



# UNION COUNTY IMPROVEMENT AUTHORITY

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Rahway, New Jersey, 07065

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Resolution No. 113-2016

Date: January 4, 2017

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY  
AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT BY  
AND BETWEEN THE AUTHORITY AND AST ROSELLE, LLC IN CONNECTION  
WITH THE ROSELLE MIND AND BODY CENTER PROJECT**

APPROVED AS TO FORM:

Lisa M. da Silva, RMC  
Clerk of the Authority

Lisa M. da Silva

APPROVED AS TO SUFFICIENCY OF FUNDS

[ ] YES [ ] NO [X] NONE REQUIRED  
UNION COUNTY IMPROVEMENT AUTHORITY

M. W. B. - O

	PRESENT	ABSENT	AYE	NAY	ABSTAIN	MOTION	SECOND
<i>Bornstad</i>	✓		✓				
<i>D'Elia</i>	✓		✓				
<i>Hockaday</i>	✓		✓				
<i>Lattimore</i>	✓		✓				✓
<i>Salerno, Secretary</i>	✓		✓				
<i>Szpond</i>	✓		✓			✓	
<i>Rountree, Vice Chair</i>	✓		✓				
<i>Scutari, Chairman</i>		✓					
<i>Vacancy</i>							

**RESOLUTION OF THE UNION COUNTY IMPROVEMENT AUTHORITY  
AUTHORIZING THE EXECUTION OF A REDEVELOPMENT  
AGREEMENT BY AND BETWEEN THE AUTHORITY AND AST  
ROSELLE, LLC IN CONNECTION WITH THE ROSELLE MIND AND  
BODY CENTER PROJECT**

**WHEREAS**, the Union County Improvement Authority (the "Authority") has been duly created by ordinance of the Union County Board of Chosen Freeholders as a public body corporate and politic of the State of New Jersey pursuant to and in accordance with the County Improvement Authorities Law, N.J.S.A. 40:37A-44, *et seq.*; and

**WHEREAS**, the Roselle Board of Education (the "BOE") owned a 4 acre parcel of land (the "Project Site") located within the Borough of Roselle (the "Borough"), which has since been conveyed to the Borough; and

**WHEREAS**, the Borough previously designated the Project Site as an area in need of rehabilitation, under the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 *et seq.*; and

**WHEREAS**, the Authority, the Borough and the BOE previously entered into a Shared Services Agreement, dated April 2014, pursuant to which the Authority was responsible for, among other things, procuring a private entity to act as the redeveloper of the Site; and

**WHEREAS**, the Authority developed and issued a *Request for Qualifications for Redeveloper Services for the Redevelopment of the Mind and Body Center Housing the Roselle Board of Education's Early Childhood Learning Center, the Roselle Public Library and a Community Center*, dated December 9, 2015 (the "RFQ"); and

**WHEREAS**, on January 12, 2016, the Authority received one response to the RFQ from AST Roselle, LLC which included Torcon, Netta Architects and Jarmel Kizel Architects and Engineers as subcontractors to AST Roselle, LLC; and

**WHEREAS**, the Evaluation Team, comprised of representatives from the Authority, the Borough and the BOE, reviewed the submission provided by AST Roselle, LLC and interviewed representatives from AST Roselle, LLC; and

**WHEREAS**, the Evaluation Team prepared an Evaluation Memorandum, dated January 29, 2016, which contains conclusions and recommendations related to the Team's review of the response received from AST Roselle, LLC; and

**WHEREAS**, pursuant to Resolution 16-2016, the Authority accepted the conclusions and recommendations of the Evaluation Team and adopted the Evaluation Memorandum; and

**WHEREAS**, further, pursuant to Resolution 16-2016, the Authority authorized and directed the Executive Director to provide a copy of Resolution 16-2016 to the Borough and the

BOE and recommend that the Borough act to designate AST Roselle, LLC as the redeveloper for the Project Site; and

**WHEREAS**, on February 17, 2016, the Borough adopted a resolution designating AST Roselle, LLC as redeveloper (the “Redeveloper”) for the Project Site; and

**WHEREAS**, the Authority now desires to authorize the Executive Director to execute, on behalf of the Authority, a Redevelopment Agreement by and between the Authority, the Borough, and Redeveloper in a form substantially similar to the Agreement attached hereto as **Exhibit A**,

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE UNION COUNTY IMPROVEMENT AUTHORITY** as follows:

- 1) The above recitals are incorporated herein as if fully set forth in length.
- 2) The Executive Director is hereby authorized and directed to execute, on behalf of the Authority, a Redevelopment Agreement by and between the Authority, the Borough and Redeveloper in a form substantially similar to the Agreement attached hereto as **Exhibit A**, and to take any and all other necessary action to implement the Agreement.
- 3) This resolution shall take place immediately.

**REDEVELOPMENT AGREEMENT FOR**

Development of  
Community Center and Public Library Complex  
Housing the Roselle Board of Education's Early Childhood Learning Center,  
the Roselle Public Library and a Community Center  
in the  
Borough of Roselle, Union County, New Jersey

**BETWEEN AND AMONG**

The Union County Improvement Authority, Designated as the Rehabilitation Entity  
for the Project Site by the Borough of Roselle

**AND**

AST Roselle LLC, as Redeveloper

**AND**

The Borough of Roselle,  
Union County, New Jersey

**DATED: January \_\_, 2017**

## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1. ACQUISITION AND CONVEYANCE OF PROJECT SITE .....	3
1.01 Definitions .....	3
1.02 Acquisition of Lot 22 by Redeveloper and the Authority .....	4
1.03 Eminent Domain Acquisition of Lot 22 .....	5
1.05 Construction Fee and Reimbursement of Project Costs .....	5
1.06 Inspections of the Project Site .....	6
ARTICLE 2. GOVERNMENTAL AND OTHER APPROVALS, CONSTRUCTION AND FINANCING OF PROJECT .....	7
2.01 Scope of Governmental Approvals .....	7
2.02 Project Financing .....	7
2.03 Construction of Project .....	8
2.04 Reimbursement of Project Costs on Termination .....	8
2.05 Proposed Uses .....	9
2.06 Union Contractor .....	9
2.07 Project Schedule .....	9
2.08 Certificate of Completion .....	9
2.09 Certificate of Completion .....	10
3.01 GENERAL CONSTRUCTION REQUIREMENTS .....	10
3.01 Scope of Undertaking .....	10
3.02 Standards of Construction .....	10
3.03 Neighborhood Impacts .....	10
3.04 Existence of Utilities .....	10
3.05 Construction Representative .....	11
3.06 Designated Representatives; Communication .....	11
3.07 Compliance with Governmental Approvals .....	11
3.08 Maintenance, Safety and Security of Project Site .....	11
ARTICLE 4. PROJECT OVERSIGHT .....	11
4.01 Progress Meetings .....	11
4.02 Progress Reports .....	12
4.03 Access to the Project Site .....	12
ARTICLE 5. REDEVELOPER COVENANT .....	13
5.01 Description of Covenant .....	13
5.02 Enforcement by Borough and/or Authority .....	13
ARTICLE 6. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER .....	13
6.01 Prohibition Against Speculative Development .....	13
6.02 Prohibition Against Transfers .....	13
6.03 Permitted Transfers and Encumbrances .....	14
6.04 Conditions of Transfer .....	14
ARTICLE 7. DEFAULT PRIOR TO REDEVELOPER'S COMMENCEMENT DATE	14

7.01	Default .....	14
7.01	Remedy for Default .....	15
7.02	No Consequential Damages.....	15
ARTICLE 8. REPRESENTATIONS.....		15
8.01	Redeveloper's Representations .....	15
8.02	Representations and Warranties by the Borough.....	16
8.03	Representations and Warranties by the Authority .....	16
ARTICLE 9. DELAYS.....		17
ARTICLE 10. WAIVER .....		17
ARTICLE 11. COOPERATION AND COMPLIANCE.....		18
9.01	Implementation of Agreement and Rehabilitation Plan .....	18
9.02	Enforcement of Agreement and Rehabilitation Plan .....	18
ARTICLE 12. NOTICES AND DEMANDS .....		18
ARTICLE 13. TITLE OF ARTICLES .....		19
ARTICLE 14. SEVERABILITY AND CONFLICTS.....		19
ARTICLE 15. SUCCESSORS BOUND .....		19
ARTICLE 16. GOVERNING LAW .....		20
ARTICLE 17. SCHEDULES AND EXHIBITS.....		20
ARTICLE 18. ENTIRE AGREEMENT .....		20
ARTICLE 19. EFFECTIVE DATE.....		20
Construction Terms Addendum to Redevelopment Agreement.....		3
ARTICLE 1. AGREEMENT.....		3
ARTICLE 2. REDEVELOPER'S RESPONSIBILITIES .....		5
ARTICLE 3. AUTHORITY'S RESPONSIBILITIES.....		9
ARTICLE 4. COMPENSATION .....		10
ARTICLE 5. ACCOUNTING .....		12
ARTICLE 6. CHANGES IN THE PROJECT.....		12
ARTICLE 7. PAYMENTS TO REDEVELOPER .....		13
ARTICLE 8. CONTRACT TIME .....		16
ARTICLE 9. CORRECTION OF THE PROJECT .....		17
ARTICLE 10. INDEMNITY AND INSURANCE .....		17
ARTICLE 11. default and TERMINATION after Redeveloper's commencement date....		21
ARTICLE 12. WARRANTIES .....		22
ARTICLE 13. MISCELLANEOUS .....		22



**THIS AGREEMENT ("Agreement")** made as of this \_\_\_\_ day of January, 2017 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 Rehabilitation Entity by the Borough of Roselle, New Jersey (hereinafter called the "**Authority**");

AND

**AST ROSELLE LLC**, a New Jersey limited liability company having its offices at 111 Magee Avenue, Lavallette, New Jersey 08735 (hereinafter called the "**Redeveloper**");

AND

**THE BOROUGH OF ROSELLE**, a municipal corporation of the State of New Jersey, with offices located at 216 Chestnut Street, Roselle, New Jersey 07203 (hereinafter called the "**Borough**").

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

**WHEREAS**, by resolution dated October 11, 2007, the Borough designated certain property commonly referred to as Block 1105, Lot 10 ("**Lot 10**") and Block 1105, Lot 22 ("**Lot 22**") on the official tax map of the Borough of Roselle, and more particularly described on **Exhibit A** (the "**Project Site**") as an area in need of rehabilitation in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 (the "**Redevelopment Law**"); and

**WHEREAS**, in April of 2014 the Borough, the Roselle Board of Education (the "**BOE**") and the Authority entered into a Shared Services Agreement, which, among other things authorized the Authority to procure a private entity to redevelop the Project Site; and

**WHEREAS**, by resolution dated August 19, 2015, the Borough designated the Authority to act on the Borough's behalf 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 Roselle Mind and Body Center, which would consist of the BOE's Early Childhood Learning Center, the Roselle Public Library and a Community Center with adjacent parking and associated site improvements (the "**Project**"); and

**WHEREAS**, the Authority, acting on behalf of the Borough and the BOE issued a *Request for Qualifications for Redeveloper Services for the Redevelopment of the Mind and Body Center Housing the Roselle Board of Education's Early Childhood Learning Center, the Roselle Public Library and a Community Center*, dated December 9, 2015 (the "**RFQ**"); and

**WHEREAS**, the Authority formed an evaluation team to review the submissions received in response to the RFQ (the "**Evaluation Team**"); and



**WHEREAS**, by ordinance dated December 16, 2015, the Borough adopted a redevelopment plan for Lot 10 (as it may be amended to incorporate Lot 22 as hereinafter provided and/or otherwise pursuant to this Agreement, the "**Redevelopment Plan**"); and

**WHEREAS**, on January 12, 2016, the Authority received one response to the RFQ from AST Roselle, LLC ("**AST**"), which included Torcon, Netta Architects and Jarmel Kizel Architects and Engineers as subcontractors to AST; and

**WHEREAS**, the Evaluation Team prepared an Evaluation Memorandum, dated January 29, 2016, recommending that AST, be designated as the redeveloper of the Project Site for the Project; and

**WHEREAS**, on February 3, 2016, the Authority's Board of Commissioners, by resolution, adopted the recommendations contained in the Evaluation Memorandum and directed the Authority's Executive Director to provide same to the Borough and request that the Borough also formally adopt the Evaluation Report and designate AST as the redeveloper of for the Project; and

**WHEREAS**, on February 17, 2016, the Borough adopted a resolution designating AST Roselle, LLC as redeveloper (the "**Redeveloper**") for the Project Site; and

**WHEREAS**, on \_\_\_\_\_, 2016, the Authority and Redeveloper entered into an escrow agreement to pay for the Authority's administrative and professional costs; and

**WHEREAS**, the BoE currently owns Lot 10, which has been or shall be leased to the Borough by the BoE on or about \_\_\_\_\_; and

**WHEREAS**, Redeveloper has agreed to attempt to acquire Lot 22 and, in that event, the Borough has agreed to acquire title Lot 22 from Redeveloper; and

**WHEREAS**, if Redeveloper is unsuccessful, the Borough has agreed to acquire Lot 22 by negotiation or eminent domain, if necessary; and

**WHEREAS**, in connection with the Project, the Borough shall sub-lease Lot 10 to the Authority, and upon acquisition of Lot 22 by Borough, shall lease or sub-lease Lot 22 to the Authority so that the Authority will be the lessee or sub-lessee of the entire Project Site, and the Project facilities shall be further subleased by the Authority upon completion of the Project to the BOE and the Borough, respectively; and

**WHEREAS**, Redeveloper has agreed to construct the Project with an estimated Project Budget of \$52,500,000 in accordance with this Agreement, including, but not limited to, the attached Construction Terms Addendum (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 \$59,000,000 to be designated as "**County Guaranteed Lease Revenue**

**Bonds, Series 2016 (Community Center and Library Project)”** (the “**Bonds**”) in order to finance the development of the Project; and

**WHEREAS**, the County adopted Ordinance number 777-2016 on or about September 15, 2016 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**, in consideration of the promises and mutual covenants herein contained, and for other good and valuable consideration, the parties hereto do hereby covenant and agree each with the other as follows:

#### **ARTICLE 1. ARTICLE 1. ACQUISITION AND CONVEYANCE OF PROJECT SITE.**

##### **1.01 Definitions.**

“**Acquisition Costs**” shall mean such costs and expenses as may be incurred by Redeveloper or the Borough in connection with (a) acquisition of Lot 22 by the Borough, whether by negotiated purchase and sale or by the exercise of the Borough’s powers of eminent domain in accordance with the Eminent Domain Law, as defined below, and (b) elimination by the Borough of any rights or interests in such Lot 22, to the extent that such interests are inconsistent with the Project (e.g., access or use easements). Such costs shall include, without limitation, (i) if the Lot 22 is to be acquired through exercise of the Borough’s powers of eminent domain, all Condemnation Costs and (ii) if Lot 22 is to be acquired through negotiated purchase and sale agreements, (A) all proceeds paid (or to be paid) to the owners of Lot 22 (and/or to any lessees, easement holders or the holders of any other rights or interests in Lot 22) as the agreed upon price for voluntary transfer or termination of rights, (B) all closing costs, adjustments, transfer taxes, escrow fees, title insurance costs, (C) the cost to cure or remove any defect, encumbrance or other objection to title, (D) liability and property insurance premiums and costs from the date of acquisition until the date of transfer to the Borough and/or Authority, (E) all property taxes and costs and expenses of owning Lot 22 from the date of acquisition until the date of transfer to the Borough, (F) all legal and other out-of-pocket fees and expenses incurred in connection with or related to the negotiation and consummation of any voluntary transfer or elimination of interests or encumbrances including, without limitation, attorneys’ fees, appraisal fees, survey costs, costs of environmental investigation, cost of inspections and expert fees, and (G) all costs and expenses, including, but not limited to, attorneys’ fees incurred in connection with the conveyance of Lot 22 to the Borough by Redeveloper, and in connection with the lease or sub-lease of Lot 22 by the Borough to the Authority.

“**Acquisition Notice**” as defined in Section 7.03(a).

“**Addendum**” shall have the meaning set forth in the Recitals.

**“Condemnation Costs”** shall mean the costs and expenses incurred by the Borough in connection with (a) the acquisition, ownership and possession of Lot 22, or any interest therein, by the exercise of the Borough’s power of eminent domain; or (b) the elimination of any rights or interest in Lot 22 by the exercise of the Borough’s power of eminent domain to the extent that such interest are inconsistent with the Project, Condemnation Costs shall include, without limitation: (i) all costs arising out of or in connection with the actual or threatened exercise of the power of eminent domain by the Borough, whether or not an action is commenced, a declaration of taking is recorded, or title is actually acquired by the Borough; (ii) all costs incurred by the Borough (included but not limited to attorneys’ fees) arising out of or in connection with site inspection, good faith negotiations, title investigation, survey, environmental investigation and remediation, appraisal, litigation, or relocation; (iii) without limiting the generality of the foregoing, the price paid or to be paid to the Lot 22 owner, which shall be the just compensation value determined by the condemnation process either in bona fide negotiations with the Lot 22 owner, or as a result of the proceedings before the condemnation commissioners or the court; (iv) the amount paid to compromise or settle any claim for just compensation (as to which the Borough agrees that the Borough will not compromise any claim without Redeveloper’s consent, which consent shall not be unreasonably withheld, conditioned or delayed); (v) title insurance costs; (vi) insurance premiums for the period in which the Borough holds title to Lot 22; (vii) all relocation costs, include the costs of obtaining any required approval or amendment to a WRAP, if required; (viii) all costs incurred by the Borough resulting from the acquisition and/or subsequent disposition of Lot 22; and (ix) all out-of-pocket costs and professional fees incurred in complying with N.J.S.A. 40A:12A-8(c) and N.J.S.A. 20:3-18, including, but not limited to, professional services, attorney fees, expert fees, inspections, appraisals, environmental investigations, court deposits (required by N.J.S.A. 20:3-18) and court costs and fees associated with bona-fide negotiations, commissioners hearings, court proceeding and challenges to the condemnation.

**“Effective Date”** shall be as defined in Section 19.01.

**“Final Plans”** shall be as defined in the Addendum.

**“Project Budget”** shall be as defined in the Addendum.

**“Public Entities”** shall mean the Borough, the Authority, the BoE, and their respective contractors, representatives, employees and agents.

**“Public Parties”** shall mean the Borough and the Authority, jointly and severally.

**“Redeveloper Fee”** shall be as defined in Section 1.05.

**“Redeveloper’s Commencement Date”** shall be as defined in the Addendum.

1.02 Voluntary Acquisition of Lot 22 by Redeveloper and the Borough. Redeveloper agrees to use commercially reasonable efforts to acquire title to Lot 22 in a voluntary purchase. In the event Redeveloper acquires Lot 22, the Borough agrees to purchase Lot 22 from Redeveloper for a purchase price equal to the Acquisition Costs incurred by Redeveloper, less any Acquisition Costs already reimbursed to Redeveloper as of the date of such purchase.

Redeveloper shall convey good, marketable and insurable title to the Borough, subject to title exceptions approved by Borough and/or which encumbered Lot 22 when acquired by Redeveloper as set forth on Exhibit B, which exceptions have been approved by the Borough. The Borough shall fund the Acquisition Costs, inclusive of all costs and expenses for the acquisition and sale of Lot 22 to the Borough from a source other than the proceeds of the Bonds. Redeveloper shall submit monthly invoices to the Borough for Acquisition Costs incurred by Redeveloper, which shall be paid within thirty (30) days after Borough receipt. The Borough specifically acknowledges that Redeveloper makes no representation or warranty, expressed or implied, as to the fitness of Lot 22 or any improvement thereon for any particular purpose, as to the condition or durability thereof, or that Lot 22 is or will be suitable for the Project. Lot 22 shall be conveyed to Borough in "AS IS" condition. To the extent required by Environmental Laws and in accordance with this Agreement, the Borough agrees, as between Redeveloper and the Borough, to assume all responsibility for Remediation of Lot 22, but, subject to the terms of the contract of sale between Redeveloper and the owner of Lot 22 for the acquisition of Lot 22, without in any way releasing, any third party, including, but not limited to, the current owners of Lot 22, with responsibility for such Remediation.

1.03 Eminent Domain Acquisition of Lot 22 In the event that Redeveloper and Public Parties, collectively determine in good faith that Lot 22 cannot be acquired by Redeveloper in accordance with Section 1.02 above, or that such acquisition could result in unreasonable Acquisition Costs or delays, then, upon receipt of written notice from Redeveloper indicating its inability to acquire Lot 22 (the "**Acquisition Notice**"), the Borough agrees to diligently pursue acquisition of Lot 22. The Borough shall promptly use reasonable efforts to acquire Lot 22 pursuant to and in accordance with the Eminent Domain Act either through a negotiated purchase and sale or through exercise by the Borough of its powers of eminent domain. The Borough shall pay all Condemnation Costs.

1.04 Failure to Obtain Lot 22. The parties agree that in the event Lot 22 is not obtained, or if Redeveloper reasonably determines that the time required to acquire Lot 22 will unduly delay construction of the remainder of the Project, then the parties shall proceed without inclusion of Lot 22 in the Project, and shall make an equitable adjustment in Guaranteed Maximum Price (as defined below) by change order for any change in the Cost of the Work resulting from the exclusion of Lot 22. Thereafter, if title to Lot 22 is acquired by the Borough prior to completion of the Project, then the Authority, Borough and Redeveloper shall enter into a mutually agreeable Change Order, as defined in the Addendum, to include Lot 22 in the Project.

1.05 Redeveloper Fee and Reimbursement of Project Costs. The Authority agrees to pay Redeveloper in accordance with the terms of the Addendum for services in connection the design and construction of the Project, a Redeveloper Fee equal to ten (10%) percent of the sum of the initial guaranteed maximum price of the Contractor (as defined in the Addendum) under the Construction Contract (as defined in the Addendum) and any design or construction contingencies included in the GMP Amendment. The Redeveloper Fee shall be in addition to (a) reimbursement of Redeveloper's Acquisition Costs; and (b) reimbursement of all Project Costs

that have been or are hereafter incurred by Redeveloper.

1.06 Inspections of the Project Site.

(a) The Borough and the Authority, as applicable, agree to permit Redeveloper, its agents, employees and contractors, to inspect the Project Site, including but not limited to, Lot 22, at any reasonable time and from time to time as Redeveloper shall desire and shall take such actions as may be required to obtain access to Lot 22 prior to the acquisition thereof by the Borough or the Authority. The Borough and the Authority will permit access for all inspections provided for in this Agreement. Such inspections may include, but are not limited to:

1. environmental inspection;
2. engineering inspection;
3. survey; and
4. any and all other inspections required by Redeveloper.

(b) Redeveloper shall indemnify and hold harmless the Authority and the Borough from any and all claims arising from the negligence of Redeveloper or its contractors entering on the Project Site. Redeveloper shall also repair any damage to the Project Site caused by such inspections and restore the Project Site to its previous grade level.

(c) Prior to conducting such inspections, Redeveloper shall provide at least twenty-four (24) hours advance notice to the Authority of an inspection. The notice shall include the type of inspection being performed, the day and time the inspection is to commence and the name of the company or person performing the inspection. The Authority shall have the right to have one or more of its employees or agents at the site during any inspection being performed by Redeveloper. Employees or agents of the Authority may not interfere with the inspections being performed by or on behalf of Redeveloper.

1.07 Amendment to Redevelopment Plan. The Redevelopment Plan shall be amended by the Borough to include Lot 22, within sixty (60) days of acquisition of Lot 22 by Redeveloper and/or the Borough so that the requirements of the Redevelopment Plan shall be applicable to Lot 22.

1.08 Environmental Remediation. In furtherance of the Project and as a Project Cost, Redeveloper has obtained a Phase I Environmental Site Assessment from T&M Associates dated July 2016 (the “**Phase I**”) of the Project Site. The Phase I identified certain potential areas of concern (“**AOCs**”) and recommended further investigation of those AOCs. Redeveloper, as a Project Cost, shall retain T&M to undertake the further investigation. The Public Parties shall be solely responsible for all costs related to the investigation and if required, remediation of the Project Site. Redeveloper shall submit monthly invoices for such costs to the Authority and the Borough, which shall be paid within thirty (30) days after receipt. Any remediation shall be performed by Redeveloper in accordance with all applicable laws at the expense of the Public Parties.

1.09 Conveyance of the Project Site to the Authority. Upon closing on the Project Financing, the Borough shall sub-lease Lot 10 to the Authority, and the Authority shall sub-lease Lot 10 from the Borough, for no consideration. Thereafter, within ten (10) days after the Borough acquires title to Lot 22, the Borough shall lease or sub-lease (as applicable) Lot 22 to the Authority, and the Authority shall lease or sub-lease Lot 22 from the Borough, for no consideration.

## **ARTICLE 2. ARTICLE 2 GOVERNMENTAL AND OTHER APPROVALS, CONSTRUCTION AND FINANCING OF PROJECT.**

2.01 Scope of Governmental Approvals. As a Project Cost, Redeveloper has caused or will cause to be prepared such plans, drawings, documentation, presentations and applications (hereinafter collectively called "**Governmental Applications**") as may be necessary and appropriate for the purpose of obtaining any and all governmental approvals for the improvement of the Project Site and the construction of the Project, including, without limitation, the following: application for capital review by the Planning Board of the Borough of Roselle ("**Planning Board**") and other reviewing bodies having jurisdiction over the Project; construction plans and specifications for obtaining building permits for the proposed construction; environmental reports and applications and other materials and submissions necessary to obtain any and all necessary permits, licenses, consents and approvals, including, but not limited to, the approvals set forth on Exhibit C (hereinafter collectively called the "**Governmental Approvals**"). Notwithstanding that Redeveloper will prepare the Governmental Applications, the Authority agrees that it will be the applicant on all of the Governmental Applications and will promptly execute and deliver all applications and related documents required in connection therewith. The Parties acknowledge that the BOE may be required to be the applicant or co-applicant for approval of the State Department of Education. The Authority shall cause the BoE to cooperate and join as applicant in such applications. All application and other fees, escrows and costs related to the Governmental Applications and Governmental Approvals shall be Project Costs. All of the Governmental Applications shall be in conformity with the Redevelopment Plan, the Final Plans, and this Agreement and any and all federal, state, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto. Nothing contained herein shall limit Redeveloper's right to request reasonable amendments to the Redevelopment Plan to conform to the Final Plans, which amendments, if necessary (including without limitation, the amendment to incorporate Lot 22 into the Redevelopment Plan), shall be considered Governmental Approvals, adopted by the Borough. In the event the Governmental Approvals are denied, or have not been obtained on or before the expiration of twenty four (24) months after the Effective Date, either the Authority or Redeveloper may terminate this Agreement by written notice to the other, in which event Redeveloper shall be reimbursed by the Public Parties for all Project Costs not previously paid by the Authority and the Borough, and no party shall have any further obligation under this Agreement.

2.02 Project Financing. The Authority acknowledges that the sole and exclusive source of funding for the Project shall be (a) funds provided by the Borough for all Acquisition Costs

related to acquisition of the Project Site, including, but not limited to, Lot 22, and the funds provided by the Public Parties for the environmental investigation and remediation of the Project Site (“**Acquisition/Environmental Costs**”); and (b) the proceeds of bond financing by the Authority (collectively, 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, other than the Acquisition/Environmental Costs, including, but not limited to (i) costs of obtaining all required Governmental Approvals, (ii) all hard costs and soft costs of construction; and (iii) costs of issuance of the Bonds (collectively with the Acquisition/Environmental Costs, “**Project Costs**”), in an amount not to exceed \$59,000,000.00 based upon a preliminary budget, which will be subject to the reasonable approval of the Authority and 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 and those costs set forth in Section 1.05, will be in accordance with the Construction Terms Addendum to this Agreement (the “**Addendum**”). Further, in order to facilitate the Project, Redeveloper has incurred, and in its sole discretion, may continue to incur Project Costs, which costs, other than Acquisition/Environmental Costs (which shall be paid by the Public Parties from funds other than the bond proceeds), shall be reimbursed upon the issuance of the Bonds. The Project Costs incurred by Redeveloper as of the date hereof are set forth on **Exhibit D**, including costs paid by means of an escrow account established by Redeveloper pursuant to an agreement between Redeveloper and the Authority. To the extent that additional Project Costs are incurred by Redeveloper after closing of the Bonds, including, but not limited to, for costs of obtaining Governmental Approvals, and Acquisition/Environmental Costs, Redeveloper shall submit monthly invoices to the Public Parties, as applicable, which shall be paid within thirty (30) days after receipt by the Borough and/or the Authority.

2.03 **Construction of Project**. Upon the (a) closing on the Project Financing, (b) securing by Redeveloper, as a Project Cost, of final and non-appealable Governmental Approvals as defined in this Article 2, (c) completion, as a Project Cost, of environmental remediation of the Project Site, (d) sub-lease by the Authority of Lot 10; (e) lease or sub-lease by the Authority of Lot 22 (or entry into a change order removing Lot 22 from the Project) and (f) the Authority and Redeveloper entering into a mutually acceptable GMP Amendment in accordance with the Addendum, Redeveloper will commence and diligently prosecute to completion the construction of the Project in accordance with the Governmental Approvals. Redeveloper shall be responsible for the letting of contracts for the construction and installation of the Project, supervision of construction, acceptance of the completed Project or parts thereof, as more particularly set forth in the Addendum in connection with the construction and installation of the Project.

2.04 **Reimbursement of Project Costs on Termination**. If this Project fails to proceed or this Agreement is terminated for any reason other than default by Redeveloper, Redeveloper

shall be entitled to a reimbursement of all of its Project Costs incurred as of the date of termination that have not previously been reimbursed by the Public Entities. Such costs shall be withdrawn from the Project Financing or otherwise paid in full by the Public Entities. This Section shall survive termination of this Agreement.

2.05 Proposed Uses. The Project will be used as a community center and public library by the Borough and as an early learning center by the BoE and other public uses permitted by the Redevelopment Plan (the “**Proposed Uses**”).

2.06 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.

2.07 Project Schedule.

(a) Subject to the provisions of Section 2.03, this Section 2.07 and Article 7 of this Agreement, and provided that the Project Site is cleared environmentally for development, construction of the Project shall be completed in accordance with this Agreement.

(b) Redeveloper will use commercially reasonable efforts to comply with the estimated project schedule attached as Exhibit G to this Agreement. (the “**Project Schedule**”) Notwithstanding the Project Schedule, Redeveloper shall have the right to request and receive reasonable extensions thereto, subject to approval by the Authority, which shall not be unreasonably withheld, conditioned or delayed, including, but not limited to, as contemplated by the Addendum. Redeveloper agrees to submit to the Authority, monthly reports setting forth the activities taken to date and providing an overall update on the progress of the Project.

2.08 Certificate of Completion. Upon completion of the construction of the Project in accordance with the Governmental Approvals, Redeveloper may apply to the Authority for a Certificate of Completion for the Project improvements. If requested by Redeveloper, the Borough agrees to request that the Authority issue a Certificate of Completion, in proper form for recording, which shall acknowledge that Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project in accordance with the requirements of this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and in the Redevelopment Plan with respect to Redeveloper's obligation to construct the Project in accordance with this Agreement. Upon issuance of a Certificate of Completion, the conditions determined to exist at the time the Project Site was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and improvements constituting the Project, and the Project Site shall no longer be subject to eminent domain. If the Authority shall fail or refuse to provide the Certificate of Completion within thirty (30) days after written request by Redeveloper, the Borough shall request in writing that the Authority provide, and the Authority shall provide within ten (10) business days to Redeveloper a written statement, setting forth in detail the respects in which it believes that Redeveloper has failed to complete the Project in accordance with the provisions of this Agreement and what



reasonable measures or acts will be necessary in order for Redeveloper to be entitled to a Certificate of Completion.

2.09 Lease of Project by Authority. Upon completion of the Project, the Authority shall lease the applicable portions of the Project to the Borough and the BoE, in accordance with the form of leases attached hereto as Exhibit E and Exhibit F, respectively. The Borough agrees to lease the applicable portion of the Project from the Authority in accordance with the form of lease attached hereto as Exhibit E.

### **ARTICLE 3. GENERAL CONSTRUCTION REQUIREMENTS**

3.01 Scope of Undertaking. Redeveloper shall undertake the services and responsibilities required to be undertaken or performed with respect to the Project as set forth in the Addendum and this Agreement. Such services and responsibilities include, without limitation, all aspects of the design, development, construction and operation of the Project 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 and (d) the administration, operation and management, or contracting for the administration, operation and management of the Project.

3.02 Standards of Construction. Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with the quality of materials called for under the applicable Governmental Approvals. 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.

3.03 Neighborhood Impacts. Redeveloper acknowledges that the construction of the Project will have certain impacts on the neighborhoods in the vicinity of the Project. 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.

3.04 Existence of Utilities. 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, as a Project Cost, 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/or Borough shall provide any appropriate order to accomplish such relocation, consistent with the provisions of N.J.S.A. 40A:12A-10. 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.

3.05 Construction Representative. The Authority shall appoint, and at all times during the design and construction period may maintain, a qualified construction consultant as a Construction Representative to review and inspect the work performed by Redeveloper and to advise the Authority in connection therewith (the "**Construction Representative**"). In the exercise of its duties on behalf of the Authority, the Construction Representative shall have the right to exercise on behalf of the Authority, all of the rights granted to the Authority hereunder. Compensation for the Authority's Construction Representative shall be an Authority cost. The Authority hereby agrees to indemnify and hold Redeveloper harmless for any injury to any person or properties sustained in connection with any inspection to the Project Site by the Construction Representative except to the extent that Redeveloper violates the standard of due care owed to the Authority and its invitees. The definition of the Construction Representative shall not include state mandated inspectors pursuant to the Uniform Construction Code (N.J.A.C. 5:23-1 et seq.) and the Uniform Fire Code (N.J.A.C. 5:70-1 et seq.).

3.06 Designated Representatives; Communication. Redeveloper and the Authority shall designate their respective Designated Representatives after the Effective Date. Each of the Designated Representatives shall be the agent of Redeveloper and the Authority, 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 Redeveloper or the Authority, 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's Designated Representative with any of Redeveloper's Project Professionals or contractors shall be processed through Redeveloper's Designated Representative, and (b) Redeveloper's Designated Representative with any of the Authority's staff, consultants and/or professionals shall be processed through the Authority's Designated Representative. Each of Redeveloper and the Authority may change the Designated Representative from time to time, upon written notice to the other Party.

3.07 Compliance with Governmental Approvals. The Project shall be constructed substantially in the manner and at the locations shown and described (a) in the site plan; (b) the Governmental Approvals, and (c) all other approved plans and specifications related to the development of the Project.

3.08 Maintenance, Safety and Security of Project Site. During any activities on the Project Site by Redeveloper, it shall be required to maintain, secure and address public safety for all affected areas of the Project Site and its surroundings, 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 Borough Property Maintenance Code.

## ARTICLE 4. PROJECT OVERSIGHT

4.01 Progress Meetings.

(a) The Parties agree to attend and participate in bi-weekly progress meetings (“**Progress Meetings**”) to report on the status of the Project and to review the progress under the Project Schedule. Progress Meetings may be held more frequently at the request of the Authority. The Authority shall give Redeveloper seven (7) days advance written notice of any additional meetings. The Progress Meetings shall be held at a time and place to be agreed upon by the Authority and Redeveloper. Prior to the meeting, representatives of the Authority may visit the Project Site to inspect the progress of the work on the Project. The Authority acknowledges that the Project Site will be an active construction site and that Redeveloper shall not be liable or responsible to the Authority, its employees or agents for injury to person or Property sustained in connection with such inspection except to the extent that Redeveloper violates the standard of due care owed to invitees or such injury results from a failure to comply with applicable regulatory safety requirements for a construction site (i.e., OSHA).

(b) The agenda for the Progress Meetings shall include, but not be limited to, a status report with regard to Governmental Approval submissions and approvals, construction of the Project, compliance with the Site Plan, the Plans and the Redevelopment Plan. At the Progress Meetings, this information will be evaluated by the Authority 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. The Authority shall have the right at all reasonable times to inspect the construction contracts, books and records pertinent to construction contracts, leases, insurance policies, and such other agreements of Redeveloper which are pertinent to the purposes of this Redevelopment Agreement and to the Progress Meetings in order to ensure completion of the Project in accordance with the Project Schedule, the Redevelopment Plan, the Site Plan, the Plans, this Redevelopment Agreement and all Applicable Law.

4.02 Progress Reports. If agreed between Authority and Redeveloper, in lieu of Progress Meetings, Redeveloper shall submit to the Authority a detailed monthly written progress report (“**Progress Report**”) (or more frequent Progress Reports, if reasonably requested by the Authority) which shall include a description of activities completed, the activities to be undertaken prior to the next monthly 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.

4.03 Access to the Project Site. The Authority and its authorized representatives shall generally have the right to enter the Project Site to inspect the Project and any and all work in progress on reasonable advance notice to Redeveloper for the purpose of furthering its interest in this Redevelopment Agreement, during normal business hours and in the company of a representative of Redeveloper or Contractor. In no event shall the Authority’s inspection of the Project (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Authority has under this Redevelopment Agreement. The Authority acknowledges that the Project Site will be an active construction site and that

Redeveloper shall not be liable or responsible to the Authority, its employees or agents for injury to person or Property sustained in connection with any such inspection, except to the extent that Redeveloper violates the standard of due care owed to invitees.

## **ARTICLE 5. REDEVELOPER COVENANT.**

5.01 Description of Covenant. Redeveloper and its successors and assigns shall: not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability, or marital status in the construction of the Project, and shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status.

5.02 Enforcement by Borough and/or Authority. In amplification, and not in restriction of the provisions of this Article 5, it is intended and agreed that the Borough and/or the Authority and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Article 5, 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 shall run in favor of the Borough and the Authority for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough and/or the Authority has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Borough and/or the Authority shall have the right; in the event of any breach of any such agreement or covenant by Redeveloper, 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 they or any other beneficiaries of such agreement or covenant may be entitled.

## **ARTICLE 6. PROHIBITION AGAINST ASSIGNMENT AND TRANSFER.**

6.01 Prohibition Against Speculative Development. Because of the importance of the development of the Project Site to the general welfare of the community and the public aids that have been made available by law for the purpose of making such development possible, Redeveloper represents and agrees that its undertakings pursuant to this Agreement are, and will be used for the purpose of the redevelopment of the Project Site as provided herein and not for speculation.

6.02 Prohibition Against Transfers. Redeveloper further represents and agrees for itself, its successors and assigns, that prior to completion of the Project Redeveloper has not made or created, and that it will not, prior to the completion of the Project, make or create, or suffer to be made or created, any sale, lease, conveyance or other transfer, in any other mode or form, of this Agreement, or any interest therein, without the prior written approval of the Authority, which shall not be unreasonably withheld, conditioned or delayed, excepting the transfers identified in Section 6.03 hereof.

6.03 Permitted Transfers and Encumbrances. The following transfers and encumbrances are exceptions to the prohibition set forth in Section 6.02 and shall not require prior approval by the Authority: (a) transfers of interests in Redeveloper (i) resulting from the death of natural persons or for estate planning purposes; or (ii) which do not individually or collectively result in a change in control of Redeveloper.

6.04 Conditions of Transfer. Except as otherwise provided in this Agreement, and except with respect to transfers permitted under Section 6.03, the Authority shall be entitled to require, as conditions to the approval of any Transfer for which consent is required pursuant to Section 6.02 that:

(a) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the Authority, necessary and adequate to fulfill the obligations undertaken in this Agreement by Redeveloper; and

(b) Any proposed transferee, by instrument in writing satisfactory to the Authority and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Authority and the Borough, have expressly assumed all of the obligations of Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which Redeveloper is subject; and

(c) All instruments and other legal documents involved in effecting any transfer shall be submitted to the Authority and Borough for review and, if approved by the Authority, approval shall be indicated to Redeveloper in writing; and

(d) Any transfer approved by the Authority shall release Redeveloper from any further obligation under this Agreement from and after the closing of the approved transfer, except as to any liability or obligation of Redeveloper incurred prior to such Transfer and except as otherwise provided in this Agreement or in the written approval by the Authority and Borough; and

(e) Redeveloper and its transferees shall comply with any other reasonable conditions that the Authority and Borough may find necessary in order to achieve and safeguard the purposes of the Rehabilitation Plan.

## **ARTICLE 7. DEFAULT PRIOR TO REDEVELOPER'S COMMENCEMENT DATE.**

7.01 Default. Except as otherwise provided in this Agreement, any party shall be in default of this Agreement if, prior to Redeveloper's Commencement Date, such party shall default under or breach this Agreement or any of its terms or conditions by any party hereto or any successor to such party, such party (or successor) shall, within thirty (30) days of receiving written notice from another, proceed to commence to cure or remedy such default or breach; provided that if such default cannot reasonably be cured within thirty (30) days, then if the defaulting party shall commence cure within such thirty (30) day period and shall thereafter proceed diligently to cure such default, then such party shall have a reasonable time to cure such default.

7.02 Remedy for Default. If any default or failure is not cured as provided in Section 7.01, the aggrieved party may:

(a) institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations; and/or

(b) terminate this Agreement by written notice, and there shall be no further rights or obligations of the parties, except for such obligations as expressly survive termination of this Agreement.

1. In the event such termination is a result of default by the Redeveloper, the Authority shall terminate Redeveloper's designation as the redeveloper of the Project and the Borough shall have the right to withdraw, to the extent possible, from purchase agreements and condemnation proceedings heretofore undertaken. Redeveloper shall pay over to the Authority all of the costs and/or damages (including reasonable counsel fees) incurred by the Authority on account of the default of Redeveloper.
2. In the event such termination is a result of the fault of the Public Entities, Redeveloper shall have the right to withdraw, to the extent possible, of from purchase and other agreements entered into by Redeveloper. The Public Parties shall pay to Redeveloper all of the costs and/or damages (including, but not limited to, all Project Costs and reasonable counsel fees) incurred by Redeveloper.

7.03 No Consequential Damages Notwithstanding anything to the contrary in this Agreement, in no event shall any party be liable for consequential, indirect, exemplary, treble or punitive damages.

## **ARTICLE 8. REPRESENTATIONS.**

8.01 Redeveloper's Representations. Redeveloper, hereby makes the following representations and covenants:

(a) It has the legal capacity to enter into this Agreement and perform each of its undertakings herein set forth and as set forth in the Rehabilitation Plan existing on the date of this Agreement

(b) It is a duly organized and validly existing legal entity under the laws of the State of New Jersey and has duly adopted the necessary resolutions authorizing the execution and

delivery of this Agreement and authorizing and directing the persons executing this Agreement to do so for and on its behalf.

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

(d) The execution, delivery, or performance of this Agreement will not constitute a violation of any partnership and or stockholder agreement or of any agreement, mortgage, indenture, instrument or judgment, to which it is a party.

(e) It will use its commercially reasonable efforts to assure the completion of the Project within the time periods specified in this Agreement.

8.02 Representations and Warranties by the Borough. The Borough hereby represents and warrants the following to Redeveloper to consummate the transactions contemplated hereby, all of which shall be true as of the date of this Agreement:

(a) Authority to Enter into Agreement. The Borough has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) Binding Upon the Borough. This Agreement is duly executed by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of applicable laws.

(c) No Pending or Threatened Litigation. Except as disclosed in writing, there is no pending, or to the best of the Borough's knowledge, threatened litigation, suit, proceeding, or investigation that would prevent the Borough from performing its duties and obligations hereunder. The Borough shall notify Redeveloper of any and all litigation that may prevent the Borough from performing its duties and obligations hereunder.

(d) Adoption of Ordinances and Resolution. That the ordinance adopting the Redevelopment Plan and any amendment(s) thereto, the ordinances designating the Rehabilitation Area, and the Resolution approving this Agreement were duly adopted by the Borough in accordance with the Redevelopment Law and any other legal requirements, subject to any such ruling as may be issued by a court of competent jurisdiction.

(e) No Other Redevelopment Agreements. No other Redevelopment Agreements are in effect with respect to the Project Site.

8.03 Representations and Warranties by the Authority. The Authority hereby represents and warrants the following to Redeveloper to consummate the transactions

contemplated hereby, all of which shall be true as of the date of this Agreement:

(a) Authority to Enter into Agreement. The Authority has the legal power, right and authority to enter into this Agreement and the instruments and documents referenced herein to which the Authority is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) Binding Upon the Authority. This Agreement is duly executed by the Authority and is valid and legally binding upon the Authority and enforceable in accordance with its terms on the basis of applicable laws.

(c) No Pending or Threatened Litigation. Except as disclosed in writing, there is no pending, or to the best of the Authority's knowledge, threatened litigation, suit, proceeding, or investigation that would prevent the Authority from performing its duties and obligations hereunder. The Authority shall notify Redeveloper of any and all litigation that may prevent the Authority from performing its duties and obligations hereunder.

(d) Adoption of Resolutions. That the Resolutions designating Redeveloper to serve as Redeveloper of the Project Site and approving this Agreement were duly adopted by the Authority in accordance with the Redevelopment Law and any other legal requirements, subject to any such ruling as may be issued by a court of competent jurisdiction.

(e) No Other Rehabilitation Agreements. No other Rehabilitation Agreements are in effect with respect to the Project Site.

## **ARTICLE 9. DELAYS.**

9.01 For the purposes of any of the provisions of this Agreement, neither the Borough, the Authority nor Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or in default with respect to its obligations hereunder because of any delay in the performance of such obligations, i.e., delay arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts or omission of other parties (including litigation by third parties), fires, floods epidemics, quarantine restrictions, strikes, freight, energy shortages, embargoes, unusual or severe weather, or delays of subcontractors due to any of the foregoing such causes, and actions or inactions by any federal, state or local governmental or quasi-governmental authority with respect to the Governmental Approvals or the development of the Project (including, without limitation, a failure of the Authority to perform in accordance with the terms of this Agreement), or any other cause beyond the reasonable control of such party, if such actions or inactions are not caused by the party asserting the delay. It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay the time or times for performance of the obligations of the Borough, the Authority or Redeveloper, as applicable, shall be extended for the period of the enforced delay.

## **ARTICLE 10. WAIVER.**



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

#### **ARTICLE 11. COOPERATION AND COMPLIANCE.**

11.01 Implementation of Agreement and Redevelopment Plan. The parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, and consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement.

11.02 Enforcement of Agreement and Redevelopment Plan. The parties hereto agree to cooperate with each other, furnish all necessary and reasonable documentation and take all necessary actions to assure compliance with the terms of this Agreement and the Redevelopment Plan.

#### **ARTICLE 12. NOTICES AND DEMANDS.**

12.01 A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Article 10.

Union County Improvement Authority  
10 Cherry Street  
Elizabeth, NJ 07207  
Attn: Executive Director

Copy to: Jonathan L. Williams, Esq.  
DeCotiis, FitzPatrick & Cole, LLP GlenPointe  
Centre West  
500 Frank W. Burr Boulevard  
Teaneck, NJ 07666

- And-

AST Roselle LLC  
111 Magee Avenue

Lavallette, NJ 08735  
Attn: Robert J. D'Anton, President

Copy to: Kenneth T Bills, Esq.  
c/o Greenbaum Rowe Smith & Davis LLP  
Metro Corporate Campus One  
P.O. Box 5600  
Woodbridge, New Jersey 07095

-And-

Borough of Roselle  
Borough Hall  
216 Chestnut Street  
Roselle, NJ 07203  
Attn: \_\_\_\_\_

Copy to: Borough of Roselle  
Office of the LLC Counsel  
Borough Hall  
216 Chestnut Street  
Roselle, NJ 07203  
Attn: \_\_\_\_\_

### **ARTICLE 13. TITLE OF ARTICLES.**

13.01 The titles of the several Articles and Sections of this Agreement as set forth in the Table of Contents or at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

### **ARTICLE 14. SEVERABILITY AND CONFLICTS.**

14.01 The validity of any Article, Section, clause or provision of this Agreement shall not affect the validity of the remaining Articles, Sections, clauses or provisions hereof.

14.02 To the extent of any conflict between the terms of this Rehabilitation Agreement and the Rehabilitation Agreement, the terms of the Rehabilitation Agreement will control and supersede the provisions of the Rehabilitation Agreement.

### **ARTICLE 15. SUCCESSORS BOUND.**

15.01 The Agreement shall be binding upon the respective parties hereto and their successors.

#### **ARTICLE 16. GOVERNING LAW.**

16.01 This Agreement shall be governed by and construed by the laws of the State of New Jersey.

#### **ARTICLE 17. SCHEDULES AND EXHIBITS.**

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

#### **ARTICLE 18. ENTIRE AGREEMENT.**

18.01 This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof except as otherwise provided herein, except, with respect to the Borough and the Authority, the Interlocal Agreements and the Purchase Agreement.

#### **ARTICLE 19. EFFECTIVE DATE.**

19.01 Anything herein contained to the contrary notwithstanding, the "Effective Date" of this Agreement shall be the date upon which all of the parties hereto have executed and delivered this Agreement and all of the other agreements referred to herein or relative hereto have been fully executed and delivered by the parties to such agreements.

IN WITNESS WHEREOF, the undersigned have duly caused this Agreement to be executed and delivered as of the day and year first above written.

ATTEST:

THE UNION COUNTY IMPROVEMENT  
AUTHORITY

\_\_\_\_\_

By: \_\_\_\_\_  
\_\_\_\_\_, Chairperson

WITNESS:

AST ROSELLE LLC

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

THE BOROUGH OF ROSELLE

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBITS and ADDENDUM**

- A Project Site
  - B Permitted Title Exceptions regarding Lot 22
  - C Governmental Approvals and Permits
  - D Project Costs Incurred by Redeveloper
  - E Lease to Borough
  - F Lease to BoE
  - G Project Schedule
- Construction Terms Addendum**

## ACKNOWLEDGEMENTS

STATE OF NEW JERSEY )  
 ) SS.:  
COUNTY OF \_\_\_\_\_ )

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me \_\_\_\_\_ who I am satisfied is the individual who executed this instrument and, who being duly sworn by me, did depose and say that:

he is the \_\_\_\_\_ of THE UNION COUNTY IMPROVEMENT  
AUTHORITY, a \_\_\_\_\_; and

he is authorized to execute the attached instrument on behalf of THE UNION COUNTY IMPROVEMENT AUTHORITY; and

he executed this instrument as the act of THE UNION COUNTY  
IMPROVEMENT AUTHORITY.

[illegible]

I CERTIFY that on this \_\_\_\_\_ day of \_\_\_\_\_, 2017, personally appeared before me \_\_\_\_\_ who I am satisfied is the individual who executed this instrument and, who being duly sworn by me, did depose and say that:

he is the \_\_\_\_\_ of AST ROSELLE LLC, a New Jersey limited liability company; and

he is authorized to execute the attached instrument on behalf of AST ROSELLE LLC; and

he executed this instrument as the act of AST ROSELLE LLC.

STATE OF NEW JERSEY                    )  
  )  
COUNTY OF \_\_\_\_\_ )       SS:

I CERTIFY that on \_\_\_\_\_, 2017, \_\_\_\_\_ personally appeared before me and this person acknowledged under oath, to my satisfaction, that this person:

(a) signed the attached instrument as \_\_\_\_\_ of THE BOROUGH OF ROSELLE,  
a \_\_\_\_\_, named in this instrument; and

(b) is authorized to execute the attached instrument on behalf of such municipality; and

(c) executed the attached instrument as the act of such municipality.

\_\_\_\_\_

Exhibit A

**Project Site**

Exhibit G  
**Project Schedule**



# Construction Terms Addendum to Redevelopment Agreement

## ARTICLE 1.

### 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. 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 “**Change Order**” shall mean a written order directing a change in the Project. Change Orders shall only require the approval of Authority and Redeveloper; provided, that notwithstanding anything herein to the contrary, the approval of the Borough shall also be required for any Change Order related to the incorporation of Lot 22 into the Project or the removal of Lot 22 from the Project.

**1.1.4** The term “**Construction Contract**” shall mean the contract entered into between Redeveloper and Contractor for all construction services relating to the Project pursuant to Paragraph 2.1.4 of this Addendum.

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

- (a) The Redevelopment Agreement, including this Addendum;
- (b) The Construction Contract and all Exhibits thereto;
- (c) Change Orders;
- (d) Written amendments to the Redevelopment Agreement executed by all parties; and

(e) the Final Plans.

**1.1.6** 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 8.3.

**1.1.7** The term “**Contractor**” shall mean the general contractor for the Project selected in accordance with Paragraph 2.1.4 of this Addendum.

**1.1.8** The term “**Design Agreement**” shall collectively mean the contract entered into by Redeveloper and Design Professional pursuant to Paragraph 2.1.1 of the Redevelopment Agreement.

**1.1.9** The term “**Design Professional**” shall collectively mean [Netta Associates] or other architect hired by Redeveloper to provide certain professional services for the Project, including but not limited to civil engineering, landscape architecture, architecture, engineering, or other such consulting services.

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

**1.1.11** 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.

**1.1.12** 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 Contract, 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.

**1.1.13** The term “**Guaranteed Maximum Price**” shall mean Redeveloper’s total compensation for the design and construction of the Project under the Contract Documents as set forth in the Final Plans. The Guaranteed Maximum Price includes (a) the Redeveloper Fee; (b) fees payable to the Design Professional; (c) 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. The Guaranteed Maximum Price does not include the additional reimbursements to Redeveloper under the Redevelopment Agreement of other Project Costs, including but not limited to, under Sections 1.05, 1.08, 2.01, 2.03, 2.04, and 3.04 of the Redevelopment Agreement.

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

**1.1.15** The term “**Performance and Payment Bond**” shall mean that performance and labor and material payment bond in the total amount of the compensation to be paid Contractor under the Construction Contract in the form of bond required for public construction contracts

**1.1.16** The term “**Project Budget**” shall mean the initial estimated costs for the Project attributable to (a) the Redeveloper Fee; (b) fees payable to the Design Professional; and (c) the estimated hard and soft construction costs as described in this Addendum.

**1.1.17** 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 Article 7.3 of the Redevelopment Agreement.

**1.1.18** The term “**Redeveloper’s Commencement Date**” shall mean the date on which Redeveloper is scheduled to start the Project pursuant to the Section 2.1.6 of this Addendum.

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

**1.1.20** 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 Authority 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.

**1.1.21** The term “**Work**” shall mean the design and construction of the Project pursuant to this Addendum.

## 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 design, construction and delivery of the Project strictly in accordance with the terms of the Contract Documents

**2.1.2** (a) No later than seventy-five (75) days after the Effective Date, Redeveloper will submit to Authority a proposed Guaranteed Maximum Price Amendment to this Redevelopment Agreement (the “**GMP Amendment**”). The GMP Amendment shall contain the proposed Guaranteed Maximum Price, a schedule of values showing how the Guaranteed Maximum Price was calculated (including, but not limited to, any allowance items and any exclusions from the Guaranteed Maximum Price), an estimate of the Redeveloper’s Commencement Date, the proposed date of Substantial Completion (as a specified number of days

after Redeveloper's Commencement Date), elevation plans, floor plans, and fifty (50%) percent complete construction plans and specifications (the "**50% Drawings**"). Within ten (10) Business Days after receipt of the proposed GMP Amendment, the Authority shall either approve or disapprove the GMP Amendment by notice in writing to Redeveloper. If the GMP Amendment is 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 GMP Amendment within ten (10) Business Days after the Authority's receipt of the GMP Amendment, Redeveloper shall be entitled to an equitable adjustment to the Project Schedule. If the Authority disapproves the GMP Amendment, the Authority and Redeveloper shall seek in good faith to agree upon mutually acceptable terms for the GMP Amendment. If the Authority and Redeveloper do not agree upon and execute the GMP Amendment within forty (40) Business Days after the Authority's receipt of the GMP Amendment, then either the Authority or the Redeveloper may terminate the Redevelopment Agreement by written notice to the other given at any time prior to execution of the GMP Amendment. In the event the Redevelopment Agreement is terminated, Redeveloper shall be reimbursed for all Project Costs incurred by Redeveloper prior to the date of termination, including, but not limited to, payments due under the Design Agreement, which obligation shall survive termination.

(b) Promptly after execution of the GMP Amendment, Redeveloper shall cause proposed Final Plans to be prepared and submitted to the Authority for its approval, which approval shall not be unreasonably withheld, conditioned or delayed and which shall be granted if the Final Plans are consistent with the 50% Drawings 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 Authority and Redeveloper do not agree upon the Final Plans within thirty (30) Business Days after the Authority's receipt of the Final Plans, then either the Authority or the Redeveloper may terminate the Redevelopment Agreement by written notice to the other given at any time prior to agreement upon the Final Plans. In the event the Redevelopment Agreement is terminated, Redeveloper shall be reimbursed for all Project Costs incurred by Redeveloper prior to the date of termination, including, but not limited to, payments due under the Design Agreement, which obligation shall survive termination. 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 except by Change Order in accordance with Section 1.04 of the Redevelopment Agreement or Article VI of this Addendum.

**2.1.4** Redeveloper shall select the general contractor for the Project, who shall be the Contractor. Redeveloper shall enter into the Construction Contract with Contractor, which Contract shall be subject to the approval of the Authority, which approval shall not be unreasonably withheld, conditioned or delayed. Additionally, the Construction Contract shall (a)

provide for a guaranteed maximum price; (b) provide that all change orders shall require Authority's approval; (c) require the Contractor to post the performance and payment bond and performance bond required pursuant to Paragraph 10.3 of this Addendum; (d) identify the Authority as the sole intended third-party beneficiary of the Construction Contract and state that all warranties provided by Contractor shall run to the benefit of Authority and Redeveloper; (e) identify the Authority as an additional obligee with regard to any indemnifications provided by Contractor to Redeveloper; (f) provide that Contractor shall carry all insurance policies required to be carried by Contractor pursuant to the Redevelopment Agreement and that Authority shall be named as an additional insured on all liability policies of the Contractor; (h) require that Contractor notify the Authority in writing of any Redeveloper default under the Construction Contract and provide the Authority with a reasonable amount of time to cure such default at Authority's sole discretion; (i) provide that in the event Redeveloper defaults or Authority otherwise terminates its agreement with Redeveloper as provided therein, Authority may at its sole option require the Construction Contract to be assigned to Authority without assuming any liability under the Construction Contract prior to the assignment. Notwithstanding the fact that Authority shall be named as a third-party beneficiary of the Construction Contract, the Construction Contract shall not create a contractual relationship between Authority and Contractor or any obligation on the part of Authority to pay, or to see to the payment of, any monies due Contractor unless the Construction Contract is assigned to Authority at Authority's direction.

**2.1.5** The Construction Contract shall require Contractor to provide and comply with a Construction Schedule that provides for obtaining the Certificate of Occupancy for the Project and achieving Substantial Completion as set forth in Section 8.2 of the Redevelopment Agreement within the time required for Substantial Completion of the Project as provided in the GMP Amendment. The initial Construction Schedule and all updates thereto shall be submitted to Authority for its information.

**2.1.6** Redeveloper will commence the construction of the Project five (5) Business Days after satisfaction of the conditions set forth in Section 2.03 of the Redevelopment Agreement, including, but not limited to, receipt of the building permit, subject to delay caused by a Force Majeure Event.

**2.1.7** Redeveloper shall prepare Change Orders for Authority and its Construction Representative's review and the Authority's approval and execution in accordance with Paragraph 6.1 of this Addendum.

**2.1.8** Any and all allowance items under the Construction Contract 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 be equitably increased or decreased as appropriate.

**2.1.9** Redeveloper, will secure, schedule, coordinate and observe all inspection and testing required by the Contract Documents. Redeveloper may use the services of 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.

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

**2.1.11** 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.

**2.1.12** 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.

**2.1.13** 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, Contractor or 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 Borough 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.

**2.1.14** 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) A copy of all fully executed Change Orders to the Redevelopment Agreement;
- (c) The Certificate of Occupancy;
- (d) All warranties obtained from Contractor, subcontractors, manufacturers and suppliers as specifically required by the Contract Documents;

- (e) A complete set of operating, service, spare parts list and maintenance manuals covering all Project mechanical, electrical and other operating systems;
- (f) A full set of door keys as shown on the hardware schedule;
- (g) Copies of all approved shop drawings;
- (h) A list of all subcontractors and material suppliers of all tiers for the Project, including their respective addresses and phone numbers; and
- (i) All necessary training for operation of all equipment and CD/acceptable electronic format of all training activities for all system operations.

### **ARTICLE 3**

#### **AUTHORITY'S RESPONSIBILITIES**

**3.1 Authority shall provide:**

- 3.1.1** interior design services;
- 3.1.2** art work;
- 3.1.3** furnishings and office equipment for the use and operation of the Project;
- 3.1.4** telephone devices and switches;
- 3.1.5** computers; and
- 3.1.6** security cameras, cabling and equipment.

**3.2** Authority shall cooperate with Redeveloper in securing Governmental Approvals, including, but not limited to, building and other permits, licenses and inspections for the Project.

**3.3** 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.

**3.4** 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.

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

## 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 (a) the Redeveloper Fee and (b) Cost of the Work, as defined below (collectively, the "**Contract Sum**"), not to exceed the Guaranteed Maximum Price, as the same may be adjusted by Change Order or allowance adjustment pursuant to this Addendum. Authority shall not be required to pay any other amount for the Contract Sum in excess of the Guaranteed Maximum Price unless such additional amount is part of a Change Order or due to an allowance adjustment (other than the reimbursements of other Project Costs required under the Redevelopment Agreement). The Guaranteed Maximum Price shall be subject to adjustment by Change Order or allowance adjustments as provided in this Addendum and the Construction Contract.

**4.2 Cost Savings.** If the Contract Sum is less than Guaranteed Maximum Price, then the difference ("**Savings**") shall be shared equally by Redeveloper and the Authority. Accordingly, at the time of the final payment, the Authority shall pay to Redeveloper an amount equal to fifty (50%) percent of the Savings.

**4.3 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. In the event the actual cost of any Allowance item, including all direct costs for labor, material, equipment, transportation, taxes and insurance, exceeds the Allowance, such excess shall either be paid directly by the Authority outside of this Addendum (and not be charged against the Guaranteed Maximum Price) or shall be reimbursed to Redeveloper with a corresponding increase in the Guaranteed Maximum Price.

#### **4.4 Cost of the Work.**

**4.4.1 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 construction phase, but excluding all costs specified in Section 4.4.2. The following items shall be included in the Cost of the Work:

4.4.1.1 Payments made by Redeveloper to the Contractor (or any replacement contractor(s)) consistent with the payment obligations of the Construction Contract (or any construction contract(s) with replacement contractor(s)).

4.4.1.2 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)).



4.4.1.3 Fees and assessments for all building and other permits, inspections, certificates and licenses the Redeveloper is required to obtain in performing the Work **[DISCUSS WHETHER AUTHORITY AND BOROUGH CAN REPRESENT THAT ALL SUCH FEES AND UTILITY CONNECTION CHARGES ARE WAIVED]**.

4.4.1.4 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 Contract.

4.4.1.5 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.

4.4.1.6 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 this Contract or to adequately supervise the Work of the Contractor, its subcontractors and suppliers, and only to the extent that the costs are not recoverable from insurance or from the Contractor or responsible subcontractor or supplier.

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

**4.4.2 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 Redeveloper Fee or are being provided by the Redeveloper at no cost to the Authority:

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

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

4.4.2.3 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.

4.4.2.4 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.

4.4.2.5 Any cost (other than allowance adjustments or other claims for which Redeveloper is entitled to an adjustment under this Addendum) not included in change orders approved by the Authority under this Addendum that would cause the Guaranteed Maximum Price to be exceeded.

## ARTICLE 5

### ACCOUNTING

**5.1 Accounting Records.** Redeveloper shall cause the Contractor 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 Contract for a period of one (1) year after final payment. Redeveloper represents and warrants to Authority that it will include a similar provision in the Design Agreement and the Construction Contract relating to accounting records. **[TO BE CONFIRMED BY REDEVELOPER]**

## ARTICLE 6

### CHANGES IN THE PROJECT

#### **6.1 Change Orders.**

**6.1.1** The Authority or Redeveloper may suggest changes in the Work within the general scope of this Agreement consisting of additions, deletions or other revisions. A suggested change involving a revision in the Guaranteed Maximum Price, Construction Schedule and Project Schedule must be agreed to by the Authority and Redeveloper in the form of a Change Order as described in 1.1.3. A suggested change in the Project which does not involve any revision in the Guaranteed Maximum Price, Construction Schedule or Project Schedule must be confirmed by Change Order as described in Section 1.1.3.

**6.1.2** Cost or credit to the Authority, and increase or decrease in the Guaranteed Maximum Price, resulting from a Change Order shall be determined in one or more of the following ways:

6.1.2.1 by mutual acceptance of a lump sum properly itemized and supported by sufficient, substantiating data to permit evaluation; or

6.1.2.2 by unit prices, valid through Certificate of Completion, stated in the Contract Documents or subsequently agreed upon.

6.1.2.3 to the extent that the Change is to delete from the Project a line item on the line item cost schedule, then the credit to the Authority shall be in the amount set forth on the line item cost schedule.

6.1.2.4 by the actual cost of time and materials.

**6.1.3** If Authority and Redeveloper are unable to agree upon the change to the Guaranteed Maximum Price, Construction Schedule, or Project Schedule, the Authority shall nevertheless have the right to require Redeveloper to proceed with the change by written directive

(a “**Change Directive**”) in which event Redeveloper shall proceed pursuant to the Change Directive and the change to the Guaranteed Maximum Price and/or Construction Schedule and Project Schedule shall be equitably adjusted in accordance with this Addendum in accordance with applicable law.

**6.1.4** If concealed or unknown conditions that affect the performance of the Work and vary from those indicated by the Contract Documents or the Redevelopment Agreement are encountered below ground or in an existing structure, which conditions differ materially from those generally recognized as inherent in work of the character provided for in this Agreement, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed and in no event later than seven (7) Business Days after first notice to Redeveloper of the conditions. If the conditions are not ordinarily found to exist or differ materially from those generally recognized as inherent in work of the character provided for in this Agreement, then the Guaranteed Maximum Price, Construction Schedule and Project Schedule shall be equitably adjusted for such concealed or unknown conditions by Change Order upon claim by either party made as soon as practicable after the claimant becomes aware of the conditions.

**6.1.5** Redeveloper shall be compensated by Change Order for changes in the Work necessitated by the enactment or revision of codes, laws or regulations adopted subsequent to the execution of this Agreement. In all other respects Redeveloper shall comply with any and all applicable codes, laws or regulations applicable to the Project and the performance of the Work hereunder.

**6.1.6 Hazardous or Toxic Substances.** If Redeveloper encounters on the Project Site any material reasonably believed by Redeveloper to be hazardous, petroleum or petroleum related products, or other hazardous or toxic substances which have not been rendered harmless (collectively “**Hazardous Condition**”), Redeveloper must immediately stop work in the area affected and shall report the Hazardous Condition to Authority. If the Work is so stopped, the Work in the affected area shall not thereafter be resumed except upon Redeveloper’s receipt of a written document from the Authority advising Redeveloper that the Hazardous Condition has been determined not to exist or has been remediated in accordance with all applicable environmental laws and instructing Redeveloper to proceed. Any such written notice to proceed shall include an equitable adjustment in the Guaranteed Maximum Price, Construction Schedule and Project Schedule.

## **ARTICLE 7**

### **PAYMENTS TO REDEVELOPER**

#### **7.1 Progress Payments.**

**7.1.1** 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 or for cost overruns in a particular line item. Redeveloper shall have the right to revise the Schedule of Values from time to time, provided that the Guaranteed Maximum Price is not exceeded.

**7.1.2** The Cost of the Work, together with the applicable Redeveloper Fee attributable thereto, 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; except that payments to the Design Professional shall be paid as and when due under the terms of the Design Agreement. 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 and the Contractor as to all amounts received in the prior progress payment, and the Contractor shall provide an affidavit that all Subcontractors included in the prior progress payment have been paid from the prior progress payment.

**7.1.3** 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, (a) no retainage shall be withheld as to the Contractor's Fee and payments for the Design Professional; and (b) if the Construction Contract provides for a different retainage requirement, the provisions of the Construction Contract shall control.

**7.1.4** 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 7.1.4, and the funds were, in fact, properly due Redeveloper, Redeveloper shall be entitled to a Change Order 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 eight percent (8%) per year.

**7.1.5** 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, Contractor and Design Professional are entitled to payment in the amount and manner requested.

**7.2 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, Contractor or any subconsultants, subcontractors, material suppliers, or anyone else claiming through Redeveloper, for amounts due them for that Project.

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

**7.3.1** 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.

**7.3.2** 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 7.1.2 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.

**7.3.3** 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.

**7.3.4** 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 Contractor.

**7.4 Partial Occupancy.** Authority 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; provided that the Authority shall be responsible for any additional costs or delays resulting from such partial occupancy, which shall be reflected in an appropriate Change Order from time to time if and as they occur. 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 8**

### **CONTRACT TIME**

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

**8.2** 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.

**8.3 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.

**8.4 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, the Borough or the Board (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 9

### CORRECTION OF THE PROJECT

**9.1** 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.

**9.2** 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. In the event any such stop work order is improperly given, Redeveloper shall be entitled to a change order providing an equitable adjustment to the Gross Maximum Price and Project and Construction Schedule for any delays or additional costs resulting from such order.

## ARTICLE 10

### INDEMNITY AND INSURANCE

**10.1.1 Indemnity.** To the fullest extent permitted by law, Redeveloper shall indemnify and hold harmless the Authority and Borough, and/or its agents, representatives and employees (the "**Authority 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, the Contractor, subcontractors and/or anyone directly or indirectly employed by them or anyone for whose acts they may be liable (collectively, the "Claims"), but excluding Claims caused by an Authority Indemnified Party (the "Excluded Claims"). Claims other than Excluded Claims, are hereinafter referred to as "Indemnified Claims").

**10.1.2 Defense of the Authority 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 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.

**10.1.3 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.

**10.1.4 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.

**10.1.5 Workers' Compensation and Employers' Liability Insurance.** Workers' compensation and employers' liability insurance shall be maintained by each of Redeveloper, Design Professional and Contractor 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

**10.1.6 Commercial General Liability Insurance.** Commercial General Liability Insurance shall be maintained by each of Redeveloper, Design Professional and Contractor 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	\$1,000,000.00 Combined Single Limit Each Occurrence and \$2,000,000.00 Policy Aggregate
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**10.1.7 Umbrella Liability Insurance or Excess Liability Insurance.** Each of Redeveloper, Design Professional and Contractor shall maintain umbrella liability insurance or excess liability insurance in an amount not less than \$5,000,000.00 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 self-insured retention shall not exceed [\$25,000.00] each claim not covered by underlying liability coverage.

**10.1.8 Automobile Liability Insurance.** Automobile Liability Insurance shall be maintained by each of Redeveloper, Design Professional, and Contractor as to ownership, maintenance, use, loading and unloading, of all owned, non-owned, leased or hired vehicles with limited of not less than \$1,000,000 combined single limit each accident for bodily injury, including death and property damage liability.

**10.1.9 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 sublimits acceptable to Authority. Coverage shall include transportation and offsite 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, the Contractor and the Design Professional and their agents, employees, consultants, subcontractors 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, Contractor 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.

**10.1.10 Insurance on Personal Property and Equipment.** Redeveloper shall, and shall cause Contractor and its subcontractors and sub-subcontractors to, maintain insurance coverage for its respective property and equipment for the full replacement value thereof. Redeveloper shall, and shall cause Contractor and 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 the Contractor's and its subcontractors' or sub-subcontractors', as the case may be, property. The foregoing policies shall provide such waiver of subrogation by endorsement.

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

**10.1.12 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 \$25,000.00 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.

**10.1.13 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] without Authority's prior written consent.

**10.1.14 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.

**10.2 Bonding Requirements.** Redeveloper shall cause Contractor to furnish a Performance and Payment Bond in the form attached hereto as Exhibit C. The Performance and Payment Bond shall identify Authority as a named obligee.

## **ARTICLE 11**

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

**11.1 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

**11.1.1** 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

**11.1.2** 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.

**11.2 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 Design Agreement and the Construction Contract, (4) all of Redeveloper's overhead expenses incurred on the Project; (5) Redeveloper Fee for the Project, less any amounts previously paid, based on the construction budget then in effect; and (6) without duplication, any Project Costs not previously paid to Redeveloper.

## **ARTICLE 12**

### **WARRANTIES**

**12.1** Redeveloper shall obtain from the Contractor warranties for the benefit of the Authority 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.

**12.2** 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 13**

### **MISCELLANEOUS**

**13.1** Redeveloper hereby conditionally assigns to Authority all of its interest in the Design Agreement. This conditional assignment shall become effective upon the termination of the Redevelopment Agreement by Authority in accordance with Paragraph 11.1, 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 11.1. 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 13.1. The Design Agreement shall contain an acknowledgement of the rights of Authority pursuant to this Paragraph 13.1. 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.

**13.2** Redeveloper hereby conditionally assigns to Authority all of its interest in the Construction Contract. This conditional assignment shall become effective upon the termination of the Redevelopment Agreement by Authority in accordance with Paragraph 11.1, and Authority's written election to succeed to the rights and obligations of Redeveloper under the Construction Contract. The Construction Contract shall contain an acknowledgement of the rights of Authority pursuant to this Paragraph 13.2. Said written election by Authority must be received by Redeveloper within twenty (20) Business Days of Authority terminating Redeveloper pursuant to Paragraph 11.1. 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 13.2. Notwithstanding the foregoing, in the event that Authority elects to succeed to the rights of Redeveloper, Authority shall only be required to compensate Contractor for Project performed or materials delivered prior to the effective date of the assignment for which payment is due from Authority to Redeveloper, and for compensation accruing to Contractor for Project services performed or materials delivered from and after the date on which the assignment of the Construction Contract to Authority shall become effective. All sums due and owing by Redeveloper to Contractor or any subcontractor or material supplier for Project services performed or materials supplied prior to such date, and for which Redeveloper has been paid by Authority, shall constitute an obligation solely of Redeveloper and not Authority.