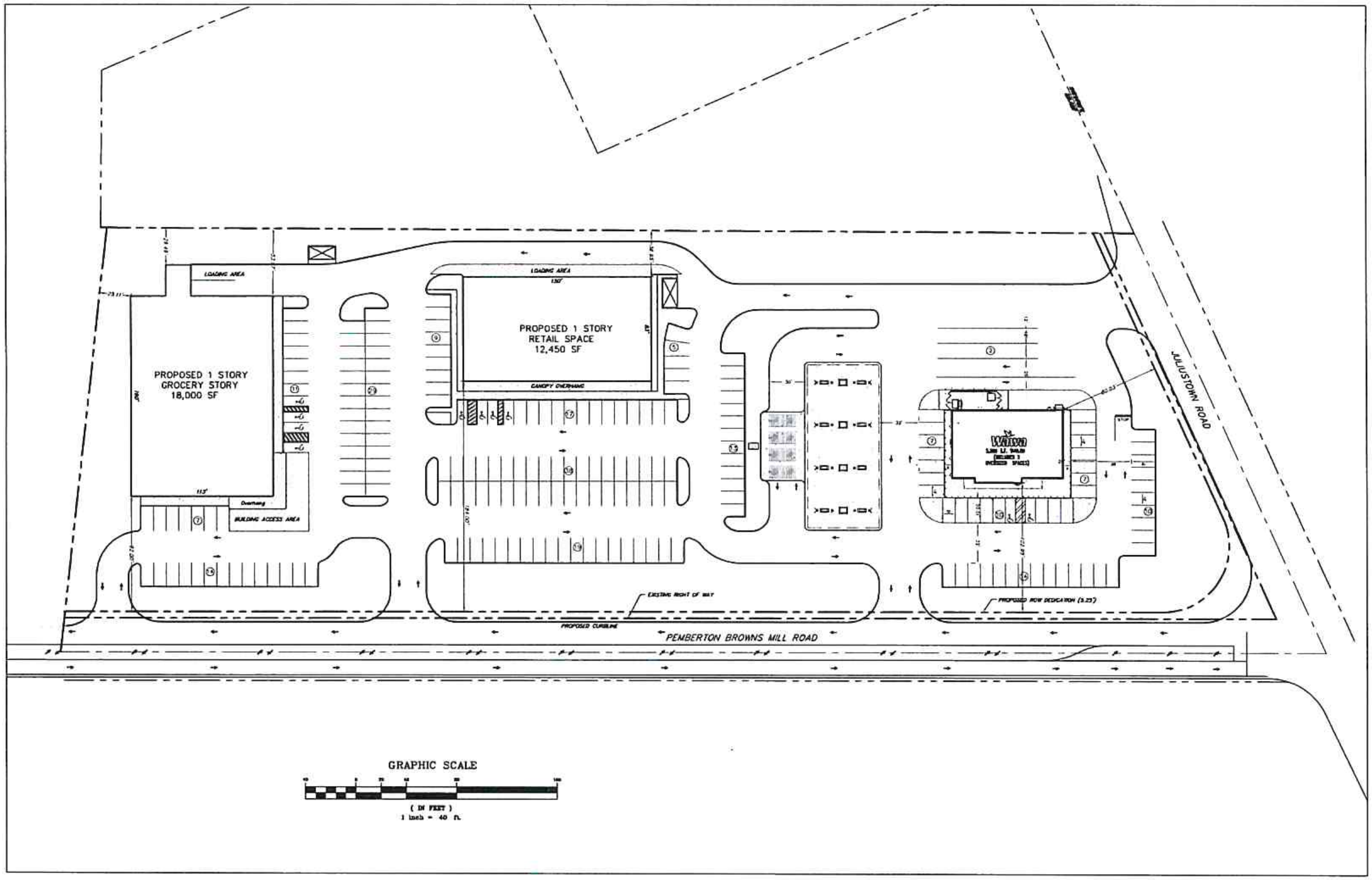
By:
David A. Patriarca, Mayor

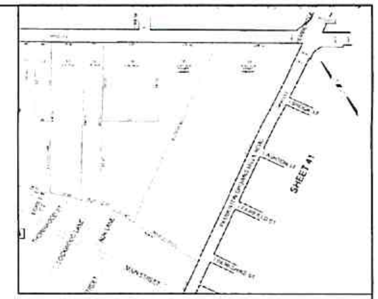
SCHEDULE OF EXHIBITS

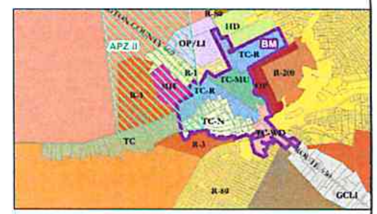
A. Concept Plan
B. Redevelopment Plan
C. Map of Property
D. Cost Estimate
E. Demolition Plan (Preliminary)

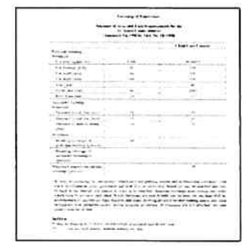
EXHIBIT A
CONCEPT PLAN

[See attached]









DATE	REVISION

STUART CHALLONER, P.E.
PROFESSIONAL ENGINEER N.J. LIC. NO. 34337
PROFESSIONAL PLANNER N.J. LIC. NO. 4489

CHALLONER & ASSOCIATES L.L.C. Certificate of Auth. No. 24GA28057700
CONSULTING ENGINEERS AND DESIGN PROFESSIONALS
201 Main Street 2nd Floor
Toms River, New Jersey 08753
Phone: 732-818-9980 Fax: 732-818-9981

CONCEPT PLAN

WAWA CONCEPT
LOT 19
BLOCK 775
SITUATED IN
TOWNSHIP OF PEMBERTON
BURLINGTON COUNTY, NEW JERSEY

Date:	Scale:	Drawn By:	Checked By:	File No.:	Field Book:	Sheet No.:
MAY 17, 2022	1"=40'	SCC	SCC	22019		1 of 1

EXHIBIT B
Redevelopment Plan

[See Attached]

EXHIBIT C
Map of Property

[See Attached]

Home ⌄ Burlington County, NJ Property Viewer

Open in Map Viewer   Modify Map   Sign In

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- [ ] NJ 2015 Natural Color Aerial (1 ft, leaf off)
- [ ] NJ NAIP 2013 Natural Color Aerial (1m, leaf on)
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- [ ] NJ 2002 Infrared Aerial (1 ft, leaf off)
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- [ ] NJ 1930 Aerial (Black & White)
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- [ ] NJ 1977 Tidelands Basemap Imagery (Black & White)
- [ ] NJ 1970 Wetlands Basemap (Black & White)
- Imagery

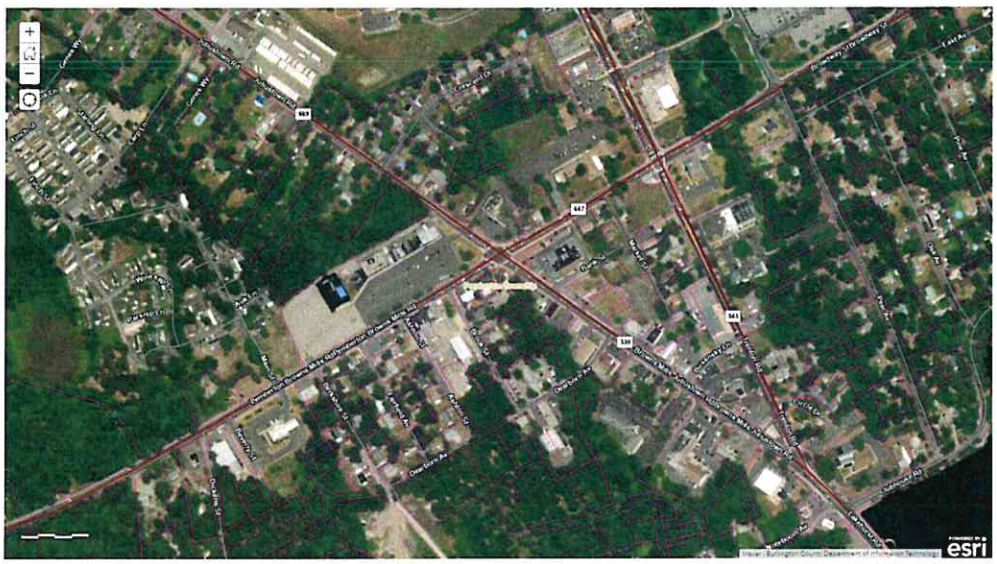

EXHIBIT D
Cost Estimate

[See attached]

Pemberton Redevelopment

Soft Cost	$	250,000.00
Hard Cost	$	7,500,000.00
	$	7,750,000.00

EXHIBIT E
Demolition Plan (Preliminary)

[See attached]

Docs #5856230-v1

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August 26, 2022

Mr. Scott England
Regan Young England Butera, P.C.
456 High Street
Mount Holly, NJ 08060

Re: Browns Mill Shopping Center-Strip Stores
Browns Mill, NJ

Dear Sir:

I visually observed the above referenced existing property with the purpose of providing the enclosed report. It is my understanding that this report is a document to be used in the undertaking of the excavation and removal of contaminated soils below the existing strip stores portion of the structure. I trust the enclosed report satisfies such requirements as set forth therein.

Please be advised that Regan Young England Butera as well as the Township of Pemberton, and any affiliates, successors, and/or assigns can rely on this Report, dated, August 26, 2022, subject to the limitations and qualifications contained therein. If you have any questions regarding the above, please do not hesitate to contact me at your convenience.

Very truly yours,

SE2 ENGINEERING, LLC

JAY B. ROSEN
Professional Engineer

JBR:njc

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Findings

Se2 Engineering, LLC (Se2) was contracted by Regan Young England Butera to conduct a Property Condition Assessment (PCA) in order to prepare a Property Condition Report (PCR) of the strip store portion of Browns Mills Shopping Center, 101 Pemberton Browns Mills Road, Pemberton Township, Burlington County, NJ 08015. The PCA was performed on Monday, August 22, 2022.

All buildings consist of approximately 25,000 square feet on several acres of land with a paved parking lot in front of the building. There are 17 tenant spaces located on the site with 1 present tenant. The building heights vary; however, the strip store portion of the structures are one-story with a clear height of approximately 12 feet. The buildings were constructed over time, with construction commencing sometime in the 1950's or 1960's and continuing through the 1990's. Generally, the property was constructed within industry standards in force at the time of construction.

The existing strip store portion of the building is an older one story shopping center divided into several tenant spaces. The vast majority of the center is not presently occupied. The roof structure of the strip stores consist of wood joists, 2 x 10's spaced at 16 inches on centers, spanning between 8 inch masonry block walls. The masonry bearing walls are spaced at approximately 20 feet centers. The clear height of the spaces are approximately 12 feet. The spaces, at least the ones I viewed, are "cleaned out" or had all interior partitions and ceilings removed. The mechanical and electrical systems are not operational. The strips stores would be considered a shell type building. It is assumed that the foundation consists of cast-in-place concrete footings approximately 16 inches wide. The perimeter foundations are lower due to frost with the interior footings stepped up to be placed directly below the existing slab. This was not verified; however, this is typical construction for this type of building.

According to the Brokerhoff Environmental Report, there are several areas of concern. This site has experienced several soils remediations dating back to 1997. It is apparent that several heating oil tanks were removed as well as contamination that existed due to occupancy of a dry cleaner. At the time of removal, it was found that the tanks had leached contaminants into the soil. As such, the surrounding soil around the tanks was removed to a depth between 5 and 6

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feet, the pit lined and filled with clean material. Monitoring wells and additional soil samples were installed and obtained overtime. Despite the extensive remediation efforts, contamination still potentially exists. Therefore, the Brokerhoff Environmental Report recommends further evaluation of the soils within the areas of concern for all 15 tank removals as well as the dry cleaner space. The Brokerhoff Enviornmental Report assumes the building are to be demolished prior to the soil excavations and removals.

Due to the proposed removal of soils, the concern is how to removal the soils without damaging the buildings in order to limit the scope of demolition. It is assumed that the soils are to be removed to a depth of approximately 6 feet below the present slab elevation. Based on the analysis presented below, I conclude that a limited demolition can occur; however, the depth and extent of the excavation must be controlled to prevent potential damage to the surrounding buildings, the public and the construction personnel.

Purpose and Scope

The purpose and scope of this report is to furnish a written physical evaluation of the subject property and to indicate the parameters required for an approximate 6 foot depth of limited excavation below the existing slab of a portion of the strip store section without damaging the surrounding structures. In order to complete this report, a review of the Brokerhoff Enviornmental Services, LLC report was completed together with a visual walk-thru inspection of a portion of the property. The visual walk-thru consisted of observation of the building exteriors and site, representative interior areas, and a random sampling of tenant spaces. Enclosed is information received during this assessment. This includes the overall site plan, building square footages, tenant layout, photographs, sketches, etc.

My site visit was completed on August 22, 2016. The weather conditions at the time of my inspection were partially cloudy with temperatures in the 80's.

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Engineering Analysis

As indicated above, the existing strip store portion of the structure primarily consists of a one story wood roof structure. The wood roof joists consist of 2 x 10 members spaced at 16 inches on centers spanning approximately 20 feet between masonry bearing walls. The 20 foot clear span consists of a typical tenant space that was occupied by an individual tenant use or store. As such, the building consists of long tenant division masonry bearing/separation walls spaced at 20 feet on centers that the wood joist span. The foundation for these walls is assumed to be directly placed below the slab with a minimum thickness of 8 inches. The interior footings are located higher than the exterior footings due to the requirement for the exterior foundations to be placed below frost depth. In this area, a typical frost depth used is 36 inches or 3 feet. The rear and front walls are infill or gable non-bearing ends of the space, but do provide the required frost protection of the structure. Based on this type of building, the front wall, rear wall and roof can be easily removed between bearing walls with the remaining structure stable as the roof on the opposite side of the removal can remain to support the bearing walls. This portion of the analysis only addresses the front wall, rear wall and roof above the tenant space to be opened and excavated. It does not address the foundation concerns.

A concrete foundation is placed to spread or distribute the roof load to the native soil. The width of the foundation is dictated by the soil bearing or its capability to support the load. In this area, a conservative soil bearing value would be 2500 pounds per square foot. For this structure, the roof is considered a light load with a live loading of 25 pounds per square foot as found within the current ASCE/SEI 7-16 "Minimum Design Loads and Associated Criteria for Building and Other Structures." The wood roof itself weighs 15 pounds per square foot dead loading. Therefore, a total loading of 40 pounds per square foot is assumed to be applied. The masonry bearing wall is assumed to be 8 inch hollow concrete masonry units with a weight of 55 pounds per foot. Based on this criterion, the load to the foundation would be approximately 2000 pounds per foot. This would require the wall footing to be a minimum of 12 inches wide. However, standard practice of the time would be to install a minimum footing width of 16 inches with a depth of 8 inches. The interior footing would typically be placed 8 inches, or one block course, below the slab. This is the condition assumed, but not confirmed, for my analysis. The exterior footings, even though non-bearing, are assumed to be this minimum size for ease of construction and are placed at 3 feet below the slab to protect the foundation from frost heave.

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Soil is considered to be a semi-solid. It will transfer load in both a vertical and horizontal direction. Under all foundations a pressure bulb will radiate outwards from the footing in a size that is relative to the stiffness or the ability of the soil to transfer the load vertically as compared to horizontally. In other words, one cannot excavate to the footing edge and expose the soil directly below the footing. This would result in the soil moving horizontally or laterally outwards from beneath the footing resulting in settlement or ultimately failure of the soil below the footing. This would cause the structure to fall or collapse, potentially catastrophically. A conservative value to use for the spread of the pressure bulb is two feet horizontally to one foot vertically. This slope preserves the pressure bulb and will leave the remaining foundation intact. So assuming the footing to be 16 inches wide and 8 inches below the slab, if we want to excavate 6 feet deep from the slab, the excavation must slope away from the footing and could not achieve the required 6 foot depth until it is approximately 10 feet away from the footing to remain. This indicates that not only does one store have to be demolished, but the adjacent store on each side or 3 total.

The final concern is frost heave. Frost heave is the term used when water builds up below a foundation and freezes. Water when it freezes, it expands. This concept is known to all who have placed a soda or beer can into a freezer and the can expands. When the ice is formed, an upward force is exerted onto the foundation for which it was not designed. This condition can be further aggravated if a water source, such as a broken plumbing line, downspout, etc feeds the ice lens permitting it to grown. If this happens the building will heave upwards and failure of the structure results. In order to prevent this phenomenon, perimeter foundations are lowered into the ground below the depth of the earth freezing. In this area, frost depth is considered a maximum of 3 feet deep.

The issue we have with the existing interior footing, which becomes an exposed exterior footing, is that it will NOT be located below the frost depth. There are two approaches. The first approach is to lower the existing footing to frost depth by underpinning. Underpinning is pouring sections of concrete on a spread pattern below the existing footing in a time dependent sequence until the entire foundation is lowered to the minus 6 foot elevation. This procedure is labor intensive, time dependent, and must be supervised. As such, it is an expensive undertaking. However, it does lower the footing and protect it from frost penetration.

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The second option is riskier; however it comes with minimal cost. The excavation adjacent to the "exposed" remaining footing is protected and all water sources are directed away from the footing. This would be to cover the soil with plastic tarping, slope the top of the excavation away from the footing, confirm that there are no leaking pipes in the area, and route the downspouts away from the foundation. This results in removing water from the soils below the footing. Due to the lack of water, prolonged frost, the fact that the remaining store is unoccupied and slated for future demolition, the potential for damage to the structure is limited. Unfortunately, I cannot guarantee that damage will not occur. This is a decision for ownership/the township to make.

Finally, as a general concern, I would recommend that the demolition area be fenced and signed including the dumpsters to protect the public from entering into work area.

Summary and Conclusion

The soil beneath the existing strip store portion of the structure was determined to be contaminated by Brokerhoff Environmental Services, LLC in their report, dated April 11, 2022. This report recommends that the soil below the stores be evaluated and removed potentially to a depth of 6 feet.

Based on this, I visually inspected the structure of the stores to determine if a limited portion of the structure could be removed and the excavation occur rather than demolishing the entire structure and then excavating the soil. My inspection revealed that the existing roof structure consists of wood 2x 10 members spaced at 16 inches on centers spanning approximately 20 feet between masonry bearing walls. The building are approximately 12 feet clear and have had all interior partitions and ceilings removed. The mechanical and electrical systems are not in service. The foundations are assumed to be minimal cast in place concrete footings founded on native soil. The exterior foundations are assumed to be 3 feet below the exterior grade with the interior footings placed directly below the existing slab.

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Due to the existing structure, it is my recommendation that limited demolition and excavation can occur. Prior to any work occurring, the work area must be fenced and signed to protect the public from entering the work area. At the store to excavated, I recommend that its roof, front wall and rear wall be removed. I also recommend that the adjacent store on each side have its roof, front wall and rear wall removed. The excavation can then occur in the subject store to a depth of 6 feet. The 6 foot depth can hold to approximately the mid point of the adjacent store on either side. From that point, the grade must slope upwards to the existing footing in a two horizontal to one vertical slope. The sloped grade must be at a minimum protected by tarping, and sloping, verifying all plumbing and water services are not leaking, and all downpouts directed away from the excavation. Please note, this recommendation does come with some risk of future damage to the remaining structure. In order to eliminate this risk fully, underpinning of the remaining foundation wall can occur.

Limitations

Se2 has completed a Property Condition Assessment (PCA) of the referenced property. The property assessed is the strip store portion of Browns Mills Shopping Center, 101 Pemberton Browns Mills Road, Pemberton Township, Burlington County, NJ 08015.

The PCA was performed employing good commercial and customary practice methods and procedures. The assessment completed was a visual walk-thru of a portion of the buildings built over time. The assessment was limited to that which was exposed and easily observable. No destructive testing of any kind was performed.

The report may be used without limitation and distributed to a purchaser, potential tenant, owner, mortgagee or potential mortgagee, lender, government entity, or property manager of the subject property. It is written for the exclusive use and benefit for individual named on the cover letter of this report.

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The opinions Se2 asserts in this report were formed employing the degree of skill and care ordinarily exercised by any prudent engineer in the same community under similar circumstances. Factual information regarding operations, conditions and test data provided by the Client or the Client's representatives has been assumed complete and correct. The conclusions present within this report are based on the data provided, observations made, and the conditions that existed specifically on the date of the assessment.

Se2 Engineering, LLC performed a limited visual observation. NO soils testing, or environmental evaluation was performed. The above observations and this report do not constitute a completed survey and assessment of the subject property. These observations were limited. A full survey and evaluation was beyond the scope of this report. Sampling or testing was not completed.

If you have any questions regarding the above, please do not hesitate to contact me at your convenience.

STATE OF NEW JERSEY
JAY BRIAN ROSEN
No. 24GE03799900
LICENSED
PROFESSIONAL ENGINEER

Very truly yours,

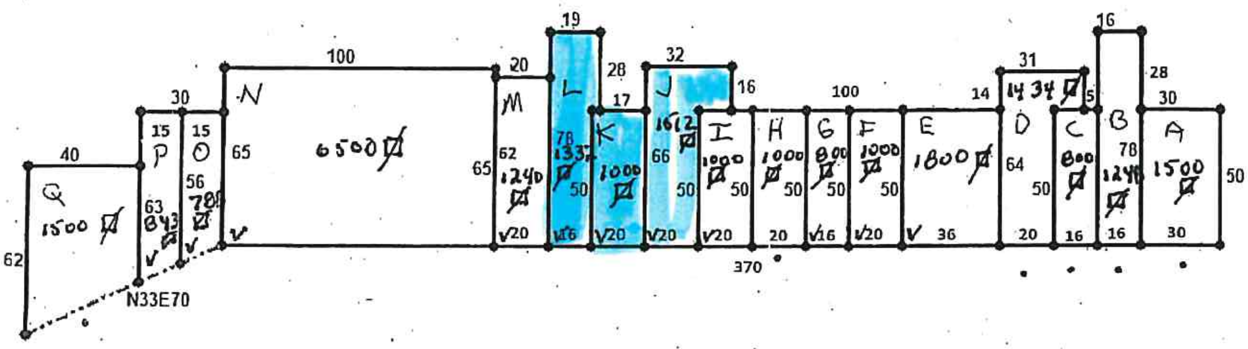
SE2 ENGINEERING LLC

JAY B. ROSEN
Professional Engineer

JBR:njc

Enclosures: Site plan
Photographs
Sketches

7/15/19



100 A Dairy Queen
609 893 4240

100 B Nu Soul Cafe – Geissel Catalan
609 893 3976

100 C Jay's Studio Jewelers
609 893 0600

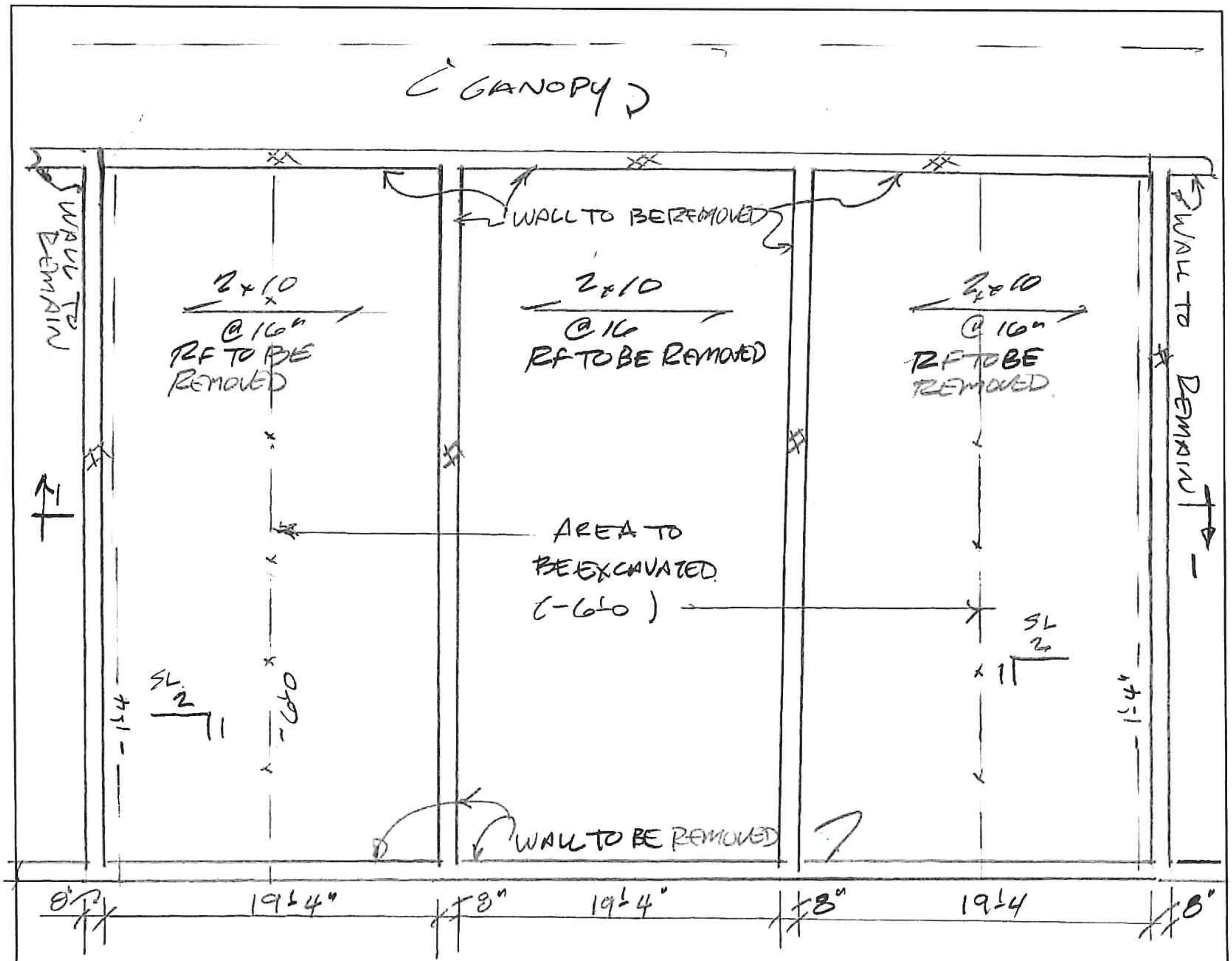
100 D Elly Premium Laundry
609 498 5243

100 H Ernie's Barbershop
609 893 1763

100 Q Dr. Lorraine Varela, DPM — Another Address comes up as 77 Pemberton-Browns Mills Rd
609 893 0040
654 4364

SE2 ENGINEERING, LLC
Professional Engineers
1705 Butler Pike
CONSHOHOCKEN, PA 19428-2236
(610) 828-1550 FAX (610) 828-5080

JOB Brauns Mills Steps
SHEET NO. SK1 OF SK2
CALCULATED BY JBR DATE 8/25/22
CHECKED BY ____ DATE ____
SCALE ____



POTENTIAL DEMO/EXCAVATION PLAN

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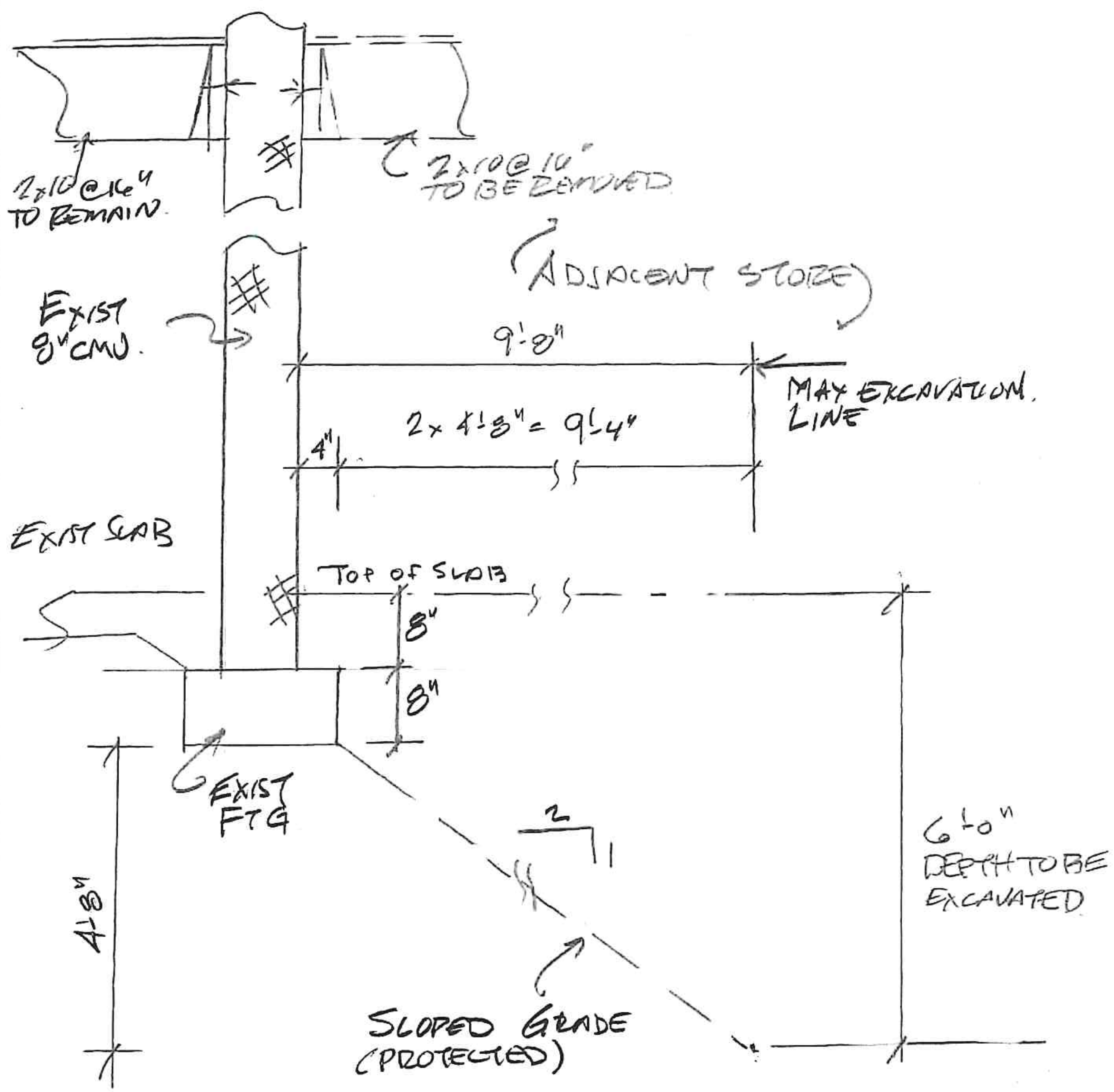
JOB BROWNS MILL · STRIPS
SHEET NO. SK2 OF SK7
CALCULATED BY DATE
CHECKED BY DATE
SCALE



EXCAVATION SECTION 1

Browns Mill Shopping Center

1

2

3

4

5

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