

CONDITIONAL REDEVELOPER'S AGREEMENT

BY AND BETWEEN

WOODBIDGE REDEVELOPMENT AGENCY

AND

SEI CUTTERS DOCK, LLC

Dated: March 31, 2019

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CONDITIONAL REDEVELOPER'S AGREEMENT

This **CONDITIONAL REDEVELOPER'S AGREEMENT** is made on this ____ day of March, 2019 (this "**Agreement**") by and between the **Woodbridge Redevelopment Agency** (the "**Agency**"), an instrumentality and agency of the Township of Woodbridge (the "**Township**"), in the County of Middlesex, State of New Jersey, the Agency having its offices at 1 Main Street, Woodbridge, New Jersey 07095 and SEI Cutters Dock, LLC, a limited liability company organized under the laws of the State of New Jersey, (the "**Redeveloper**"), and together with the Agency, the "**Parties**").

WITNESSETH:

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

WHEREAS, the Council adopted a resolution directing the Township Planning Board the ("**Planning Board**") to undertake a preliminary investigation to determine if certain real property appearing on the official tax maps of the Township as Block 523, Lots 1, 2 and 4; Block 523, Lot 3; Block 531, Lot 1; Block 531, Lot 2; Block 531.01, Lots 1, 1-A, 2, 3, Block 531 Lot 3; Block 531.02, Lot 1.021; Block 531.02, Lot 1.03; Block 531.02, 100; Block 540.07, Lot 10; Block 541, Lot 8; Block 541, Lots 10.01 & 12; Block 541, Lot 11; Block 730, Lots 1 and 1-B; commonly referred to as the Pennval Road Redevelopment Area (the "**Redevelopment Area**") is an area in need of redevelopment as defined in the LRHL; and

WHEREAS, the Township Planning Board ("**Planning Board**") by resolution dated March 19, 2008, recommended that the Redevelopment Area be designated by the Council as an area in need of redevelopment; and

WHEREAS, on April 1, 2008 pursuant to the recommendation of the Planning Board, the Council adopted a resolution designating the Redevelopment Area as an area in need of redevelopment; and

WHEREAS, in furtherance of the redevelopment of the Redevelopment Area, a redevelopment plan was prepared by Heyer, Gruel & Associates for the Redevelopment Area (the "**Pennval Road Redevelopment Plan**"); and

WHEREAS, the Township Council adopted a resolution on December 2, 2008 referring the Pennval Road Redevelopment Plan to the Planning Board for its review and recommendation; and

WHEREAS, the Planning Board, by resolution, recommended that the Council adopt the Pennval Road Redevelopment Plan; and

WHEREAS, the Council adopted Ordinance 09-06 on January 20, 2009 approving and adopting the Pennval Road Redevelopment Plan; and

WHEREAS, thereafter, Council referred to Planning Board, and the Planning Board conducted a hearing, with regard to the inclusion of certain, additional parcels to the Redevelopment Area, and ultimately the Redevelopment Plan, and the Council adopted an ordinance on January 19, 2010 amending the Redevelopment Plan to include those certain, additional parcels (the “**Amended Redevelopment Plan**”); and

WHEREAS, on March 19, 2019, in furtherance of the Agency’s powers pursuant to the LRHL and in further efforts to allow for the redevelopment of the Redevelopment Area, the Agency, by Resolution #19-20 (the “**Resolution**”), that authorized the limited designation of Redeveloper for Block 531, Lots 1 and 2, and Block 523, Lot 1 (the “**Property**”) in the Redevelopment Area contingent upon: 1) Redeveloper entering into an agreement with the Agency, within two (2) weeks of the effective date of this resolution, that sets forth, inter alia, the rights and responsibilities of the Parties to enter into this Agreement; and 2) the Agreement, including but not limited to the instant designation of Redeveloper, be void and of no further legal effect following One Hundred Twenty (120) days from the effective date of the Agreement, regardless of the Agreement or any progress made by the Parties towards the negotiation of a comprehensive redevelopment agreement to govern the redevelopment of Block 531, Lots 1 and 2, and Block 523, Lot 1 in the Redevelopment Area.

WHEREAS, the Redevelopment Law authorizes the Agency to arrange or contract for the planning, construction or undertaking of any development project or redevelopment work in a designated area pursuant to N.J.S.A. 40A:12A-8.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, the Parties do hereby covenant and agree each with the other as follows:

ARTICLE I GENERAL PROVISIONS

Section 1.01 Definitions. As used in this Agreement defined terms shall have the meaning assigned to such terms in the preambles hereto or as set forth below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation”. The words “agree,” “agreements,” “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed,” except or unless the context may otherwise specify. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement. Words that are capitalized, and which are not the first word of a sentence, are defined terms. Unless otherwise defined in the preambles hereof, the following terms shall mean:

“**Costs**” shall mean all out of pocket costs incurred by the Agency in connection with the Redeveloper’s undertakings with respect to the Project. Such costs include, but are not limited to, any reasonable fees and costs of any outside professional consultant, contractor or vendor retained by the Agency including outside attorneys, technical consultants, planners, financial consultants and appraisers, among others.

“**Certificate of Completion**” shall mean with respect to the Project or Property, the date that the Project may, in all material respects, be used and operated for its intended purpose provided that: all of the applicable provisions of this Redevelopment Agreement have been met, and the Agency has received a written certificate from Redeveloper affirming that such Project is complete.

“**Declaration of Restrictions**” shall be a declaration of redevelopment agreement restrictions that complies with the provisions of *N.J.S.A. 40A:12A-9(a)*.

“**Project**” shall have the meaning assigned in Section 1.04.

“**Redevelopment Agreement**” shall mean a redevelopment agreement regarding the Redevelopment Area.

“**Term of this Agreement**” shall mean the period of time from the execution of this Agreement until the Termination Date.

“**Termination Date**” shall have the meaning assigned in Section 1.05.

Section 1.02 Purpose of the Agreement. The purpose of this Agreement is to outline the nature of the arrangement by and between the Parties and the scope of responsibilities that each will undertake hereunder during the Term of this Agreement. The Parties agree to work with due diligence and in good faith for the consummation of the transactions contemplated in this Agreement. Specifically, the Parties desire to negotiate a Redevelopment Agreement to redevelop the Property, in accordance with the Redevelopment Plan, as amended and supplemented.

Section 1.03 Exclusivity. The Agency agrees that the Redeveloper shall be the sole and exclusive party with whom the Agency shall negotiate the redevelopment of the Property, for the Term as set forth at Section 1.05 of this Agreement.

Section 1.04 Project. The redevelopment of the Property shall be of a project that complies with the Redevelopment Plan, as amended and supplemented, or is otherwise agreed to by the Agency, in its sole discretion (the “**Project**”).

Section 1.05 Termination of Agreement.

(a) This Agreement shall automatically terminate on the earlier of either of the dates set forth below (each a “**Termination Date**”):

(i) The date of the execution by the Parties of a Redevelopment Agreement for the Project; or

(ii) July 25, 2019 at 12:00 midnight EST.

(b) Following the Termination Date, the Parties shall have no further obligation to each other under this Agreement, financial or otherwise. The Redeveloper specifically acknowledges that it shall not be entitled to reimbursement of any Costs, except as otherwise specified in Section 2.01(e), regardless of whether this Agreement is terminated pursuant to Section 1.05(a)(i) or (ii) above.

Section 1.06 No Liability. Neither Party shall be liable for damages to the other Party in any way under this Agreement or otherwise.

ARTICLE II OBLIGATIONS OF THE PARTIES

Section 2.01 Redeveloper Obligations

The Redeveloper shall, during the term of this Agreement, undertake the following at its own cost and expense:

- (a) Negotiate with the Agency for the execution of a Redevelopment Agreement;
- (b) Cooperate with the Agency in any reasonable manner so as to enable the Agency to meet its obligations hereunder including but not limited to, attendance at meetings and preparation and/or compilation of information;
- (c) Provide the Agency with all reasonable information in its possession which may affect the Agency's assessment of the Redeveloper's ability to undertake and complete the Project, including but not limited to providing the Agency with a concept plan and *pro forma* concerning the Project;
- (d) Assist the Agency in securing any available grants or loans to offset costs; and
- (e) As of date hereof, Redeveloper acknowledges that it has established an escrow account with the Agency, in the amount of \$25,000. Redeveloper acknowledges that, notwithstanding the establishment of an escrow account with the Agency, should the Agency and Redeveloper agree to the terms of a Redevelopment Agreement, Redeveloper is still responsible for paying the Agency's Administrative Fee, consistent with Agency Resolution 16-56.

Before the Agency's withdrawal of funds from the escrow for payment of its costs, the Agency shall provide Redeveloper with a copy of each invoice. Unless Redeveloper promptly (within ten (10) days of its receipt of any such copy) provides a written objection, the Agency shall be free to withdraw funds from the escrow for the payment of such invoiced services. If, when, and as often as may occur that the escrow account is drawn down to five thousand dollars (\$5,000), then Redeveloper, upon the Agency's request, shall immediately provide to the Agency for deposit funds sufficient to replenish the escrow account to maintain the amount of Twenty Five Thousand Dollars (\$25,000) for use in accordance with these terms. In the event that this Agreement is terminated, the balance of the escrowed monies and the interest earned thereon shall be returned to Redeveloper following the payment from the fund of the Agency's costs incurred up to the time of termination, provided invoices for such costs have been provided to Redeveloper and have not been objected to within the time provided. In the event that the Parties execute the Redevelopment Agreement, then the remaining escrowed funds may be applied in accordance with the requirements of the Redevelopment Agreement, in the Agency's sole discretion.

Section 2.02 Agency Obligations

The Agency shall, during the term of this Agreement, undertake the following:

- (a) Negotiate with the Redeveloper for the execution of a Redevelopment Agreement;
- (b) Cooperate with the Redeveloper in any reasonable manner so as to enable the Redeveloper to meet its obligations hereunder including but not limited to, attendance at meetings and preparation and/or compilation of information; and
- (c) Provide the Redeveloper with all reasonable information in its possession which may affect the Redeveloper's ability to undertake and initiate the Project.

ARTICLE III COVENANTS AND RESTRICTIONS

Section 3.01 Covenants and Restrictions.

The Redevelopment Agreement to be executed by the Parties shall, at a minimum, provide that the Redeveloper shall:

(a) Devote the Property to the uses specified in the Redevelopment Plan, as amended and supplement, and shall not devote the Property to any other uses;

(b) Commence the construction of the Project within the period of time described therein;

(c) Agree with the Agency to limit the Redeveloper's authority to sell, lease or otherwise transfer the Property or the Project as a whole, without the prior consent of the Agency;

(d) Not 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 Project or any buildings or structures erected or to be erected thereon, or any part thereof, for the period provided therein;

(e) In the sale, lease or occupancy of any of the Property (i) not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status and (ii) provide that the Redeveloper, its successors and assigns, shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status; and

(f) Require that a separate Declaration of Covenants and Restrictions be filed.

Section 3.02 Property Upon Completion. Upon redevelopment of any portion of the Property and completion of the Project, the conditions that were found and determined to exist at the time the Property was determined to be in need of development shall be deemed to no longer exist as to these portions of the Property upon receiving a Certificate of Completion, as contemplated in the LRHL.

Section 3.03 Effect and Term of Covenants and Restrictions. It is intended and agreed that the covenants and restrictions set forth in this Article shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, and any successor in interest to the Area, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Area or any part thereof, for such time as set forth in the Redevelopment Agreement and until discharged.

Section 3.04 Prohibition Against Speculative Landholding. Because of the importance of the development of the Area to the general welfare of the community, the Redeveloper represents and agrees that the Redeveloper's undertakings pursuant to this Agreement and any Redevelopment Agreement are, and will be used for the purpose of redevelopment of the Property as provided herein, in any Redevelopment Agreement and in the Redevelopment Plan, as amended and supplemented, and not for speculation in landholding.

ARTICLE IV REDEVELOPER REPRESENTATIONS AND COVENANTS

Section 4.01 Redeveloper Representations and Covenants.

The Redeveloper hereby makes the following representations and covenants:

(a) It has the legal capacity to enter into this Agreement and perform each of the undertakings set forth as of the date of this Agreement;

(b) It is duly organized and a validly existing legal entity under the laws of the State of New Jersey, and all necessary resolutions have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper's behalf;

(c) The Redeveloper has made the appropriate filings with the State of New Jersey and is authorized to do business within the State of New Jersey;

(d) To the best of its knowledge, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform pursuant to the terms of this Agreement;

(e) This Agreement is duly executed by the Redeveloper, and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery of this Agreement and the performance hereunder will not constitute a violation of any partnership and/or stockholder agreement of the Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which the Redeveloper is a party;

(f) The Redeveloper shall, at such times as the Agency may request, furnish the Agency with a complete statement subscribed and sworn to by the managing member of the Redeveloper, setting forth all of the ownership interests of the Redeveloper, or other owners of equity interests of the Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Redeveloper's, their names and the extent of such interest. The above outlined reporting requirements shall only apply to those individuals holding a ten percent (10%) or greater ownership interest in the Redeveloper;

(g) This Agreement is not prohibited by and does not conflict with any other agreements, instruments, judgments or decrees to which the Redeveloper is a party or is otherwise subject;

(h) No receiver, liquidator, custodian or trustee of the Redeveloper shall have been appointed as of the date hereof, and no petition to reorganize the Redeveloper pursuant to the

United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the date hereof;

(i) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper shall have been filed;

(j) No indictment has been returned against any official of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Agreement;

(k) There is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the authority of the Redeveloper to enter into this Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair its ability to perform its obligations pursuant to the terms of this Agreement;

(l) All information and statements included in any information submitted by the Redeveloper to the Agency and its agents are true and correct in all material respects. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Agency to enter into this Agreement;

(m) The Redeveloper has received no notice as of the date hereof asserting any noncompliance in any material respect by the Redeveloper with applicable statutes, rules and regulations of the United States, the State or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on the Redeveloper's ability to perform its obligations in connection with this Agreement. The Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby;

(n) Neither the Redeveloper, nor any Person holding a controlling interest (i) has been convicted in a criminal proceeding or is a named subject in a pending criminal proceeding (excluding traffic violations or other minor offences), or (ii) to the best of the Redeveloper's knowledge and belief is a target of or a potential witness in a criminal investigation; and

(o) The Redeveloper is fully experienced, financially and technically capable and properly qualified to undertake the responsibilities and perform the work provided for in or contemplated under this Agreement and that it is properly equipped, organized and financed to undertake all such responsibilities hereunder.

ARTICLE V AGENCY REPRESENTATIONS AND COVENANTS

Section 5.01 Agency Representations and Covenants.

The Agency hereby makes the following representations and covenants:

- (a) The Agency has the power and authority to enter into this Agreement;
- (b) The Agency has duly authorized the execution and delivery of this Agreement;
- (c) The Agency is lawfully authorized to conduct its business within the State of New Jersey with all due power and authority to enter into this Agreement and to incur and perform its obligations hereunder;
- (d) There is no action, suit or proceeding at law or in equity now pending or, to the knowledge of the Agency, threatened against or affecting the Agency that, if already determined, would materially impair its right and ability to perform its obligations under this Agreement; and
- (e) The execution and delivery of this Agreement and the performance by the Agency of its obligations under this Agreement do not and will not violate any provision of law and will not result in the breach of, or constitute a default under, any agreement to which the Agency is a party or by which it is bound.
- (f) The Agency represents that the Property has been designated as an “area in need of redevelopment,” in conformance with the LRHL.

ARTICLE VIMISCELLANEOUS

Section 6.01 Waivers. No waiver made by any Party with respect to any obligation of any other Party shall be considered a waiver of any rights beyond those expressly waived in writing and to the extent expressly stated in writing.

Section 6.02 Notices and Demands. A notice, demand or other communication under this Agreement by any Party to the other shall be sufficiently given or delivered if dispatched by United States registered or certified mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged), or by confirmed facsimile or email transmission, to the Parties at their respective addresses set forth herein, or at such other address that either Party may, from time to time, designate in writing to the other.

The addresses for notices to the Parties are as follows:

AGENCY:

Woodbridge Redevelopment Agency
Township Municipal Building
1 Main Street
Woodbridge, New Jersey 07095
Attn: Caroline Ehrlich, Executive Director

With copy to:

William W. Northgrave, Esq.
McManimon, Scotland & Baumann, L.L.C.
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

REDEVELOPER:

SEI Cutters Dock, LLC
1649 49th St.
Brooklyn, New York 11204
Attn: Samuel Wachsmann

With a copy to:

Meryl A.G. Gonchar, Esq.
Sills Cummis & Gross
One Riverfront Plaza
Newark, New Jersey 07102

Section 6.03 Severability. The validity of any Article, Section, clause or provision of this Agreement shall not affect the validity of the remaining provisions.

Section 6.04 Assignment. This Agreement may not be transferred and/or assigned by the Redeveloper without the written consent of the Agency.

Section 6.05 Governing Law. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

Section 6.06 Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements between the Parties.

Section 6.07 Titles of Articles and Sections. The titles of the Articles and Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 6.08 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.

Section 6.09 Effective Date. The effective date of this Agreement shall be the date when the Parties have executed this Agreement.

Section 6.10 Review by Counsel. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey without regard to or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both Redeveloper and the Agency have combined in their review and approval of same.

[SIGNATURES ON FOLLOWING PAGE]

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

WOODBIDGE REDEVELOPMENT AGENCY

BY: Caroline Ehrlich
Caroline Ehrlich, Executive Director

SEI CUTTERS DOCK, LLC

BY: SPD. King