

**NOTICE/DISCLAIMER**

**THIS DOCUMENT IS BEING PROVIDED SOLELY FOR INFORMATIONAL PURPOSES TO ASSIST POTENTIAL RESPONDENTS IN PREPARING A RESPONSE TO THE REQUEST FOR QUALIFICATIONS/PROPOSALS FOR PLANNING, DESIGN AND CONSTRUCTION OF THE NEW UNION COUNTY GOVERNMENT COMPLEX ISSUED BY THE UNION COUNTY IMPROVEMENT AUTHORITY ON AUGUST 17, 2020.**

**THE TERMS AND CONDITIONS SET FORTH IN THIS DRAFT REDEVELOPMENT AGREEMENT ARE SUBJECT TO NEGOTIATIONS AMONGST THE UNION COUNTY IMPROVEMENT AUTHORITY, THE COUNTY OF UNION AND THE SUCCESSFUL RESPONDENT DESIGNATED AS REDEVELOPER FOR THE PROJECT SITE.**

**THE UNION COUNTY IMPROVEMENT AUTHORITY AND THE COUNTY OF UNION RESERVE ALL RIGHTS TO AMEND, DELETE, SUPPLEMENT AND OTHERWISE CHANGE ANY TERMS AND CONDITIONS SET FORTH IN THIS DRAFT REDEVELOPMENT AGREEMENT.**

**REDEVELOPMENT AGREEMENT FOR**

New Union County Government Complex Project  
in the  
City of Elizabeth, Union County, New Jersey

**BETWEEN AND AMONG**

The Union County Improvement Authority, Designated as the Redevelopment Entity  
for the Project Site by the City of Elizabeth

**AND**

\_\_\_\_\_, as Redeveloper

**AND**

County of Union, New Jersey

**DATED:** \_\_\_\_\_, 2021

**THIS AGREEMENT ("Agreement")** made as of this \_\_\_\_ day of \_\_\_\_\_, 2021 by and among **THE UNION COUNTY IMPROVEMENT AUTHORITY**, a body corporate and politic of the State of New Jersey, having its offices at 1499 Routes 1 & 9 North, Rahway, New Jersey 07065, designated as the Redevelopment Entity by the City of Elizabeth, New Jersey (hereinafter called the "**Authority**" of "**UCIA**");

AND

\_\_\_\_\_, a New Jersey \_\_\_\_\_ having its offices at \_\_\_\_\_ (hereinafter called the "**Redeveloper**");

AND

**THE COUNTY OF UNION**, a body corporate and politic of (the State of New Jersey, having offices at Union County Administration Building, 10 Elizabethtown Plaza, Elizabeth, New Jersey 07207 (hereinafter called the "**County**")

(singularly, a "Party", collectively referred to as the "Parties").

**W I T N E S S E T H:**

**WHEREAS**, by resolution dated January 22, 2019, the City Council of the City of Elizabeth (the "City") designated certain property commonly referred to as 61-99 West Grand Street, also identified as Block 6, Lot 1589 on the official tax map of the City of Elizabeth (the "**Project Site**") as a non-condemnation area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 (the "**Redevelopment Law**"); and

**WHEREAS**, by ordinance dated April 14, 2020, the City adopted a redevelopment plan for the Project Site (as it may be amended hereinafter, the "**Redevelopment Plan**"); and

**WHEREAS**, the County created the UCIA pursuant to the County Improvement Authorities' law, constituting Chapter 183 of the Pamphlet Laws of New Jersey of 1960 and the acts amendatory thereof and supplemental thereto (the "**Act**"), for the express purpose of, among other things, facilitating the development and financing of public facilities and development projects within the County; and

**WHEREAS**, pursuant to the Act, the UCIA is authorized to provide public facilities as such term is defined therein, within the County which includes the financing, acquisition, construction and/or leasing of such public facility and to act as a Redevelopment Entity for purposes of the Redevelopment Law; and

**WHEREAS**, on or about \_\_\_\_\_, 2019 the UCIA and County entered into a Shared Services Agreement for the Continued Evaluation and Analysis of the Occupancy and Space Utilization Needs of County Properties; and

**WHEREAS**, the County previously assessed its long-term occupancy requirements, specialized space and security of a number of County-owned properties; and

**WHEREAS**, based, upon the Parties’ mutual review of a report prepared by Colliers International (the “Colliers Report”), the Parties have determined that the County office space and leased premises associated therewith, do not adequately meet the foreseeable needs of the County; and

**WHEREAS**, the County desires to have the UCIA undertake a redevelopment project as defined by N.J.S.A. 40A:12A-1 in order to meet the County’s long-term occupancy requirements specialized space and security needs for County-owned properties; and

**WHEREAS**, on or about August 13, 2020 the UCIA and County entered into a Memorandum of Agreement for the Planning, Design and Construction of a New Union County Government Complex to be Undertaken, Financed and Completed pursuant to the Redevelopment Law, which, among other things authorized the Authority to procure a private redeveloper to redevelop the Project Site; and

**WHEREAS**, the County is presently the fee simple owner of the Project Site, which shall be conveyed to the Authority prior to commencement of construction of the Project; and

**WHEREAS**, by resolution dated \_\_\_\_\_, 2020, the City designated the Authority as the designated redevelopment entity for the Project Site; and

**WHEREAS**, the project intended to be constructed on the Project Site is known as the New County Government Complex, which would consist of approximately 225,000 gross square feet of office space with surface parking and associated site improvements generally as depicted on the concept plan attached hereto as **Exhibit 2** (the “**Project**”); and

**WHEREAS**, the Authority, acting on behalf of the County issued a *Request for Qualifications/Proposals for Planning, Design and Construction of the New Union County Government Complex*, dated August 17, 2020 and subsequent addenda 1-6 (the “**RFQ/P**”); and

**WHEREAS**, the Authority formed a review committee to review the submissions received in response to the RFQ/P (the “**Review Committee**”); and

**WHEREAS**, October 30, 2020, the Authority received \_\_\_ responses to the RFQ/P from potential respondents; and

**WHEREAS**, the Review Committee prepared an Evaluation Memorandum, dated February 22, 2021, recommending that \_\_\_\_\_, be designated as the redeveloper of the Project Site for the Project; and

**WHEREAS**, on February 22, 2021, the Authority’s Board of Commissioners, by resolution, adopted the recommendations contained in the Evaluation Memorandum and designated \_\_\_\_\_ as redeveloper (the “**Redeveloper**”) for the Project Site; and

**WHEREAS**, in connection with the Project, the Authority shall lease the Project Site to the County so that the County will be the lessee of the entire Project Site; and

**WHEREAS**, Redeveloper has agreed to construct the Project for a Guaranteed Maximum Price of \$\_\_\_\_\_ in accordance with this Agreement, including, but not limited to, the Construction Terms Addendum attached hereto as **Exhibit 3** (hereinafter referred to as the "**Addendum**"), which Addendum is incorporated herein by reference; and

**WHEREAS**, the Authority will issue bonds in one or more series in an aggregate principal amount not in excess of \$\_\_\_\_\_ to be designated as "**County Guaranteed Lease Revenue Bonds (New Union County Government Complex Project)**" (the "**Bonds**") in order to finance the development of the Project; and

**WHEREAS**, the County adopted Ordinance number \_\_\_\_\_ on or about \_\_\_\_\_, 2021 pursuant to which the County has agreed to guaranty repayment of the Bonds; and

**WHEREAS**, the parties desire to enter into this Agreement for the purposes of setting forth their respective undertakings, rights and obligations in connection with the construction of the Project, all in accordance with the Redevelopment Plan, and applicable law and the terms and conditions of this Agreement hereinafter set forth.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, and for the benefit of the parties hereto and general public, and, further to implement the purposes of the Local Redevelopment and Housing Law and the Redevelopment Plan, the Parties hereto agree as follows:

**ARTICLE I**  
**DEFINITIONS AND INTERPRETATIONS**

**Section 1.01. Definitions.** The following words and phrases shall have the meanings ascribed to such words and phrases below, such definitions to be applicable to the singular and plural forms and to the upper and lower-case initial letters:

"Agreement" or "Redevelopment Agreement" means this Redevelopment Agreement by and amongst the Authority, the County and Redeveloper, dated the Effective Date, which Agreement shall supersede and replace any prior agreements by and amongst the Authority, the County and the Redeveloper, as it may be amended or supplemented in accordance with its terms.

"Applicable Law(s)" means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding action which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority and/or court of competent jurisdiction that relates to or affects the Parties or any of them, the Project Site , the Project (or any component thereof), the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement. "Applicable Law" shall include, without limitation, the Municipal Land Use Law, the Redevelopment Law, and all Environmental Laws.

“Bridging Documents” means plans and specifications for the design of the Project, including fit-out, furnishings and equipment, prepared by the Authority’s design team which represent approximately 30% of the total design effort for the Project, which are attached hereto as Exhibit 6 and shall be utilized by the Redeveloper for the preparation of the final design of the Project.

"Certificate of Completion" means a certificate of completion issued by the Authority when (i) all work related to the Project in its entirety (or a Phase thereof), or any other work or actions to which such term is applied, has been substantially completed, acquired and/or other work or actions to which such term is applied, has been substantially completed, acquired and/or installed in accordance with this Redevelopment Agreement and in compliance with Applicable Laws, so that (a) the Project in its entirety (or the Phase thereof that has been completed), may in all respects, be used and operated under the applicable provisions of this Redevelopment Agreement, or (b) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been substantially completed, and (ii) all Governmental Approvals that are required in order that such a certificate can be issued for the Project in its entirety (or a Phase thereof that has been completed), or such other work or action to which such term is applied, are in full force and effect, and (iii) such completion has been evidenced by a written notice to that effect provided by an authorized officer of the Authority. Issuance of the Certificate of Completion releases the applicable portion of the Project from the rights and obligations under this Agreement.

"Certificate of Occupancy" means a permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued by the City of Elizabeth with respect to the Project in its entirety (or any portion thereof or any Phase, as the case may be), upon Completion of the Project (or any portion thereof, or Phase, as the case may be) in its entirety.

“City” means the City of Elizabeth, Union County, New Jersey.

"Change in Law" means the enactment, promulgation, modification or repeal of or with respect to any Applicable Law subsequent to the Effective Date, which establishes requirements affecting performance by the Party relying thereon as a justification for its failure to perform any obligation under this Agreement which are materially more burdensome than and adversely inconsistent with the requirements which are applicable to the performance of such obligations as of the Effective Date. Actions or inactions of the Authority or County shall not constitute a Change in Law giving rise to a suspension of any performance or other obligation of the Authority or County under this Agreement, provided however, that the actions or inactions (including without limitation, any denial or conditional approval) of the Planning Board shall not be deemed to constitute a “Change in Law” for purposes of relieving the Redeveloper of any performance or other obligation under this Agreement. However, if the Planning Board action is appealed, the Redeveloper’s performance obligations hereunder shall be tolled and/or extended by the amount of time during which such appeal of the City Planning Board’s action (whether approval, denial or conditional approval) is continuing.

"Commence Construction" or "Commencement of Construction" means the beginning of physical construction of the Project (or any portion thereof, or Phase).

"Completion", "Complete" or "Completed" means with respect to the Project or any or portion thereof, or Phase, as the case may be, that (a) all work related to the Project in its entirety (or any portion thereof, or any Phase, to the extent applicable), or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project in its entirety or portion thereof, or Phase, that has been Completed, may, in all respects, be used and operated under the applicable provisions of this Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed, (b) all permits, licenses and Governmental Approvals that are required in order that a Certificate of Completion can be issued for the Project in its entirety or any or portion thereof, or Phase, that has been Completed, or such other work or action to which such term is applied are in full force and effect, and (c) such "Completion" has been evidenced by a written notice provided to the Authority by the Redeveloper (or its successors, including any Transferee) with respect to the Project, or portion thereof, or Phase, which determination is reasonably acceptable to the Authority.

"Days" means calendar days.

"Effective Date" means the date on which this Redevelopment Agreement is executed by all Parties or such other date as may be agreed to by the Parties.

"Environmental Law" or "Environmental Laws" means any and all federal, State, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to pollution, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. sect. 9601-9675); the Resource Conservation and Recovery Act of 1976 ("RCRA") (42 U.S.C. sect. 6901, et. seq.), the Clean Water Act (33 U.S.C. sect. 1251, et. seq.); the New Jersey Spill Compensation and Control Act (the "Spill Act") (N.J.S.A. 58:10-23.11, et. seq.); the Industrial Site Recovery Act, as amended ("ISRA") (N.J.S.A. 13:1K-6, et. seq.); the New Jersey Underground Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21, et. seq.), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et. seq.); the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1, et. seq.); the New Jersey Site Remediation and Recovery Act (N.J.S.A. 58:10C-1, et. seq.); and the rules and regulations promulgated thereunder.

"Event of Default" means the occurrence of any Redeveloper Event of Default or Authority Event of Default or County Event of Default, as the case may be.

"Exhibit(s)" means any exhibit attached hereto which shall be deemed to be a part of this Redevelopment Agreement as if set forth in the text hereof.

"Final Site Plan" means the Final Site Plan prepared by the Redeveloper in accordance with the Municipal Land Use Law with respect to the Project, as reviewed and approved by the Planning Board, as may be required.

“Guaranteed Maximum Price” or “GMP” as defined in the Construction Terms Addendum in Exhibit 3 of this Agreement.

"Governmental Agency" or "Governmental Authority" means the federal government, the State or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government and any other governmental entity with authority over any part of the permitting, construction or operation of the Project, and the Project Site.

"Governmental Applications" shall mean any and all submissions, supporting documents, reports or other proofs transmitted to any Governmental Authority for the purpose of obtaining a Governmental Approval of any aspect of the Project or the Project Site. "Governmental Applications" shall also include, without limitation, any submission of any kind, communications, exhibits, notice of meetings and telephone conferences, relating to any Governmental Application. Redeveloper shall provide a copy of all the information and notices of meetings referred to in this direction, to the Authority and County. It is the intention of this provision that the Authority and County receive copies of all communications, and notice and an opportunity to be present, at all meetings or participate in any telephone calls, with representatives of any Governmental Authority relating to any Governmental Application.

“Governmental Approvals” means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, State or federal governmental or quasi-governmental entity required to be obtained with respect to the Project and the Project Site.

“Hazardous Materials or Substances” means any substance, chemical or waste that is listed as hazardous, toxic, a pollutant or contaminant, or dangerous under any Environmental Law.

“Insurance Requirements” shall mean all requirements set forth in the terms of any insurance policy(ies) covering or applicable to all or any part of the Project Site or applicable to any Project Improvements thereon, or with respect to any portion of the Project Site, or any easement for the benefit of the Redeveloper granted by the Authority, County, or City, all requirements of the issuer of any such policy, and all orders, rules, regulations and other requirements of the National Board of Fire Underwriters (or any other body exercising similar functions) applicable to or affecting all or any portion of the Project Site, the Project Improvements thereon or the use or condition thereof.

"Municipal Land Use Law" or “MLUL” means the Municipal Land Use Law, as codified at N.J.S.A. 40:55D-1 et seq. and the acts amendatory thereof and supplemental thereto.

"NJDEP" means the New Jersey Department of Environmental Protection, and any successor Governmental Authority to which its powers are transferred.

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

"Planning Board" means the City of Elizabeth Planning Board and/or the County of Union Planning Board as may be required.



“Property” means Block 6, Lot 1589, also known as 61-99 West Grand Avenue, which is currently owned by the County and subject to this Agreement is to be conveyed to the Authority for construction of the Project. Also means the Project Site. The Property is approximately 2.38 acres. The Property currently contains the Union County Motor Vehicle Garage in an approximately 50,000 square foot structure.

“Project” means the construction of two office buildings, surface parking and related site improvements on the Project Site. Unless otherwise set forth, the term “Project” shall also include the term “Phase.”

“Project Site” means the Property upon which the Project is to be constructed.

“Project Costs” means all costs of the Project, including, without limitation, the demolition and clearance of existing structure(s) on the Project Site, Remediation, design, permitting and construction of the Project Improvements.

“Project Infrastructure” or “Infrastructure” means (a) all roadways, bridges and site infrastructure improvements (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the Project, lighting within on-site parking areas, landscaping, fire hydrants and interior roadways, in each case, as more particularly described in the construction plans and specifications, and (c) water and sewer service lines for the Project Site, including hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (which are to be built underground), and (d) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project. “Project Infrastructure” shall include such infrastructure improvements as identified in (i) the Remediation Permits, (ii) the Governmental Approvals, and (iii) such other Project Improvements to be constructed by the Redeveloper.

“Project Improvements” means all buildings, structures, improvements, site preparation work, infrastructure improvements, and amenities necessary for the implementation and completion of the Project, or any Phase, and any work incidental thereto, including such work as may be required in connection with permits and Governmental Approvals for the Project, or any Phase. “Project Improvements” also include but are not limited to, grading, site drainage, drainage outfalls, walkways, water service, storm and sanitary sewers, and other utilities, (including electric, gas, telephone and cable services which are to be built underground unless permitted otherwise by the City), parking, lighting, landscaping, and interior roadways.

“Project Schedule” means the schedule for the design, permitting, financing, construction and Completion of the Project by the Redeveloper, attached hereto as Exhibit 1, and as amended or supplemented from time to time.

“Redevelopment Area” means the Property as the area designated by the City of Elizabeth pursuant to the Redevelopment Law as an area in need of redevelopment and shown on the official tax maps of the City of Elizabeth as Block 6, Lot 1589. The Redevelopment Area is further defined in the Redevelopment Plan.

"Redevelopment Agreement Term" means the period of time from the Effective Date until the Authority issues the final Certificate of Completion for the Project (in its entirety) or the last Phase, as the case may be.

"Redevelopment Law" means the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended.

"Redevelopment Plan" means the Redevelopment Plan for Redevelopment Area in the City of Elizabeth, New Jersey, adopted by the City on April 28, 2020, as it may be further amended or supplemented from time to time.

"Remediation" means the performance and completion of all investigations and cleanup, wetlands mitigation, and any and all other activities to the extent required by applicable law or regulations for the cleanup or containment of all substances including, without limitation, Hazardous Substances, known or unknown, on, under or migrating to or from the Project Site, and the construction of the remedial systems, all in compliance with Applicable Law and Governmental Approvals, and in accordance with Environmental Laws, to address any environmental contamination or condition or environmental damage to any natural resource including but not limited to air, groundwater, surface water or soil, required to implement the Redevelopment Plan.

"Remediation Costs" means any and all costs incurred in carrying out or undertaking the Remediation of the Property.

"Remediation Permits" means any applicable permit, license or approval issued by NJDEP (or other federal or state regulatory City or local governmental entity or authority having competent jurisdiction) or any approval, confirmation, certification or Remedial Action Outcome ("RAO") issued or provided by a New Jersey Licensed Site Remediation Professional as defined in N.J.S.A. 58:10C-1 ("LSRP"), necessary for the Remediation, as the same may have been amended or supplemented from time to time subsequent to the Effective Date and prior to the date that the Remediation is Completed, under Applicable Laws.

"Site Plan" means both the Preliminary Site Plan or Final Site Plan, as applicable, depicting those aspects of the Project Site and Project Improvements required pursuant to N.J.S.A. 40:55D-7 or as a capital project for review pursuant to N.J.S.A. 40:55D-31.

"Substantial Completion" means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of "Completion" have been satisfied, with the exception of certain immaterial portions of the work relating to the Project Improvements that have not been Completed, or such other work which remains to be Completed, as long as the Redeveloper, with respect to the Project Improvements, has prepared and delivered to the Authority: (a) a "punch list" of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Agreement; and (b) the "punch list" items have been reasonably agreed to by the Authority; and (c) such "punch list" items are capable of being Completed within ninety (90) days of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion; and

provided further, that all such “punch list” items shall be Completed under all circumstances within (i) one hundred eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) three hundred sixty-five (365) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings. “Substantial Completion” shall be evidenced by issuance of a Temporary Certificate of Occupancy for the Project Improvements, or any portion thereof that has been Substantially Completed.

“Temporary Certificate of Occupancy” means a temporary Certificate of Occupancy issued with respect to the Project Improvements, or a portion thereof, upon Substantial Completion of the Project Improvements or such portion thereof.

“Tolling Event” means (i) an act or omission by one Party or a third Party that is identified as a Tolling Event or Uncontrollable Circumstance under this Agreement; or (ii) any reasonable request by one Party to the other to extend the time for performance of any obligation, requirement, commitment or responsibility arising pursuant to this Agreement, which request is granted by the other Party.

"Uncontrollable Circumstance" means the events or conditions set forth below, or any combination thereof, that has (have) had or may reasonably be expected to have a material adverse effect on the rights or obligations of the Parties to this Agreement, provided however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing obligation or complying with any condition required of such Party under the terms of this Agreement:

(a) An act of God, such as severe natural conditions such as landslide, lightning strike, earthquake, flood, hurricane, blizzard, tornado or other severe weather conditions, severe sea conditions affecting delivery of materials or similar cataclysmic occurrence, pandemic, public emergency declared by the President of the United States or Governor of the State of New Jersey, nuclear catastrophe, an act of a public enemy, war, blockade, insurrection, riot, general unrest or general restraint of government and people, provided however, that any question as to whether any such conditions should be deemed to constitute an Uncontrollable Circumstance shall be considered in light of good engineering practice and industry standards to protect against reasonably foreseeable severe weather conditions (such as, but not limited to, seasonable temperature and precipitation), taking into account the geographic location and topographic and geotechnical conditions of the Project Site.

(b) a “Change in Law”.

(c) Action or inaction by any Governmental Authority which precludes or delays the Party relying thereon from performing its obligations under this Agreement, provided however, that (i) such action or failure to act shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon, (ii) neither the contesting of any action or failure act, in good faith, nor the reasonable failure to so contest shall constitute or be constructed as a willful, intentional or negligent action or inaction by such Party, (iii) such action, inaction, issuance, denial or suspension shall not be the result of the illegal or unlawful actions of the Party relying thereon, and/or (iv) decisions interpreting Federal, State and local tax laws that are

generally applicable to all business taxpayers shall not constitute an Uncontrollable Circumstance under this paragraph (c).

(d) The suspension, termination, interruption, denial, failure of or delay in the renewal or issuance of any Governmental Approval, provided however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest (up to thirty (30) days following such suspension, termination, interruption or failure of renewal or issuance) shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party. The Redeveloper's failure to timely and substantially complete submission for a Governmental Approval or failure of the Redeveloper to agree to any reasonable condition to the issuance or renewal of such Governmental Approval shall not constitute an Uncontrollable Circumstance under this paragraph (d).

(e) The intentional or unintentional damage or destruction of the Project Improvements or any portion thereof or of the Project Site by contractors as long as the Redeveloper has implemented and complied with customary and reasonable security measures and has maintained customary and reasonable insurance against the occurrence of such acts.

(f) Delay caused by or arising out of legal action or lawsuits filed in challenge of the issuance or grant of any Governmental Approval, including, but not limited to, Planning Board approval of the Redeveloper's Site Plans.

(g) Delay caused by or arising out of the inability of any contractor or materials supplier to make timely delivery or materials of long-lead items due to strike, labor unrest, national emergency or generally recognized materials shortage, or other delays in the industry.

The Parties acknowledge that the acts, events or conditions set forth in paragraphs (a) through (g) of this definition are intended to be the only acts, events or conditions which may (upon satisfaction of the criteria set forth above) constitute an Uncontrollable Circumstance.

**Section 1.02 Interpretation and Construction.** In this Redevelopment Agreement, unless the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms, as used in this Redevelopment Agreement, refer to this Redevelopment Agreement, and the term "hereafter" means after, and the term "heretofore" means before the date of delivery of this Redevelopment Agreement.

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

(c) Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural persons.

(d) Any headings preceding the texts of the several Articles and Sections of this Redevelopment Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Redevelopment Agreement, nor shall they affect its meaning, construction or effect.

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed. The words "consent" or "approve" or words of similar import, shall mean the prior written consent or approval of the Authority and/or County or the Redeveloper, as the case may be, unless expressly stated to the contrary herein.

(f) Each right of the Authority and County to review or approve any actions, plans, specifications, or other obligations of hereunder shall be made by the Authority and County officials with legal authority to conduct such review or grant such approvals. Any review contemplated by this Redevelopment Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Authority and the County shall inform the Redeveloper of all officials of the Authority and the County having requisite approval powers to review or grant such requests for approval.

(g) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, otherwise expressly provided in the Redevelopment Agreement, or unless the context dictates otherwise.

(h) Unless otherwise indicated, any "fees and expenses" shall be required to be customary and reasonable.

(i) The Recitals and all Exhibits are incorporated herein and made a part of this Agreement.

## **ARTICLE II**

### **IMPLEMENTATION OF REDEVELOPMENT PROJECT**

#### **Section 2.01 Purpose.**

It is the intention of the Parties, and the purpose of this Agreement, to set forth the rights, duties and obligations of the Parties to provide for the implementation of the Redevelopment Plan.

#### **Section 2.02 The Project Site.**

The Project Site consists of the Property within Redevelopment Area and as further identified in the Redevelopment Plan.

#### **Section 2.03 Designation of Redeveloper.**

\_\_\_\_\_ is hereby designated as Redeveloper by the Authority and County upon entry of this Redevelopment Agreement and shall have the exclusive

right to redevelop and implement the Project in accordance with the terms and conditions of the Redevelopment Plan and this Redevelopment Agreement.

**Section 2.04 The Project.**

(a) The Project intended to be constructed on the Project Site is known as the New County Government Complex, which would consist of approximately 225,000 gross square feet of office space with surface parking and associated site improvements generally as depicted on the concept plan attached hereto as Exhibit 2 (the "Project"). The Parties recognize that the Project may be modified as a result of Governmental Approvals.

(b) The Project consists of (i) demolition and clearance of the existing structures on the Project Site (ii) the Remediation of the Project Site; and (iii) Construction of the Project Site Infrastructure; and (iv) Construction of the Project Improvements. The Project is to be constructed consistent with the Redevelopment Plan and the Bridging Documents, as it may be amended from time to time, and this Agreement.

**Section 2.05 Project Infrastructure.**

(a) The Redeveloper will construct the Project Infrastructure, as required by the terms of the Redevelopment Agreement and the Governmental Approvals. The Redeveloper shall carry out its obligations with respect to construction of the Project Infrastructure, in accordance with (i) all Applicable Laws, including specifically and without limitation, the Governmental Approvals, and (ii) such other permits, licenses and approvals as may be required in order to carry out such obligations or may otherwise be applied for and received from any regulatory authority or UCIA or County.

(b) The Redeveloper shall (at its sole cost and expense) undertake such technical and other studies and shall prepare and file (after review by and consultation with the Authority and County) any applications required for the receipt of the Governmental Approvals needed for the Project Infrastructure. In the event that this Redevelopment Agreement is terminated, the Redeveloper hereby consents to the transfer of the Governmental Approvals obtained to the Authority and County.

(c) Redeveloper shall timely implement the Project Infrastructure in order to complete the Project according to the Project Schedule, shall coordinate all Project Infrastructure among the Phases, if any, and shall consult with and coordinate such activities with the Authority and County. Redeveloper shall cooperate with the Authority and County in all respects to ensure that the implementation of the Project Infrastructure does not unreasonably interfere with the operation of the existing utilities. Redeveloper agrees to provide all performance and maintenance bonds as required by the Governmental Approvals.

**Section 2.06 Environmental Enhancements.**

The Redeveloper shall use reasonable efforts to include within the Project design elements which address the Leadership in Energy and Environmental Design ("LEED") Green Building System, as advanced by the United States Green Building Council ("USGBC") and the United States Environmental Protection "Energy Star" standards (collectively, the "Environmental

Enhancements"). However, this section shall not be interpreted to impose requirements upon the Redeveloper to obtain LEED certification.

**Section 2.07 Project Costs and Financing.**

The Authority acknowledges that the sole and exclusive source of funding for the Project shall be the proceeds of bond financing by the Authority (the “**Project Financing**”). In recognition of this fact, the Authority affirmatively commits to expeditiously secure such Project Financing. In order to achieve the lowest possible rates, the Authority agrees to and shall issue fixed rate Bonds for the purposes of funding all costs and expenses for the entire Project, including, but not limited to (i) costs of obtaining all required Governmental Approvals, (ii) all design costs; (iii) all hard costs and soft costs of construction; and (iii) costs of issuance of the Bonds (collectively, “**Project Costs**”), in an amount not to exceed \$\_\_\_\_\_.00 based upon a preliminary budget, Bridging Documents and plans and specifications provided by the Redeveloper. The Bonds will be structured as 30-year tax exempt bonds. The Authority represents and warrants that the County will guaranty payment of the Bonds. The Authority agrees to close on the Bonds within ninety (90) days after the Effective Date. The parties agree that the procedure to allow Redeveloper to access funds monthly in order to pay Project Costs will be in accordance with the Construction Terms Addendum to this Agreement (the “**Addendum**”).

**Section 2.08 Project Schedule.**

(a) A Project Schedule, attached hereto as Exhibit 1, sets forth the critical milestones of the Project. Redeveloper shall diligently implement and complete all aspects of the Project by the completion dates set forth in the Project Schedule subject only to relief resulting from the occurrence of a Tolling Event or Uncontrollable Circumstance. After Commencement of Construction, Redeveloper will thereafter diligently and continuously prosecute the Project in accordance with the Project Schedule to completion.

(b) If Redeveloper fails to meet a Completion Date set forth on the Project Schedule, or in Article XI, or determines that it will fail to meet a Project Completion Date, Redeveloper shall promptly provide notice to the Authority and County stating: (i) the reason for the failure to complete the applicable task, (ii) Redeveloper's schedule for completing such task, (iii) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant completion dates, and (iv) a request that the Authority and County extend such Completion Date.

**Section 2.09 Cooperation.**

The Parties shall fully cooperate with each other as necessary to effectuate the Project Improvements, including entering into additional agreements that may be required, provided however, that such actions and/or agreements shall not result in a material increase or decrease in the Authority’s and the Redeveloper’s respective obligations hereunder.

**Section 2.11. Term.**

This Agreement shall become effective on the Effective Date and shall remain in full force and effect from such date until the Project has been fully completed and implemented, as evidenced

by the issuance of a Certificate of Completion for the Project, in accordance with the terms of this Agreement, the Redevelopment Plan, and any Governmental Approvals.

### **ARTICLE III** **ENVIRONMENTAL MATTERS**

#### **Section 3.01. Environmental Compliance in General.**

(a) The Redeveloper agrees and specifically assumes any and all responsibility for any further investigation required that may not have already been undertaken by the Authority and/or County, and Remediation of all environmental conditions, whether known or unknown, on, under or migrating to or from the Project Site, as may be required by applicable Environmental Laws and regulations, including without limitation, the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. (“ISRA”), soil analyses, site investigations and other environmental evaluations necessary to determine the condition of the soils and subsurface conditions, including the groundwater, and the presence of Hazardous Substances and the Redeveloper shall bear all costs for such investigation and Remediation of the Project Site. The Redeveloper also agrees that it shall use its best efforts to obtain all Remediation Permits for the Remediation of the Project Site.

(b) Notwithstanding anything herein, the Redeveloper, as the redeveloper of the Project, shall be exclusively responsible for the any further investigation and delineation required that may not have already been undertaken by the Authority and/or County, and remediation of any environmental condition required by applicable Environmental Laws and regulations, (collectively, an “Environmental Condition”), and is attributable to, emanates from, on or under or otherwise occurs at the Project.

(c) Consistent with, and in partial fulfillment of the requirements of Section 6.04, Redeveloper shall provide a copy of all Communications to the Authority and County and afford the Authority and County notice and an opportunity to participate in all meetings, telephone conferences or otherwise through the Authority and County’s counsel regarding the Remediation.

(d) The Redeveloper agrees to undertake the Remediation in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C, which created the LSRP program to oversee the remediation of contaminated sites. Under an LSRP, the remediating party need not wait for NJDEP direction and pre-approvals to commence cleanups, but instead must initiate and complete the cleanup under the direction of the LSRP, who will have responsibility for oversight of the environmental investigation and remediation. The NJDEP will monitor the remediation progress and actions of the LSRP by requiring submission of form and reports as remediation milestones are reached.

#### **Section 3.02. Remediation Construction.**

(a) Redeveloper will, at its sole cost and expense: (i) diligently prosecute and obtain all Remediation Permits, and (ii) Remediate the Project Site, as required in accordance with the terms of this Redevelopment Agreement and the Remediation Permits. Notwithstanding this obligation, should the extent of environmental contamination significantly exceed what was contemplated by the Redeveloper and the cost to obtain such Remediation Permits and to effectuate Remediation of the Project Site correspondingly exceeds the Redeveloper’s estimates,



the Redeveloper shall have the obligation to undertake and complete such additional Remediation as part of the GMP.

(b) The Redeveloper shall be responsible to ensure that the use, operation, and maintenance of the necessary remedial systems required for the Remediation and Project Site Improvements are in accordance with all Applicable Laws, including without limitation, all requirements of NJDEP, the U.S. Environmental Protection Agency, and any other Governmental Agencies with jurisdiction over the Project, and the Remediation Permits, which may include institutional and engineering controls, whether imposed before or after approval of the Final Site Plan for the Project for so long as such requirements shall be in effect.

(c) The Authority and County assume no responsibility for the Remediation except as may be required as a potentially responsible party as property owner pursuant to Environmental Law. Additionally, upon completion of the Project, the Authority and/or County shall assume any responsibility for the use, operation and maintenance of the necessary remedial systems and improvements or the maintenance of such systems at the Project Site.

(d) Redeveloper shall take no action to require the Authority or the County to undertake any part of the Remediation, or to initiate any action against any property owner in the Redevelopment Area, except as provided in this Agreement, and the Redeveloper hereby waives all claims against the Authority or the County resulting from any failure to perform any such acts and from any failure to enforce laws and ordinances against other property owners in the Redevelopment Area.

**Section 3.03. Conformity with Remediation Permits.**

The Redeveloper shall undertake such technical and other studies and shall prepare and file any applications required for the receipt of the Remediation Permits. In the event that this Redevelopment Agreement is terminated, the Redeveloper hereby consents to the transfer of the Remediation Permits pertaining to the Property, if any, to the Authority and County.

**Section 3.04. Environmental Escrow, Bonds and Insurance.**

(a) The Redeveloper agrees that it will fund any escrow account for expenditures or other reasonable assurances, ("Reasonable Assurances"), that the NJDEP or other Governmental Agency having jurisdiction over the Remediation, may reasonably require under any Applicable Law.

(b) In the event that the Redeveloper obtains or is required by any Governmental Authority or Holder to obtain any environmental insurance policy, the Authority and County shall be named as additional beneficiaries on such policy.

**Section 3.05. Redeveloper Indemnification of Authority and County.**

Without limitation on any obligation to defend and indemnify under this Article, and without limitation to such obligation which the Redeveloper may have as a matter of law, the Redeveloper shall indemnify, defend, release and hold the Authority and County and their officials and agents harmless against (a) all Claims or alleged Claims and response costs and fines and

penalties against the Authority and County and their officials and agents or the Redeveloper by any Governmental Authority or third party which concern the presence of Hazardous Materials which become present on or within the Property, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, when such Materials become present on or within the Property after the Effective Date, (b) all Claims or alleged Claims against the Authority and County and their officials and agents by any Governmental Authority or third party for injunctive relief for the abatement of a nuisance or related to the presence of Hazardous Materials which become present on or within the Property or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, when such Materials become present on or within the Property after the Effective Date, and (c) all Claims or alleged Claims of bodily injury or property damage asserted against the Authority and County and their officials and agents by third Parties which are related to the presence of Hazardous Materials which become present on or within the Property, or the discharge of Hazardous Materials in excess of any limitations provided by Applicable Law, whenever such Hazardous Materials become present on or within the Property after the Effective Date. This indemnity shall survive termination of this Redevelopment Agreement.

**Section 3.06. Environmental Reports.**

The LSRP and/or Redeveloper shall provide to the Authority and County a copy of all reports, test results, sampling results, studies, soil logs, analyses, plans, permits, approvals, applications, and other documents prepared by or on behalf of, or obtained by Redeveloper related to the Property, or any part thereof. Redeveloper's obligations under this subsection shall survive termination of this Agreement.

**Section 3.07. Project Site Inspection Rights.**

The Authority and County shall have the right to inspect any work on the Project Site to determine whether such work is in conformity with the requirements and/or protocols set forth in the Remediation Permits. To the extent that any such work is determined (as a result of such inspection, or otherwise) to fail to meet the requirements set forth in the Remediation Permits, the Redeveloper agrees to take such actions as are reasonably necessary to meet the requirements of the Remediation Permits. Any and all fines or other sanctions or cleanup, sampling, removal or Remediation Costs incurred as a result of the failure to meet the requirements of the Remediation Permits shall be borne solely by the Redeveloper.

**Section 3.08. No Other Environmental Condition.**

The Authority and County represent, to the best of their information, knowledge and belief that they: (i) know of no releases or discharges of hazardous substances or wastes at the Property other than that which may have been disclosed by the Authority and County to the Redeveloper; (ii) have no knowledge of any improper disposal practices by any user of the Property or any adjacent or nearby Property; and (iii) have not received any Environmental Claim, letter or other communication, written or oral, from the New Jersey Department of Environmental Protection ("NJDEP"), the federal Environmental Protection Agency, or other local, state or federal regulatory agencies, relating to the existence of releases or discharges of hazardous substances or wastes at, or the existence of environmental problems affecting the Property or any adjacent or

nearby property, except for that which may have been disclosed by the Authority and County to the Redeveloper.

The Authority and County represent, warrant and covenant that the Authority or County have not discharged at, in or under the Property, buildings and appurtenances and Authority and County have no knowledge of the existence of such hazardous wastes or substances present at, in or under the Property, other than that which may have been disclosed by the Authority and County to the Redeveloper.

## **ARTICLE IV** **GOVERNMENTAL APPROVALS**

### **Section 4.01. Approval of Site Plan.**

The Redeveloper in cooperation with the Authority and the County shall submit a preliminary site plan for the Project (the “Preliminary Plans”) to the City and County Planning Boards as may be required by Applicable Law. The Preliminary Plans shall be prepared in accordance with Applicable Laws and shall be consistent with the Redevelopment Plan. It is anticipated that the Preliminary Plans will be subject to a courtesy review pursuant to N.J.S.A. 40:55D-31 of the MLUL.

### **Section 4.02. Other Governmental Approvals.**

After the Planning Board grants approval of the Preliminary Plans (the “Preliminary Approval”), the Redeveloper shall proceed to obtain all remaining Governmental Approvals required for the Project from any Governmental Agency having jurisdiction over the Project, including but not limited to NJDEP approvals. Nothing contained in this Agreement shall be construed to prohibit Redeveloper from pursuing any Governmental Approvals prior to Preliminary Approval. The Authority, County, and Redeveloper acknowledge and agree that (i) this list may not be entirely accurate, (ii) there may be Governmental Approvals that Redeveloper may need to obtain in order to construct the Project, and (iii) there may be Governmental Approvals that Redeveloper does not need to obtain in order to construct the Project.

### **Section 4.03. Inability to Obtain Governmental Approval(s).**

It is hereby agreed to by the Parties that any failure to obtain Governmental Approval(s) within the time required by this Redevelopment Agreement which (i) is caused by the advent of an Uncontrollable Circumstance or Tolling Event, (ii) involves the Redeveloper's or other appeals from any denial or approval of or conditions to any approvals by Governmental Agencies with jurisdiction over the Property (other than the Authority or County), or (iii) is required due to actions, decisions or other requirements of any other Governmental Agency maintaining jurisdiction over the Property, will not be deemed to be an Event of Default. With respect to clauses (iii) above, the Redeveloper's time constraints for obtaining Governmental Approvals shall be extended on a day-to-day basis during the period of the delay, but only if the application then under consideration is consistent with the requirements of the Redevelopment Plan and with the Applicable Law(s). With respect to subsection (i) above, the Redeveloper's time constraints for obtaining Governmental Approvals shall be extended during the period of delay. With respect to subsection (ii) above, the Redeveloper's time constraint for obtaining Governmental Approvals

shall be extended until such time as a final and unappealable judgment is entered by a court of competent jurisdiction.

**Section 4.04. Authority and County Cooperation.**

To the extent reasonably requested by the Redeveloper and, to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Project), the Authority and County shall provide support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate agency, board, body or department, including the Planning Board, as applicable.

**ARTICLE V**  
**GENERAL CONSTRUCTION REQUIREMENTS**

**Section 5.01 Scope of Undertaking.**

The Redeveloper shall, at its sole cost and expense, undertake the services and responsibilities required to be undertaken or performed with respect to the Project. Such services and responsibilities include, without limitation, all aspects of the design, development, construction and operation of the Project and each of the Phases thereof including (a) all design, engineering, permitting and administrative aspects, and (b) the performance of or contracting for and administration and supervision of all physical work required in connection with the Project, and (c) arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals (all of the foregoing undertakings and the work product thereof being referred to collectively herein as "Work"), and (d) the administration, operation and management, or contracting for the administration, operation and management of the Project.

**Section 5.02 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 Governmental Approvals, including without limitation, the Remediation Permits. All construction shall be in accordance with the International Building Code, N.J.A.C. 5:23-1 et seq., based on height and area, unless another class is specifically approved in writing by the Planning Board.

**Section 5.03 Neighborhood Impacts.**

The Redeveloper acknowledges that the construction of the Project will have certain impacts on the neighborhoods in the vicinity of the Project. The Redeveloper shall take all steps that are reasonably necessary in order to minimize any potential negative effects that construction of the Project may produce, including, without limitation, dust, debris and noise.

**Section 5.04 Existence of Utilities.**

The Redeveloper acknowledges that utility providers may have certain rights with respect to the Project Site and may own certain facilities located therein. Redeveloper agrees that it will

undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefore, in order to complete the Project as provided by this Agreement, provided that the Authority and County shall provide any appropriate order to accomplish such relocation, consistent with the provisions of N.J.S.A. 40A:12A-10, and that any costs incurred by the Authority or County in connection with same shall be deemed a cost of the Authority and/or County. The Redeveloper shall use the services of "Call Before You Dig" and take all other precautions to prevent personal injury, property damage and other liabilities related to utilities above, at or under the Project Site.

**Section 5.05 No Warranty of Suitability.**

The Redeveloper specifically acknowledges that the Authority and County make no representation or warranty, expressed or implied or otherwise, as to the Project or Project Improvement or the Project Site's fitness for use for any particular purpose, condition or durability thereof.

**Section 5.06 Designated Representatives; Communication.**

The Redeveloper, the Authority and County shall designate the respective Designated Representatives after the Effective Date. Each of the Designated Representatives shall be the agent of Redeveloper, the Authority and the County, respectively, until Completion of the Project and shall be authorized to act on behalf of each Party, except to the extent that such authorization is limited by the Redeveloper or the Authority or the County, as the case may be, in writing, provided to the other Party. In order to maintain clear channels of reporting authority and avoid inconsistent directions and miscommunication, all communication by the (a) Authority or County's Designated Representatives with any of the Redeveloper's Project Professionals or contractors shall be processed through the Redeveloper's Designated Representative, and (b) Redeveloper's Designated Representative with any of the Authority and County's staff, consultants and/or professionals shall be processed through the Authority and County's Designated Representatives. Each of the Redeveloper, the Authority and the County may change the Designated Representative from time to time, upon written notice to the other Party.

**Section 5.07 Compliance with Governmental Approvals.**

The Project shall be constructed substantially in the manner and at the locations shown and described (a) in the Final Site Plan; (b) the Governmental Approvals, and (c) all other approved plans and specifications related to the development of the Project (subject to immaterial variances necessitated by field conditions and technical considerations permitted under the Redevelopment Agreement).

**Section 5.08 Office.**

During construction of the Project, the Redeveloper shall maintain an office within the State of New Jersey (the "Local Office") from which it will perform its duties hereunder. Such office need not be distinct from an office in which Redeveloper carries on its other business activities. The Redeveloper may change the location of such office within the State of New Jersey upon at least fifteen (15) days prior written notice to the Authority and County.

**Section 5.09. Union Contractor.**

Redeveloper agrees that the Project will be a union project, and accordingly that the general contractor retained by Redeveloper will be a union contractor. As may be appropriate the Redeveloper and/or its general contractor shall enter into project labor agreements with the applicable unions. All contracts entered into by the Redeveloper for the construction of the Project Improvements shall contain appropriate language to effectuate this provision.

**Section 5.10. Maintenance, Safety and Security of Project Site.**

Upon commencement of any activities on the Project Site by the Redeveloper, whether as the Authority or County's agent or as property owner, it shall be required to maintain, secure and address public safety for all areas of the Project Site including any buildings, structures, parking areas, landscaping, streetscaping, sidewalks, including curbing and traffic calming devices, trash collection and receptacles, and all such issues identified in the City's Property Maintenance Code. The Authority and County shall cooperate with the Redeveloper in obtaining all necessary permits required for construction operations on or near the existing public right-of-ways including, but not limited to, road closure and road opening permits.

**ARTICLE VI  
PROJECT OVERSIGHT**

**Section 6.01. Progress Meetings.**

The Parties agree to attend and participate in quarterly progress meetings ("Progress Meetings") to report on the status of the Project Improvements and to review the progress under the Project Schedule. Progress Meetings may be held more frequently at the request of the Authority or County. The Authority or County shall give the Redeveloper seven (7) days advance written notice of any additional meetings. The Progress Meetings shall be held on the first day of the quarter, following the Effective Date, at 10:00 a.m., at the Project Site. Prior to the meeting, representatives of the Authority and County may visit the Project Site to inspect the progress of the work on the Project and Project Improvements. The Authority and County acknowledge that the Project Site will be an active construction site and that the Redeveloper shall not be liable or responsible to the Authority and County, their employees or agents for injury to person or property sustained in connection with such inspection except to the extent that the Redeveloper violates the standard of due care owed to invitees.

The agenda for the Progress Meetings shall include, but not be limited to, a status report with regard to Governmental Approval submissions and approvals, financial commitments, construction of the Project Improvements, compliance with the Site Plan, the Plans and the Redevelopment Plan. At the Progress Meetings, this information will be evaluated by the Authority and County to determine compliance with the terms and conditions of this Redevelopment Agreement, the Redevelopment Plan, the Site Plan, the Plans, the Project Schedule, and all Applicable Law. Upon reasonable notice, the Authority and County shall have the right at all reasonable times to inspect the construction contracts, Performance Security, financing commitments and agreements, books and records pertinent to Project Improvements' construction contracts, leases, insurance policies, and such other agreements of the Redeveloper

which are pertinent to the purposes of this Redevelopment Agreement and to the Progress Meetings in order to insure completion of the Project Improvements in accordance with the Project Schedule, the Redevelopment Plan, the Site Plan, the Plans, this Redevelopment Agreement and all Applicable Law.

These Progress Meetings are not intended to replace or act as construction meetings that the Redeveloper, its Design Professionals, any design professionals for the Authority and County, sub-contractors and any other parties involved in the construction of the Project may typically schedule for any construction project, usually on a weekly basis at the Project Site.

**Section 6.02. Progress Reports.**

The Redeveloper shall submit to the Authority and County a detailed quarterly written progress report (“Progress Report”) (or more frequent Progress Reports, if reasonably requested by the Authority and County) which shall include a description of activities completed, the activities to be undertaken prior to the next quarterly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is showing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule and an explanation of corrective action taken or proposed. The first Progress Report shall be due at the first Progress meeting.

**Section 6.03. General Access to the Project Site.**

The Authority and County and their authorized representatives shall generally have the right to enter the Project Site to inspect the Project Improvements and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement. In no event shall the Authority or County’s inspection of the Project Improvements (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Authority and County have under this Redevelopment Agreement. The Authority and County acknowledge that the Project Site will be an active construction site and that the Redeveloper shall not be liable or responsible to the Authority or County, their employees or agents for injury to person or property sustained in connection with any such inspection, except to the extent that the Redeveloper violates the standard of due care owed to invitees.

**Section 6.04. Project Applications, Meetings, Submissions and Communications.**

Redeveloper agrees that it shall, and will require its agents, consultants and other representatives, provide the Authority and County, through their counsel, copies of any and all submissions, supporting documents, reports or other communications of any kind transmitted to any Governmental Authority, relating to or the for the purpose of obtaining, a Governmental Approval of any aspect of the Project or the Project Site and all responses thereto; this shall include, without limitation, any submission of any kind, correspondence, emails, communications, exhibits, notices of meetings, (collectively, “Communications”) relating to any Governmental Application. The Authority and County shall have the right, through their counsel, to participate in any and all telephone conferences or meetings.

Redeveloper shall provide a copy of all Communications with any utility or private supplier of services to the Project Site to the Authority and County.

Redeveloper shall provide a copy of all Communications with any party involving or relating to its acquisition or conveyance of any property interest involving the Project, including without limitation, conveyances in fee, leases or licenses.

It is the intention of this provision that the Authority and County, through counsel, receive copies of all Communications, and notices and an opportunity to be present, at all meetings or participate in any telephone calls, with representatives of any Governmental Agency relating to any Governmental Application or matters involving any utility, or relating to the acquisition or conveyance of any property interest, without exception.

## **ARTICLE VII**

### **SECURITY FOR CONSTRUCTION OF PROJECT IMPROVEMENTS**

#### **Section 7.01. Performance Security.**

The Redeveloper shall deliver, or cause the delivery of, the performance security to the Authority and the County in order to secure the Redeveloper's obligations to complete construction of the Project in accordance with the provisions and requirements of this Redevelopment Agreement and Exhibit 4.

## **ARTICLE VIII**

### **CERTIFICATES OF OCCUPANCY AND COMPLETION**

#### **Section 8.01 Certificate of Occupancy.**

Upon completion of the construction of any building(s) that is included as part of the Project Improvements, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for that building. The Redeveloper shall take all actions required for issuance of a Certificate of Occupancy from the City. Upon satisfaction of the requirements set forth in the definition of "Substantial Completion," the Redeveloper may apply to the appropriate governmental officer or body for issuance of a Temporary Certificate of Occupancy which shall be effective until such time as a permanent Certificate of Occupancy is received. Notwithstanding the issuance of the Temporary Certificate of Occupancy, the Redeveloper shall not be deemed to have completed the Project Improvements, or portion thereof, as applicable, until the permanent Certificate of Occupancy is issued. As such, until such permanent Certificate is issued, the provisions of this Redevelopment Agreement remain in full force and effect. Nothing herein shall preclude the Redeveloper from filing for applying for Temporary Certificates of Occupancy for Project Improvements that have reached Substantial Completion.

#### **Section 8.02. Certificate of Completion.**

The completion of the Project Improvements shall be evidenced by a certificate of the Authority in recordable form ("Certificate of Completion") accepting the terms of a certification



of the Redeveloper stating that: (a) the Project Improvements have been Completed (excluding any normal and customary tenant improvements) in accordance with the Site Plan and Plans and all labor, services, materials and supplies used in connection therewith have been paid for or adequate security has been posted in connection therewith; (b) other facilities necessary to achieve Substantial Completion and commence occupancy of a particular portion of the Project Improvements by the County has been constructed or improved in accordance with the Site Plan and Plans and all costs and expenses incurred in connection therewith have been paid or adequate security otherwise posted; and (c) a Certificate of Occupancy, if required, and any other permissions required, if any, by Governmental Agencies for the occupancy and use of all or portions of the Project Improvements for the purposes contemplated by this Redevelopment Agreement have been obtained. The Authority shall not unreasonably withhold or delay the delivery of a Certificate of Completion. If the Authority determines that the Redeveloper is not entitled to a Certificate of Completion, the Authority shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the Authority refused or failed to furnish a Certificate of Completion.

**Section 8.03 Effect of Certificate of Completion.**

The Certificate of Completion shall constitute a recordable determination of the satisfaction and termination of the conditions, terms and the Covenants and Restrictions contained in this Agreement, the Redevelopment Law and in the Redevelopment Plan with respect to the Redeveloper's obligation to construct the Project within the dates contained in the applicable Project Schedule. Upon issuance of a Certificate of Completion for the Project, or a portion thereof, the conditions determined to exist at the time the Project Site, or portion thereof, was determined to be "an area in need of redevelopment" shall be deemed to no longer exist, and the land and the Project Improvements constructed upon the Project Site shall no longer be subject to eminent domain. If a Certificate of Completion is issued for less than all of the Project Site or Project Improvements, then the balance of the Project Site shall continue to be within a redevelopment area and subject to the Redevelopment Plan. Granting of the Certificate of Completion releases all parties of their rights and obligations under this Agreement as to the Project or part thereof for which the Certificate of Completion is issued.

**ARTICLE IX**  
**REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS**

**Section 9.01. Representations and Warranties by the Redeveloper.**

In addition to, but not limited by, any and all other representations and warranties of the Redeveloper contained in this Agreement, the Redeveloper hereby represents and warrants the following to the Authority and the County for the purpose of inducing the Authority and the County to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the Effective Date (such representations and warranties to survive the termination or expiration of the Term of this Agreement):

(a) The Redeveloper is a limited liability company organized under the laws of the State, is in good standing under the laws of the State and has all requisite power and authority to

carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Redeveloper is a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform their obligations hereunder.

(c) This Redevelopment Agreement has been duly authorized, executed and delivered by the Redeveloper and is valid and legally binding upon the Redeveloper and enforceable in accordance with its terms. The execution and delivery thereof shall not constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Redeveloper is a party.

(d) No receiver, liquidator, custodian or trustee of the Redeveloper shall have been appointed as of the Effective Date, 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 Effective Date.

(e) 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.

(f) No indictment has been returned against any partner, member or officer of the Redeveloper with respect to any transaction related to the transactions contemplated by the terms of this Redevelopment Agreement or otherwise.

(g) There is no pending or, to the best of the Redeveloper's knowledge, threatened litigation that would prevent the Redeveloper from performing its duties and obligations hereunder.

(h) There are no suits, other proceedings or investigations pending or, to the best of the Redeveloper's knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(i) All materials and documentation submitted by the Redeveloper and its agents to the Authority and County and their agents were, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall continue to inform the Authority and County of any material and adverse changes in the documentation submitted. 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 Authority and the County to enter into this Redevelopment Agreement.

(j) The Redeveloper is financially and technically capable developing, designing, and constructing the Project Improvements.

(k) The Redeveloper is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction(s) contemplated by this Agreement solely

in reliance on and as a result of Redeveloper's own investigations and efforts and at Redeveloper's sole risk. Redeveloper acknowledges that this paragraph was a negotiated part of this Agreement and serves as an essential component of consideration for the same.

**Section 9.02. Delivery of Collateral Documents by the Redeveloper.**

The Redeveloper agrees to deliver the following fully executed collateral documents simultaneously with the execution of this Redevelopment Agreement and the Authority and County hereby acknowledge the receipt of such documents:

(a) Certified copies of the certificate of formation and certificate of good standing of the Redeveloper.

(b) A certification of counsel to the Redeveloper that, after reasonable inquiry, (1) no material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, state or local governmental authority or agency, or in any federal, state or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the Redeveloper, this Redevelopment Agreement or to any of the agreements which are referred to herein, as a result of the Redeveloper's negotiation, execution, delivery or performance of any such agreement or its participation or intended participation in any transaction contemplated thereby; (2) no receiver, liquidator, custodian or trustee of the Redeveloper or of a major part of its property, 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 which is applicable to the Redeveloper, shall have been filed as of the date hereof; (3) 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 which is applicable to the Redeveloper, has been filed; and (4) 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 Redevelopment Agreement.

**Section 9.03. Mutual Representations.**

(a) The Authority, the County and the Redeveloper agree that the Project shall be governed by this Redevelopment Agreement.

(b) In the event that any contractual provisions that are required by Applicable Law have been omitted, then the Authority, the County and the Redeveloper agree that this Redevelopment Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Redevelopment Agreement. If such incorporation occurs and results in a change in the obligations or benefits one of the Parties, the Authority, the County and the Redeveloper agree to act in good faith to mitigate such changes in position.

**Section 9.04. Redeveloper Covenants.**

In addition to, but not limited by, any and all other covenants and agreements of the Redeveloper contained in this Redevelopment Agreement, the Redeveloper hereby covenants and agrees to the following for the purpose of inducing the Authority and the County to enter into this

Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, "Redeveloper Covenants"):

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project Improvements. The Redeveloper shall construct the Project Improvements in compliance with all Governmental Approvals, and Applicable Law including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper. The Redeveloper shall provide evidence reasonably satisfactory to the Authority and County that the Project Improvements are in compliance with all applicable State and Federal environmental statutes and regulations.

(b) The Redeveloper shall construct the Project Improvements in accordance with this Redevelopment Agreement, the Project Schedule, the Redevelopment Law, the Redevelopment Plan, the Site Plan, the Plans and all other Applicable Law. The Redeveloper acknowledges that the Authority and the County have relied on the proposed Project Schedule, along with its rights to review and approve of the Site Plan and the Plans, in entering into its obligations under this Redevelopment Agreement.

(d) The Redeveloper shall fulfill its material obligations under any and all agreements it enters into with third parties with respect to the demolition and clearance, design, construction and other matters relating to the Project Improvements, provided however, that this covenant is not intended to prevent the Redeveloper from contesting the performance by third parties scope or nature of such obligations as and to the extent provided in such agreements.

(e) The Redeveloper shall complete the Project Improvements or cause same to be completed, on or prior to the date set forth in the Project Schedule.

(f) Upon completion of the development and construction of the Project Improvements, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(g) The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.

(h) The Redeveloper shall not restrict the use, occupancy, tenure, or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.

(i) The Redeveloper shall not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that

may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project Improvements, except for a Tolling Event or Uncontrollable Circumstances.

(j) The Redeveloper shall immediately notify the Authority and County of any material change in its financial condition from the information provided to the Authority and County by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project Improvements in furtherance of the Authority and County's consideration in designating the Redeveloper as the redeveloper of the Project Site.

(k) The Redeveloper shall not use the Project Site, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan, this Redevelopment Agreement, the Site Plan and the Plans.

(l) The Redeveloper shall not use the Project Site, Project Improvements or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

**Section 9.05. Authority and County Covenants.**

In addition to, but not limited by, any and all other covenants and agreements of the Authority and County contained in this Agreement, the Authority and County hereby covenant and agree to the following for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, the "Authority/County Covenants") that upon the Completion of the Project Improvements in accordance with the terms hereof, the conditions that were found and determined to exist at the time the Project Site was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project Improvements.

**Section 9.06. Effect and Duration of the Covenants.**

Except as otherwise set forth herein, it is intended and agreed that the agreements and covenants set forth in this Article IX and those elsewhere in this Redevelopment Agreement shall be covenants running with the Project Site until the Project Improvements shall be Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Authority and the County, their successors and assigns, and any successor in interest to the Project Improvements, or any part thereof, the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project Improvements, or any part thereof. It is further intended and agreed that the agreements and covenants herein that expressly state shall survive termination of this Redevelopment Agreement, shall be covenants running with the Project Site and shall remain in effect without limitation as to time.

**Section 9.08. Enforcement of Covenants by the Authority and County.**

In amplification, and not in restriction of the provisions of this Article IX, it is intended and agreed that the Authority and County and their successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Authority and County for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Authority and County has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Authority and County shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, including all other rights as more specifically set forth in Article XI. This Section is not intended to confer standing to sue on any party other than the Authority and County.

## **ARTICLE X** **INDEMNIFICATION; INSURANCE**

### **Section 10.01. Redeveloper Indemnification.**

(a) The Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Authority/County Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, demolition, Remediation, construction or installation of the Project Site and/or the Project Improvements, including but not limited to, (i) the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Project Site and/or Project Improvements and which results, wholly or partially, from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from gross negligence or willful misconduct of the Authority or County, their employees, representatives or agents, or (ii) any lawsuit or other proceeding commenced by any person or entity, because of action(s) or omissions taken by the Redeveloper, its contractors, employees, agents, representatives and elected or appointed officials in connection with the Project Site and/or Project Improvements or this Redevelopment Agreement.

(b) The Redeveloper shall defend, indemnify and hold harmless the Authority/County Indemnified Parties and their officers, agents, employees, contractors, and consultants from any claims, investigations, liability, loss, injury, damage, Remediation Costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorney's fees and disbursements which result, wholly or partially, from (i) the performance or any failure or delay of performance by the Redeveloper of its obligations under the Redevelopment Agreement; (ii) any bodily injury or property damage that may occur in the Project Site during the term of the Redevelopment Agreement, provided however, that such indemnity shall not include the actions or inactions of third-parties over whom the Redeveloper does not exercise control, as long as the Redeveloper

maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions

(c) In any situation in which an Authority/County Indemnified Party is entitled to receive and desires indemnification by the Redeveloper, the Authority/County Indemnified Party shall give prompt notice of such situation to the Redeveloper. Failure to give prompt notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Authority/County Indemnified Party, unless such failure to give prompt notice materially impairs the Redeveloper's ability to defend such party. Upon receipt of such notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Authority/County Indemnified Party, including the employment of counsel reasonably acceptable to the Authority/County Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the Authority/County Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized by the Redeveloper, which authorization shall not be unreasonably withheld or delayed. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Authority/County Indemnified Party in any such action, the Redeveloper agrees to indemnify and hold harmless the Authority/County Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the Authority/County Indemnified Party is entitled to indemnification hereunder. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that no admission of liability by the Authority/County Indemnified Party is required. In the event the Authority or County refuses to provide a release of such action, and a final judgment is rendered against the Redeveloper, the Authority/County shall be responsible for the Redeveloper's counsel fees and costs incurred subsequent to the Authority or County's refusal to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

(d) The Redeveloper's indemnity provided under this Section 10.01 shall survive the termination of this Redevelopment Agreement and shall run with the land.

**Section 10.02. Insurance Required.**

See Construction Terms Addendum in Exhibit 3.

**ARTICLE XI**  
**EVENTS OF DEFAULT AND REMEDIES**

**Section 11.01. Events of Default.**

Any one or more of the following shall constitute an Event of Default hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Authority or the County to observe and perform any covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice

from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied, provided however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; or (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstated and in effect for any period of ninety (90) consecutive days.

(c) The Redeveloper shall be in default of or violate its obligations with respect to the design, demolition/clearance, development and/or construction of the Project in accordance with this Redevelopment Agreement (including, but not limited to, the Project Schedule), the Site Plan or the Plans, or shall abandon or substantially suspend construction work (unless such suspension arises out of a Tolling Event or Uncontrollable Circumstance), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Authority and County to do so, provided however, that if the default or violation is one which cannot be completely remedied within the ninety (90) days after such written notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding in good faith and with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

**Section 11.02. Uncontrollable Circumstance.**

Performance by either party hereunder shall not be deemed to be in default where delays or failure to perform are the result of a Tolling Event or Uncontrollable Circumstance that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the parties to this Redevelopment Agreement, provided however, that such act, event or condition shall be beyond the reasonable control of the party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Redevelopment Agreement. It is agreed that the terms, obligations and responsibilities set forth in this Agreement and the schedules and deadlines set forth throughout this Agreement shall be suspended or modified for the period of time that the Uncontrollable Circumstance or Tolling Event remains in effect, and the relevant terms of this Agreement and any schedules and deadlines shall be modified/extended for the period of delay caused thereby. The Party who seeks



the benefit of the above described modification/extension shall, within Thirty (30) Days after that Party's actual discovery of any such Uncontrollable Circumstance or Tolling Event, notify the other Party in writing of the Uncontrollable Circumstance or the Tolling Event, and of the cause(s) thereof, and the need for a modification/extension of the term and an extension for the period of the enforced delay.

**Section 11.03. Remedies Upon Events of Default by the Redeveloper.**

If an Event of Default by the Redeveloper occurs, then the Authority or County may take whatever action, at law or in equity, it may deem desirable, including the pursuit of damages, except any consequential damages, or the Authority or County may institute such proceedings as may be necessary or desirable in its discretion to cure and remedy such Event of Default, including but not limited to, proceedings to compel specific performance by the Redeveloper.

Additionally, during the continuance of an Event of Default by the Redeveloper, the Authority or County shall have right to take one or more the following actions:

- a) Cease, halt or withhold the issuance of any approval, including, but not limited to, Certificates of Completion, sought by the Redeveloper;
- b) Cease, halt, or withhold cooperation with the Redeveloper; or
- c) Terminate this Agreement, in which case, the Redeveloper's designation as the exclusive Redeveloper of the Project Site shall automatically terminate and become null and void without necessity for any further action.

Redeveloper acknowledges and agrees that the selection of one or more of the Authority or County's remedies set forth above shall not impact or impair the Authority or County's right and ability to select and implement any other remedies set forth above, elsewhere in this Agreement, or available in law or equity.

**Section 11.04. Remedies Upon Events of Default by the Authority or County.**

In the event that an Event of Default by the Authority or County occurs, then the Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Authority or County, as applicable, under this Redevelopment Agreement, including the seeking of damages (including reasonable counsel fees and costs).

**Section 11.05. Specific Performance.**

Unless otherwise provided for in this Agreement, if an Event of Default occurs, or a party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) party shall have the right and remedy, without posting bond or other security, to have the provisions of this Redevelopment Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Authority and County or the Redeveloper and that money damages may not provide an adequate remedy thereto.

**Section 11.06. Failure or Delay.**

Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**Section 11.07. Remedies Cumulative.**

No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a party be entitled to recover more than its actual damages.

**Section 11.08. Continuance of Obligations.**

The occurrence of an Event of Default shall not relieve the defaulting party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

**Section 11.09. Litigation Costs.**

In the event that a party to this Redevelopment Agreement successfully pursues an action to enforce any remedy provided in this Article, that party shall be entitled to payment by the other party of all reasonable costs and expenses incurred in connection with such action.

**Section 11.10. Mitigation.**

The parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder.

**Section 11.11. Documents to be Delivered Upon Termination.**

In the event this Redevelopment Agreement is terminated for any reason, except as a result of the default of the Authority or County, the Redeveloper shall deliver to the Authority and County, within ten (10) days after such termination, copies of all reports, studies, data, plans, surveys, title reports, maps and specifications prepared by the Redeveloper and third parties with respect to the Project Site and the Project Improvements and all documents, reports, permits and approvals obtained by the Redeveloper relating to the Project Site and the Project Improvements.

**ARTICLE XII  
MISCELLANEOUS**

**Section 12.01. Notices.**

Formal notices, demands and communications between the Authority, the County and the Redeveloper shall be deemed given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

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

**If to the Authority:**

Administrative Office  
1499 Routes 1 and 9 North  
Rahway, New Jersey 07065  
Attn: Bibi Taylor, Project Manager  
Email: btaylor@ucnj.org

with a copy to: David L. Minchello, Esq.  
Authority General Counsel  
c/o Rainone, Coughlin & Minchello  
555 U.S. Highway One South, Suite 440  
Iselin, New Jersey 08830  
Email: dminchello@njrcmlaw.com

**If to the County:**

Administration Building  
10 Elizabethtown Plaza, 6<sup>th</sup> Floor  
Elizabeth, NJ 07207  
Attn: Edward Oatman, County Manager

with a copy to: Robert Barry, Esq.  
Senior County Counsel  
Administration Building  
10 Elizabethtown Plaza, 6<sup>th</sup> Floor  
Elizabeth, NJ 07207

with a copy to: Jonathan L. Williams, Esq.  
County Special Counsel  
DeCotiis, FitzPatrick, Cole & Giblin, LLP  
61 South Paramus Road  
Paramus, New Jersey 07652

**If to the Redeveloper:**

with a copy to:

**Section 12.02. Conflict of Interest.**

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

**Section 12.03. No Consideration for Redevelopment Agreement.**

The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Authority or County, any money or other consideration for or in connection with this Redevelopment Agreement.

**Section 12.04. Non-Liability of Officials and Employees of the Authority.**

No member, official, employee agent or consultant of the Authority shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Authority, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**Section 12.05. Non-Liability of Officials and Employees of the County.**

No member, official, employee agent or consultant of the County shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the County, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

**Section 12.06. Non-Liability of Officials and Employee of Redeveloper.**

No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Authority or the County, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Authority or the County, or their successors, on any obligation under the terms of this Redevelopment Agreement unless such liability is separately assumed under a separate document.

**Section 12.07. No Brokerage Commissions.**

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

indemnifying party.

**Section 12.08. Provisions Not Merged with Deeds.**

To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Project Site from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

**Section 12.09. Successors and Assigns.**

This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto, and their heirs, executors, and administrators.

**Section 12.10. Titles of Articles and Sections.**

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

**Section 12.11. Severability.**

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

**Section 12.12. Modification of Redevelopment Agreement.**

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

**Section 12.13. Execution of Counterparts.**

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

**Section 12.14. Prior Agreements Superseded.**

This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes any prior agreement and all negotiations or previous

agreements between the parties with respect to all or any part of the subject matter hereof.

**Section 12.15. Waivers and Amendments in Writing.**

All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Authority, the County and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the UCIA, County, and the Redeveloper.

**Section 12.16. Drafting Ambiguities; Interpretation.**

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

**Section 12.17. Governing Law.**

This Redevelopment Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. Any action or proceeding to enforce or arising out of this Agreement shall be filed in either the Superior Court of New Jersey, Union Vicinage or United States District Court.

**[SIGNATURES APPEAR ON THE FOLLOWING PAGE].**

**IN WITNESS WHEREOF**, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

ATTEST:

**REDEVELOPER**

\_\_\_\_\_

By: \_\_\_\_\_

ATTEST:

**UNION COUNTY IMPROVEMENT  
AUTHORITY**

\_\_\_\_\_

, Secretary

By: \_\_\_\_\_

, Chairman

[SEAL]

ATTEST:

**COUNTY OF UNION**

\_\_\_\_\_

By: \_\_\_\_\_

[SEAL]

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, a \_\_\_\_\_ (the "Redeveloper"), by \_\_\_\_\_, its \_\_\_\_\_, on behalf of the Redeveloper.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_

DRAFT



STATE OF NEW JERSEY )  
 )  
COUNTY OF UNION )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2020, by the Union County Improvement Authority (the “Authority”), a body corporate and politic of the State of New Jersey, by \_\_\_\_\_, its Chairman, on behalf of the Authority.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_

\_\_\_\_\_

DRAFT

STATE OF NEW JERSEY )  
 )  
COUNTY OF UNION )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2020,  
by the County of Union (the "County"), a body corporate and politic of the State of New Jersey,  
by \_\_\_\_\_, its \_\_\_\_\_, on behalf of the County.

\_\_\_\_\_  
Notary Public

Commission Expiration: \_\_\_\_\_

\_\_\_\_\_

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**EXHIBIT 1**

**REDEVELOPMENT PROJECT SCHEDULE**

	<i>Task</i>	<i>Completion Date</i>
1	Redeveloper, the Authority and the County execute Redevelopment Agreement.	"Effective Date"
2	Commencement of Construction	Immediately upon Effective Date
3	Completion of Construction	April 1, 2023

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**EXHIBIT 2**  
**CONCEPT PLAN**

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## EXHIBIT 3

### **Construction Terms Addendum to Redevelopment Agreement**

Redeveloper agrees to contract for the furnishing of all the design, architectural, engineering and construction services set forth herein and agrees to furnish efficient business administration of those services and to use its commercially reasonable efforts to manage the Project in an expeditious and economical manner consistent with the interests of Authority and County. All capitalized terms in this Construction Terms Addendum (this “**Addendum**”) without definition shall have the meanings set forth in the Redevelopment Agreement (sometimes referred to as the “**Redevelopment Agreement**”).

#### **1.1 Definitions.**

**1.1.1** The term “**Application for Payment**” shall mean the written request for payment periodically submitted by Redeveloper to Authority showing the amounts due Redeveloper for the Project. All Applications for Payment shall be on a standard form approved by Authority and Redeveloper prior to the start of the Project.

**1.1.2** The term “**Business Days**” shall mean any day other than (a) Saturday, (b) Sunday or (c) a day on which banks in New Jersey are required by law to be closed.

**1.1.3** The term “**Contract Documents**” shall mean:

- (a) The Redevelopment Agreement, including this Addendum;
- (b) The Bridging Documents attached hereto as Exhibit 6;
- (c) Written amendments to the Redevelopment Agreement executed by all parties; and
- (d) the Final Plans.

**1.1.4** The term “**Contract Time**” shall mean the time period starting with Redeveloper’s Commencement Date and ending with the date for Substantial Completion set forth in Paragraph 8.2.

**1.1.5** The term “**Design Professional**” shall mean the architect hired by Redeveloper to provide certain professional services for the Project, including but not limited to landscape architecture, architecture, or other design services.

**1.1.6** The term “**Final Contractor’s Affidavit, Waiver and Release of Lien**” shall mean an affidavit required to be furnished by the Redeveloper in accordance with New Jersey Construction Lien Law.

**1.1.7** The term “**Final Plans**” shall mean the final construction plans and specifications as (i) produced by Redeveloper, either directly or through its contractors, design professionals or subcontractors of any tier and (ii) submitted by Redeveloper to, and approved by, the applicable construction code official.

**1.1.8** The term “**Force Majeure Event**” shall mean acts of God; natural disasters; unavoidable fire or other casualty, public enemy, insurrection, war, strikes, riots, material shortages of labor or materials resulting from major political or natural catastrophic events, injunction, and court order, such other events as constitute a basis for an extension of time under the Construction Documents, or other delay beyond the reasonable control of Redeveloper; but only to the extent any such act or event is not due to the fault or neglect of Redeveloper.

**1.1.9** The term “**Guaranteed Maximum Price**” shall mean Redeveloper’s total maximum compensation for the demolition and clearance of the existing structure(s) on the Project Site, Remediation of the Project Site, design and construction of the Project under the Contract Documents as set forth in the Final Plans. The Guaranteed Maximum Price includes (a) the cost of demolition and clearance of existing structure(s) on the Project Site; (b) Remediation of the Project Site in accordance with the Redevelopment Agreement (c) fees payable to the Design Professional; (d) construction and design contingencies for the benefit of, and use by, Redeveloper; and (d) the estimated hard and soft construction costs as described in this Addendum.

**1.1.10** The term “**Liens**” shall mean construction and liens under the New Jersey law, security interests or other encumbrances relating to Authority’s estate in the Project Site and title in the Project.

**1.1.11** The term “**Performance and Payment Bond**” shall mean that performance and labor and material payment bond or letter of credit in the total amount of the compensation to be paid Redeveloper under the Contract Documents in the form of bond required for public construction contracts.

**1.1.12** The term “**Punch List**” shall mean the list of deficiencies prepared by Design Professional and approved by Authority for use on the Project in accordance with Section 7.3 of this Addendum.

**1.1.13** The term “**Redeveloper’s Commencement Date**” shall mean the date on which Redeveloper is scheduled to start the Project pursuant to the Section 2.1.5 of this Addendum.

**1.1.14** The term “**Subcontract**” shall mean any subcontract or purchase agreement entered into by Redeveloper to or for the benefit of a subcontractor or material supplier thereunder with respect to the Project.

**1.1.15** The term “**Substantial Completion**” shall mean the date on which the Design Professional determines that the Project (or a portion thereof designated by Authority), is sufficiently completed in accordance with the Contract Documents so County can occupy and utilize the Project (or a portion thereof designated by Authority), and a Certificate of Occupancy for the Project (or a portion thereof) has been issued.

**1.1.16** The term “**Work**” shall mean the demolition and clearance of the Project Site, the Remediation, the design and construction of the Project pursuant to this Addendum and the Redevelopment Agreement.

## **ARTICLE 2 REDEVELOPER’S RESPONSIBILITIES**

**2.1 Redeveloper's Services.** Redeveloper shall furnish or arrange for the services, with respect to the execution and completion of the Project, as set forth in the following subparagraphs and makes those representations and warranties stated herein.

**2.1.1** Redeveloper hereby agrees to be responsible for providing everything necessary and appropriate for the demolition and clearance of the existing structure(s) on the Project Site, Remediation of the Project Site, design, construction and delivery of the Project strictly in accordance with the terms of the Contract Documents.

**2.1.2** Redeveloper shall cause proposed Final Plans to be prepared and submitted to the Authority and County for their approval, which approval shall not be unreasonably withheld, conditioned or delayed and which shall be granted if the Final Plans are consistent with the Bridging Documents and in compliance with applicable construction codes. Within ten (10) Business Days after receipt of the proposed Final Plans, the Authority shall either approve or disapprove the Final Plans by notice in writing to Redeveloper. If the Final Plans are disapproved, the Authority shall specify the reasons for disapproval in the notice. If the Authority shall fail to respond in writing to Redeveloper's request for approval of the Final Plans within ten (10) Business Days after the Authority's receipt of the Final Plans, the Final Plans shall be deemed to have been approved. If the Authority disapproves the Final Plans, the Authority and Redeveloper shall seek in good faith to agree upon mutually acceptable revisions to the Final Plans. If the Final Plans are agreed upon, then Redeveloper shall submit the proposed Final Plans to the applicable construction code official for approval and issuance of construction permits.

**2.1.3** The Final Plans shall not be modified after approval by the Authority and Redeveloper.

**2.1.4** Redeveloper will commence the construction of the Project five (5) Business Days after satisfaction of the requirements set forth in this Addendum and the Redevelopment Agreement, including, but not limited to, receipt of the building permit, subject to delay caused by a Force Majeure Event.

**2.1.5** Any and all allowance items under the Contract Documents together with any and all selections and directions issued with respect to such allowance items are subject to Authority's prior written approval; provided, however, if the costs associated with any such directions or selections are greater or less than the designated allowance amount, the Guaranteed Maximum Price shall not increase.

**2.1.6** Redeveloper, will secure, schedule, coordinate and observe all inspection and testing required by the Contract Documents. Redeveloper may use the services of a contractor and Design Professional to satisfy this testing and inspecting requirement. Such testing and inspection as required by the Contract Documents is included in the Guaranteed Maximum Price.

**2.1.7** Redeveloper shall coordinate with Authority and Design Professional on the preparation of the Punch List.

**2.1.8** Redeveloper shall give all notices and comply with all laws, ordinances, rules, regulations and lawful orders of any public authority bearing on the performance of the Project and shall promptly notify Authority in writing upon discovery of any variance in the Project

or the Final Plans or its component documents. Redeveloper shall be responsible for obtaining the necessary Certificate of Occupancy for the Project.

**2.1.9** Redeveloper shall keep the Project Site and surrounding areas free from unreasonable accumulation of waste materials or rubbish caused by the operations under the Project. Upon completion of the Project, Redeveloper shall have removed from and about the Project Site all of its waste materials, rubbish, tools, construction equipment, machinery and surplus materials.

**2.1.10** Redeveloper shall ensure that all reasonable precautions are taken for the entry of, and shall provide all reasonable protection to prevent damage, injury or loss to (1) all employees on the Project and other persons who may be affected thereby, (2) all the Project and all materials and equipment to be incorporated therein, and (3) all property at the Project Site or adjacent thereto. Redeveloper shall ensure that all notices are given and all applicable laws, ordinances, rules, regulations and orders of any public authority bearing on the safety of persons and property and their protection from damage, injury or loss are complied with. Redeveloper shall promptly remedy all damage or loss to any property caused in whole or in part by Redeveloper, Design Professional, any subcontractor, subconsultant, sub-subcontractor, sub-subconsultant or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, except for (a) damage for loss attributable to the acts or omissions of Authority or the County or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, and not attributable to the fault or negligence of Redeveloper and (b) casualty damage which is subject to the builder's risk insurance required to be covered by this Addendum.

**2.1.11** At the completion of construction, and as a condition precedent to final payment by Authority, Redeveloper shall prepare and submit to Authority, the following:

- (a) A complete set of marked-up record as-built reproducible drawings and specifications;
- (b) The Certificate of Occupancy;
- (c) All warranties obtained from subcontractors, manufacturers and suppliers as specifically required by the Contract Documents;
- (d) A complete set of operating, service, spare parts list and maintenance manuals covering all Project mechanical, electrical and other operating systems;
- (e) A full set of door keys as shown on the hardware schedule;
- (f) Copies of all approved shop drawings;
- (g) A list of all subcontractors and material suppliers of all tiers for the Project, including their respective addresses and phone numbers; and
- (h) All necessary training for operation of all equipment and CD/acceptable electronic format of all training activities for all system operations.
- (i) Compliance with Project closing out procedures as identified in the Bridging Documents



**ARTICLE 3  
AUTHORITY'S RESPONSIBILITIES**

**3.1** The Authority shall provide (and, as applicable) install at its cost (and not as a Cost of the Work):

- 3.1.1** office equipment, including telephones, copiers, computers for the use and operation of the Project; and
- 3.1.2** security cameras.

**3.2** If Authority shall observe or otherwise become aware of a fault or defect in the Project or nonconformity with the Contract Documents, Authority shall give prompt written notice thereof to Redeveloper; provided, however, that nothing contained in this Paragraph or elsewhere in the Redevelopment Agreement shall impose upon Authority any obligation to inspect for faults or defects in the Project or for nonconformity with any of the Contract Documents.

**3.3** Authority shall promptly furnish information and services required hereunder to be furnished by Authority and shall promptly render decisions pertaining thereto so as to avoid delay in the orderly progress of the Project in accordance with the Construction Schedule.

**3.4** Authority shall communicate with Redeveloper, Design Professional and any subcontractors or sub-consultants employed by Redeveloper or Design Professional in connection with the Project only through Redeveloper.

**3.5** Authority shall provide such documents and certifications as are required to obtain a tax exemption for the construction materials, labor and services of the Project

**ARTICLE 4  
COMPENSATION**

**4.1 Guaranteed Maximum Price.** Redeveloper's total compensation for its performance of the Project and all of its obligations under this Addendum shall be the sum of the Cost of the Work, as defined below (collectively, the "**Contract Sum**"), not to exceed the Guaranteed Maximum Price. The Authority shall not be required to pay any other amount for the Contract Sum in excess of the Guaranteed Maximum Price.

**4.2 Allowances.** To the extent that the Schedule of Values includes any "Allowance" items, such amounts are based upon the status of the design. No Allowance(s) may be used without prior written authorization by the Authority. Any cost savings attributable to an Allowance item shall be deemed to reduce the Guaranteed Maximum Price by the amount of the cost savings attributable to that Allowance item.

**4.3 Cost of the Work.**

**4.3.1 Reimbursable Costs.** The "**Cost of the Work**" shall consist of all direct costs, without mark-up, that are actually and reasonably incurred, and paid or payable, by the Redeveloper in properly performing the Work during the design and construction phase. The following items shall be included in the Cost of the Work:

4.3.1.1 Payments made by Redeveloper to the Design Professional (or any replacement design professional) consistent with the payment obligations of the Design Agreement (or any replacement design agreement(s) with replacement design professional(s)).

4.3.1.2 Surveying, geotechnical, mechanical and structural engineering and similar engineering and consulting costs and fees.

4.3.1.3 Costs for the demolition, clearance and disposal of debris and materials from the existing structure(s) on the Project Site.

4.3.1.4 Remediation Costs for the Project Site, including asbestos abatement and lead paint abatement.

4.3.1.5 Costs incurred by Redeveloper for labor, services or materials or other Work performed or provided by Redeveloper which are within the definition of the Costs of the Work under the Construction Documents.

4.3.1.6 Costs incurred to prevent threatened damage, injury or loss in the event of an emergency affecting the safety of persons or property in connection with the Work and the Project.

4.3.1.7 Costs incurred to repair or correct damaged or non-conforming Work provided that such damaged or nonconforming Work was not caused by the failure of the Redeveloper and its personnel to fulfill a specific responsibility to the Authority under the Contract Documents or to adequately supervise the Work of the Redeveloper, its subcontractors and suppliers, and only to the extent that the costs are not recoverable from insurance or from the Redeveloper or responsible subcontractor or supplier.

4.3.1.8 Other costs necessarily incurred in performing the Work to the extent approved in writing in advance by the Authority and County.

**4.3.2 Exclusions from the Cost of the Work.** Under no circumstances shall the Cost of the Work include any of the following costs, which the parties agree are either included in the GMP or are being provided by the Redeveloper at no cost to the Authority:

4.3.2.1 Losses and expenses covered by the Redeveloper's insurance.

4.3.2.2 Costs arising out of the willful misconduct, breach of the Construction Documents or gross negligence by the Redeveloper, its employees, subcontractors or anybody for which the Redeveloper is responsible under the Construction Documents.

4.3.2.3 All losses, costs and expenses incurred by the Redeveloper as a result of or in connection with any event in which the Redeveloper agreed to indemnify and hold harmless the Authority against such losses, costs and expenses; provided that same shall not be construed as a waiver of the Redeveloper's rights under any available insurance policy.

4.3.2.4 Costs of all fines and violations issued in connection with performing the Work, even if issued in the name of the Authority, except to the extent expressly caused by the Authority.

## **ARTICLE 5 ACCOUNTING**

**5.1 Accounting Records.** Redeveloper shall to keep detailed accounts and exercise such controls as may be necessary for proper financial management under the Redevelopment Agreement. Redeveloper shall preserve Redeveloper's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Construction Documents for a period of five (5) years after final payment. Redeveloper represents and warrants to Authority that it will include a similar provision in the agreement with the Design Professionals and the Construction Documents relating to accounting records.

## **ARTICLE 6 PAYMENTS TO REDEVELOPER**

### **6.1 Progress Payments.**

**6.1.1** Redeveloper shall prepare and submit for Authority's review and prior written approval a Schedule of Values that breaks down the Guaranteed Maximum Price among the various design and construction categories, including a contingency line item for the benefit of, and use by, the Redeveloper for costs not included in the Schedule of Values. Redeveloper shall have the right to revise the Schedule of Values from time to time, provided that the Guaranteed Maximum Price is not exceeded.

**6.1.2** The Cost of the Work shall be paid by Authority to Redeveloper on a percentage of completion basis against the approved Schedule of Values in accordance with this Article 7. Redeveloper shall submit to Authority's Representative an Application for Payment for the period ending on the last day of the preceding month which shall indicate the total costs incurred by Redeveloper under the Redevelopment Agreement, and the current amounts due therefor. Authority's Representative shall have the right of inspection and verification with respect to the Application for Payment and shall have five (5) Business Days within which to review and approve or respond with comments to the Application for Payment to the extent not approved. Authority's Representative shall forward each approved Application for Payment to Authority for payment, which shall be made within ten (10) Business Days. As a condition precedent to each progress payment after the initial payment, each Application for Payment shall be accompanied by duly executed and notarized "after the fact" partial waivers of lien from Redeveloper as to all amounts received in the prior progress payment, and the Redeveloper shall provide an affidavit that all subcontractors included in the prior progress payment have been paid from the prior progress payment.

**6.1.3** Within ten (10) Business Days after an Application for Payment has been approved by Authority's Representative, Authority shall cause Redeveloper to be paid, in accordance with this Article 7, the currently due amounts shown on the approved Application for

Payment. Ten percent (10%) retainage shall be withheld from each progress payment until fifty (50%) percent completion at which time the retainage shall be reduced to five (5%) percent, and thereafter five (5%) percent of each progress payment shall be held as retainage. Notwithstanding the foregoing, no retainage shall be withheld as to the Redeveloper's Fee, bonding costs, insurance, general conditions costs and payments for the Design Professional.

**6.1.4** If Authority should fail to pay any amount, at the time it becomes due hereunder, then Redeveloper may, at any time thereafter, upon serving written notice that it will stop work at the Project within seven (7) Business Days after receipt of the notice by Authority, and after such seven (7) Business Day period, stop the Project until payment of the amount owing has been received. If Redeveloper stops the Project in accordance with this Paragraph 6.1.4, and the funds were, in fact, properly due Redeveloper, Redeveloper may be entitled to a payment for its demobilization and remobilization costs, as well as an extension of the Contract Time for any delay related to such work stoppage at the Project. Payments due but unpaid shall bear interest at the rate of five percent (5%) per year.

**6.1.5** Each Application for Payment shall constitute a representation by Redeveloper to the Authority that the design and construction have progressed to the point indicated, that the quality of the Project covered by the Application for Payment is in accordance with the Contract Documents, and Redeveloper and Design Professional are entitled to payment in the amount and manner requested.

**6.2 Title Free of Liens.** Redeveloper warrants and guarantees that title to all Project, material and equipment covered by an Application for Payment, whether incorporated in the Project or not, will pass to Authority upon receipt of such payment by Redeveloper, free and clear of all Liens. Further, Redeveloper shall indemnify, defend and save Authority harmless, for Project which has been paid for by Authority pursuant to the terms herein, against Liens filed against the Project Site by Design Professional or any subconsultants, subcontractors, material suppliers, or anyone else claiming through Redeveloper, for amounts due them for that Project.

**6.3 Final Payment.** For purposes of final payment, the procedure under the Redevelopment Agreement will be as follows:

**6.3.1** Redeveloper shall give written notice to Authority upon obtaining the temporary or permanent Certificate of Occupancy for the Project. Upon issuance of this written notification, the Authority and Redeveloper shall jointly prepare the Punch List. If a temporary Certificate of Occupancy is issued, Redeveloper shall remain fully liable to perform all work on the Project necessary to achieve the final Certificate of Occupancy.

**6.3.2** When Redeveloper has delivered the Certificate of Occupancy to Authority, and Design Professional has issued a written certificate of Substantial Completion, Redeveloper shall submit to Authority's Representative for approval an Application for Payment for the unpaid balance of the Guaranteed Maximum Price (including, but not limited to, all retainage held by Authority) less an amount equal to two hundred percent (200%) of the estimated cost of completing all remaining unfinished items of Project shown on the Punch List as determined by the Design Professional. Authority's Representative shall have ten (10) Business Days within which to review and approve the Application for Payment, which shall be deemed approved if not disapproved

within such time. Within ten (10) Business Days after Authority's Representative has approved (or been deemed to have approved) the Application for Payment, Authority shall make payment of the amount approved by Authority's Representative in accordance with the terms of subparagraph 6.1.2 herein. If Authority fails to pay the amount specified by Authority's Representative within the said ten (10) Business Day period, Redeveloper shall provide Authority with written notice of Authority's potential breach. Upon its receipt of such written notice, Authority shall have five (5) Business Days to cure. Failure of Authority to pay the amount specified by Authority's Representative by the end of this five (5) Business Day cure period shall constitute a material breach of the Redevelopment Agreement and Redeveloper may terminate the Redevelopment Agreement as stated in Paragraph 11.2.

**6.3.3** Redeveloper shall begin work on the Punch List immediately and correct or complete the items of Project noted thereon, without additional expense to Authority, within thirty (30) calendar days from Substantial Completion. Authority's Representative and Design Professional shall inspect the corrected or completed items of Project within seven (7) Business Days after receiving written notice from Redeveloper of correction or completion of each such item of Project and, if acceptable, Authority shall issue a written notice of acceptance of such items of Project to Redeveloper within seven (7) Business Days of the inspection. Authority shall pay monthly for all the items of Project corrected or completed, based upon the amount being retained by Authority for those items.

**6.3.4** Following full completion of the Project, final inspection and Final Acceptance of the Project by Authority's Representative, Redeveloper shall submit a final Application for Payment for the entire unpaid balance of the Guaranteed Maximum Price, as noted in the final application and a Final Contractor's Affidavit, Waiver and Release of Lien. The final application shall be paid by Authority within thirty (30) calendar days of its receipt of that application. As a condition precedent to final payment, Redeveloper shall issue a duly executed and notarized final waiver of lien for the entire Project conditioned only upon receipt of said final payment. In addition, and also as a condition precedent to final payment, Redeveloper shall deliver to Authority similar conditional final waivers of lien duly executed and notarized under oath by Design Professional and the Redeveloper.

**6.4 Partial Occupancy.** County may occupy or use any completed or partially completed portion of the Project at any stage when such portion is designated by Authority after Substantial Completion of such portion. Authority and Redeveloper equitably apportion responsibility for security, maintenance, heat, utilities, damage to the Project and insurance based on the portion so occupied. Immediately prior to such partial occupancy or use, Authority, Design Professional and Redeveloper shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Project. Partial occupancy or use of a portion or portions of the Project shall not constitute acceptance of Project not complying with the requirements of the Contract Documents.

## **ARTICLE 7 CONTRACT TIME**

**7.1** Redeveloper shall commence performance of the Project on or before the Redeveloper's Commencement Date.

7.2 Redeveloper's scheduled date for obtaining Substantial Completion (TCO) the for the Project and achieving the issuance of a Final Certificate of Occupancy shall be set forth in the Construction Schedule as Project milestones.

**7.3 Delay Due to Force Majeure Event.** Should Redeveloper be obstructed or delayed in the prosecution of or completion of the Project as a result of a Force Majeure Event, Redeveloper shall notify Authority in writing within thirty (30) Business Days after the commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which Redeveloper may have had to request a time extension as a result of such event. Redeveloper shall only be entitled to an extension of time in the performance of any of its obligations hereunder for a Force Majeure Event to the extent that such Force Majeure Event is not due to the fault or neglect of Redeveloper or anyone for whom Redeveloper is liable. Notwithstanding any performance extension of Redeveloper's obligations hereunder resulting from a Force Majeure Event, Redeveloper shall use commercially reasonable efforts to cure, correct or otherwise mitigate the impact from such Force Majeure Event to allow Redeveloper to as quickly as possible commence and complete the Project. No delay shall be deemed to be caused by a Force Majeure Event unless Redeveloper notifies Authority in writing of the occurrence of a Force Majeure Event within thirty (30) Business Days after its occurrence and any extension shall only be for the period equal to the delay related to the Force Majeure. In no event is Redeveloper entitled to any increase to the Guaranteed Maximum Price for any delay or acceleration costs whether direct or indirect, incurred by Redeveloper as a result of a Force Majeure Event.

**7.4 Delay Due to Authority's Fault or Neglect.** Should Redeveloper be obstructed or delayed in the prosecution of or completion of the Project as a result of a delay due to fault or neglect of the Authority or the County (the "**Public Entities**"), Redeveloper shall notify Authority in writing within thirty (30) Business Days after the commencement of such delay, stating the cause or causes thereof. Failure to provide that thirty (30) Business Days written notice shall be deemed a waiver of any claim Redeveloper otherwise may have had with respect to such delay. Notwithstanding any performance extension of Redeveloper's obligations hereunder resulting from such an Authority-caused obstruction or delay, Redeveloper shall use commercially reasonable efforts to cure, correct or otherwise mitigate the impact from such event to allow Redeveloper to as quickly as possible commence and complete the Project. No such delay shall be deemed to be caused by Authority unless Redeveloper notifies Authority in writing of the occurrence of such an event within thirty (30) Business Days after its occurrence and any extension or increase shall only be for the period or amount equal to the delay related to such an event.

## **ARTICLE 8 CORRECTION OF THE PROJECT**

**8.1** Redeveloper shall promptly correct defective or nonconforming Work rejected by Authority or known by Redeveloper to be defective or not in conformity with the Contract Documents.

**8.2** If Redeveloper shall fail to correct the Work as required or shall fail to carry out the Work in accordance with the Contract Documents within a reasonable time after written notice from the Authority, the Authority, by written order, may order Redeveloper to stop the Work, or any portion thereof, until the cause for such order has been eliminated. Such a stop work order

with respect to a portion of the Work shall not prevent Redeveloper from continuing with other portions of the Work as may be reasonable; provided, however, that such right to stop the Work shall be in addition to, and not to the exclusion of, any other rights or remedies which may be available to Authority hereunder or at law or in equity by reason of such failure on the part of Redeveloper; and provided further, that Authority's right to stop the Work shall not give rise to a duty on the part of Authority to exercise the right for benefit of Redeveloper or any other person or entity.

## **ARTICLE 9 INDEMNITY AND INSURANCE**

**9.1.1 Indemnity.** To the fullest extent permitted by law, Redeveloper shall indemnify and hold harmless the Authority and County, and/or its agents, representatives and employees (the "**Authority/County Indemnified Parties**") from and against claims, damages, losses or expenses, including but not limited to reasonable attorneys' fees, that are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Project itself) arising out of or resulting from performance of the Project and caused in whole or in part by negligent acts or omissions of Redeveloper, Design Professional, subcontractors and/or anyone employed by them or anyone for whose acts they may be liable (collectively, the "**Claims**"), but excluding Claims caused by an Authority/County Indemnified Party (the "**Excluded Claims**"). Claims other than Excluded Claims, are hereinafter referred to as "**Indemnified Claims**").

**9.1.2 Defense of the Authority/County Indemnified Parties.** If an Indemnified Claim occurs, the Authority shall provide prompt notice of same to Redeveloper. Upon receipt of such notice, Redeveloper shall defend any the Indemnified Claim on behalf of the Authority/County Indemnified Parties and shall be responsible for the payment of all fees, costs and expenses associated with the Indemnified Claim, including, but not limited to, fees for counsel that is reasonably acceptable to the Authority. Any cost for reasonable attorneys' fees of separate counsel with respect to the Indemnified Claim, in situations where it is legally required for the Authority to be separately represented, shall be promptly reimbursed by Redeveloper. The Authority shall have the right to employ separate counsel in any such action and to participate in the defense thereof, at its cost.

**9.1.3 Settlement or Judgment.** Redeveloper shall have the sole right to negotiate a settlement of a Claim for which Redeveloper is indemnifying the Authority subject to notice to the Authority prior to such settlement. Redeveloper shall not be liable for any settlement of any such action effectuated without its consent, but if settled with the written consent of Redeveloper or if there is a final judgment against Redeveloper or the Authority in any such action, Redeveloper shall indemnify and hold harmless the Authority from and against any loss or liability arising out of such settlement or judgment to the extent pertaining to a claim.

**9.1.4 Survival.** The indemnification obligations set forth in this Article shall survive the termination or expiration of the Redevelopment Agreement, for whatever reason with respect to any act or occurrence preceding such termination or expiration for a period of twelve (12) months from the date of Substantial Completion.

**9.1.5 Workers' Compensation and Employers' Liability Insurance.** Workers' compensation and employers' liability insurance shall be maintained by each of Redeveloper and Design Professional for all employees providing Project or services in connection with the Project, in accordance with the laws of the State of New Jersey. The amount of the employers' liability insurance shall not be less than:

Workers' Compensation	New Jersey statutory requirements
Employer's Liability	\$100,000.00 limit each accident \$500,000.00 limit disease aggregate \$100,000.00 limit disease each employee

**9.1.6 Commercial General Liability Insurance.** Commercial General Liability Insurance shall be maintained by each of Redeveloper and Design Professional with Authority as an additional insured on an occurrence form. Coverage shall include, but not be limited to, Premises and Operations, Personal Injury, Contractual for the Redevelopment Agreement, Independent Contractors, Broad Form Property Damage and Products & Completed Operations. Coverages shall not exclude "X" (explosion), "C" (collapse) and "U" (underground). Limits of coverage shall not be less than:

Bodily Injury & Property Damage Liability	\$2,000,000.00 Combined Single Limit Each Occurrence and \$4,000,000.00 Policy Aggregate
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**9.1.7 Umbrella Liability Insurance or Excess Liability Insurance.** Each of Redeveloper and Design Professional shall maintain umbrella liability insurance or excess liability insurance in an amount not less than \$10,000,000.00 each occurrence and aggregate. Coverage shall be in excess of the Employers Liability, Commercial General Liability and Automobile Liability insurance required herein and shall include all coverages on a "following form" basis. Coverage shall drop down as primary on the exhaustion of any aggregate limit. The deductible/self-insured retention shall not exceed \$25,000.00 each claim not covered by underlying liability coverage.

**9.1.8 Automobile Liability Insurance.** Automobile Liability Insurance shall be maintained by each of Redeveloper and Design Professional, as to ownership, maintenance, use, loading and unloading, of all owned, non-owned, leased or hired vehicles with limited of not less than \$2,000,000 combined single limit each accident for bodily injury, including death and property damage liability.

**9.1.9 Builder's Risk Insurance.** Once Redeveloper's Commencement Date has occurred, builder's risk insurance shall be maintained by Authority, at the Authority's cost and not chargeable against the Guaranteed Maximum Price, with Authority as the first named insured and Redeveloper as an additional named insured, for the benefit of the Authority and Redeveloper, as their interests may appear. The amount of insurance shall be the replacement cost value and shall insure against, but not be limited to, fire, lightning, windstorm, hail, riot, riot attending a strike, sinkhole, civil commotion, aircraft, vehicle, explosion, smoke, vandalism, malicious mischief, earthquake, flood and collapse on an "all risk" type policy with coverages, deductibles, and sub-



limits acceptable to Authority. Coverage shall include transportation and offside storage for building materials and equipment to become part of the Project along with debris removal and building ordinance and law coverage in amounts of insurance acceptable to Authority. Loss, if any, under this insurance coverage shall be adjusted by Authority with the claim check made payable to Authority for the interests of all concerned. The Authority waives all rights against Redeveloper and the Design Professional and their agents, employees, consultants, subs and subconsultants for damages caused by fire or other perils to the Project. A waiver of subrogation provision shall be included in the policy for the benefit of Authority, Redeveloper, Design Professional and each of their respective officers, directors and agents. If for any reason Authority's insurance coverage policies do not allow for the waiver of subrogation at the time of loss, then this waiver of subrogation requirement shall not be applicable. The premium cost for any Builder's Risk Insurance secured by Authority shall not be deducted from the Guaranteed Maximum Price.

**9.1.10 Insurance on Personal Property and Equipment.** Redeveloper shall and shall cause its subcontractors and sub-subcontractors to, maintain insurance coverage for its respective property and equipment for the full replacement value thereof. Redeveloper shall cause its subcontractors and sub-subcontractors to, waive and cause their respective insurance carriers to waive all rights against Authority and Authority's agents and employees for damages caused by fire or other perils to Redeveloper's or its subcontractors' or sub-subcontractors', as the case may be, property. The foregoing policies shall provide such waiver of subrogation by endorsement.

**9.1.11 Products and Completed Operations.** With respect to any general liability insurance purchased hereunder, Redeveloper shall maintain products and completed operations insurance for a minimum period of two (2) years after Substantial Completion of the Project.

**9.1.12 Professional Liability Insurance.** Professional liability insurance shall be maintained by Design Professional insuring its legal liability arising out of the performance of professional services under the Design Agreement or the Redevelopment Agreement. Such insurance shall have limits of not less than \$2,000,000.00 each claim and aggregate, and the insurance company shall waive its right of subrogation against Authority. In addition, Design Professional shall maintain professional liability insurance for its services in connection with the Project only in an amount of not less than \$1,000,000.00 each claim and aggregate, and the insurance company providing such policy shall waive its right of subrogation against Authority. Any deductible or self-insured retention applicable to any claim under either of the insurance policies required by this subparagraph shall be the sole responsibility of Design Professional and/or Redeveloper and shall not be greater than \$100,000.00 each claim. Design Professional must continue the coverage required under this subparagraph for a period of not less than five (5) years after completion of its services to Authority. The retroactive date each policy required under this subparagraph will always be prior to the date services were first performed by Design Professional for Authority, and the date will not be moved forward during the term of the Redevelopment Agreement and for five (5) years thereafter. Design Professional shall promptly submit Certificates of Insurance providing for an unqualified written notice to Authority of any cancellation of coverage or reduction in limits, other than the application of the aggregate limits provision. In the event of more than a twenty percent (20%) reduction in the aggregate limit of any policy required by this subparagraph, Design Professional shall immediately take steps to have the aggregate limit reinstated to the full extent permitted under such policy. Design Professional shall promptly submit

a certified, true copy of each policy required by this subparagraph and any endorsements issued or to be issued on the policy if requested by Authority.

**9.1.13 Requirements.** All insurance required to be maintained pursuant to this Section shall provide that (i) no cancellation, material change or reduction thereof shall be effective until at least thirty (30) days after written notice thereof is given to Authority, (ii) the rights of the insured(s) to receive and collect the proceeds thereof shall not be diminished because of any additional insurance carried by Redeveloper on its own account, (iii) all losses shall be payable notwithstanding any act or negligence of Authority or Redeveloper which might, absent such agreement, result in a forfeiture of all or part of such insurance payment and notwithstanding the occupation of the Property for purposes more hazardous than permitted by the terms of such policy; (iv) be written with insurance companies authorized to do business in New Jersey, reasonably acceptable to Authority, and having an A. M. Best Rating of A-/VIII or better in Best's Insurance Guide (or a similar rating in an equivalent publication if Best's Insurance Guide is no longer in publication; and (v) be written on an occurrence basis and endorsed to name Authority and Authority's mortgagee, if any, as additional insureds. Each policy, other than the builders risk insurance, shall state that such insurance is primary over any insurance carried by Authority. No insurance required to be maintained by Redeveloper shall be subject to any deductible in excess of \$25,000 or such higher amount as is provided in this Construction Terms Addendum without Authority's prior written consent.

**9.1.14 Certificates.** Upon the commencement of the term of the Redevelopment Agreement, Redeveloper shall deliver to Authority certificates of insurance evidencing the insurance required to be maintained under the Redevelopment Agreement. Redeveloper also shall deliver to Authority at least thirty (30) days prior to the expiration date of any such policy or policies or any other policies required to be maintained under the Redevelopment Agreement (or of any renewal policy or policies), certificates for the renewal policies of such insurance. Redeveloper covenants to furnish Authority promptly upon Authority's request copies of insurance policies required to be maintained by Redeveloper hereunder, certified by the insurance carrier or broker.

**9.2 Bonding Requirements.** Redeveloper shall furnish a Performance and Payment Bond in the form attached hereto as Exhibit 4. The Performance and Payment Bond shall identify Authority and County as a named obligees.

**9.3 Guarantor Agreement.** Redeveloper shall execute the Guarantor Agreement in the form attached hereto as Exhibit 5.

## **ARTICLE 10 DEFAULT AND TERMINATION AFTER REDEVELOPER'S COMMENCEMENT DATE**

**10.1 Termination by Authority for Cause.** If, after Redeveloper's Commencement Date, Redeveloper defaults in its obligations to carry out the Project in accordance with the Contract Documents or fails to perform the provisions of the Redevelopment Agreement and this Addendum, Authority may give written notice that Authority intends to terminate Redeveloper's right to continue its performance under the Redevelopment Agreement. If Redeveloper fails to

commence and continue correction of the default, failure or neglect within fifteen (15) Business Days after Redeveloper's receipt of said notice, Authority may then

**10.1.1** give a second written notice and, after an additional five (5) Business Days of Redeveloper's receipt of said second written notice, Authority may without prejudice to any other remedy terminate the employment of Redeveloper and take control of the Project Site and finish the Project. If the expense of finishing the Project exceeds the Guaranteed Maximum Price, Redeveloper shall pay the difference to Authority; or

**10.1.2** deduct from the payments then due or which thereafter may become due to Redeveloper all actual and reasonable costs incurred by Authority in correcting such deficiencies as a result of Redeveloper's default. If the payments then due or which thereafter may become due to Redeveloper shall not be sufficient to cover the amount of the deduction, Redeveloper shall pay the difference to Authority upon demand.

**10.2 Termination by Redeveloper.** If, after Redeveloper's Commencement Date, the Authority fails to make payments when due in accordance with the terms of the Redevelopment Agreement and this Addendum, or otherwise materially breaches the Redevelopment Agreement or this Addendum, Redeveloper shall give written notice to the Public Parties of Redeveloper's intention to terminate the Redevelopment Agreement. If Authority fails to make such payment within fifteen (15) Business Days after its receipt of such notice, or Authority otherwise fails to cure a breach or failure other than the payment of money within fifteen (15) Business Days after receipt of such notice, Redeveloper may, without prejudice to any other remedy, terminate the Redevelopment Agreement, and recover from the Public Parties payment for: (1) all Work executed as of the date of termination, (2) losses sustained upon materials, equipment, tools and machinery, (3) all amounts owed by Redeveloper under the Contract Documents, and (4) all of Redeveloper's overhead expenses incurred on the Project.

**ARTICLE 11  
WARRANTIES**

**11.1** Redeveloper shall provide warranties for the benefit of the Authority and County that (i) the Project will be constructed in accordance with the Final Plans, (ii) all materials and equipment furnished will be new, unless otherwise specified by Authority in writing, and (iii) all the Project will be performed in accordance with good and sound applicable professional and industry practices and in a good and workmanlike manner, free from defects. Any warranties and guarantees Redeveloper may receive from third parties in connection with the Project shall expressly run to the benefit of Authority.

**11.2** In addition to all other rights or remedies available to Authority under the Redevelopment Agreement or at law or in equity, including any implied warranties Authority may be entitled to as a matter of law, if the Project or any part or element thereof is found to be defective or not in accordance with the Final Plans, Redeveloper shall correct the same promptly after receipt of written notice from Authority to do so, unless Authority has previously given Redeveloper a written acceptance of such condition. This obligation to correct defective work or work not in accordance with the Final Plans shall run for a period of one (1) year from the Completion Date of the Project.

**ARTICLE 12  
MISCELLANEOUS**

**12.1** Redeveloper hereby conditionally assigns to Authority all of its interest in its design agreement. This conditional assignment shall become effective upon the termination of the Redevelopment Agreement by Authority in accordance with Paragraph 10.1, and Authority's written election to succeed to the rights and obligations of Redeveloper under the Design Agreement. Said written election by Authority must be received by Redeveloper within twenty (20) Business Days of Authority terminating Redeveloper pursuant to Paragraph 10.1.1. If Redeveloper has not received that written notification within said twenty (20) Business Day period, Authority shall be deemed to have waived its rights under this Paragraph 12.1. The Design Agreement shall contain an acknowledgement of the rights of Authority pursuant to this Paragraph 12.1. Notwithstanding the foregoing, in the event Authority elects to succeed to the rights of Redeveloper, Authority shall only be required to compensate Design Professional for services rendered prior to the effective date of the assignment for which payment is due from Authority to Redeveloper, and for compensation accruing to Design Professional for services rendered from and after the date on which the assignment of the Design Agreement to Authority shall become effective. All sums due and owing by Redeveloper to Design Professional or any of their subcontractors for Project services performed or services rendered prior to such date, and for which Redeveloper has been paid by Authority, shall constitute an obligation solely of Redeveloper and not Authority.

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**EXHIBIT 4**

**BONDING REQUIREMENTS**

DRAFT

**EXHIBIT 5**

**GUARANTOR AGREEMENT**

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**EXHIBIT 6**

**BRIDGING DOCUMENTS**