

**CITY COUNCIL****The City of Orange Township, New Jersey**DATE September 19, 2023NUMBER 382-2023

**TITLE: RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF A PURCHASE AND SALE AGREEMENT BETWEEN THE CITY AND SYMREC ORANGE JV LLC, RELATED TO THE PROPERTY IDENTIFIED ON THE CITY TAX MAP AS BLOCK 3601, LOTS 1, 33, 34, 35, 36, 37 AND 38**

**WHEREAS**, the former site of Orange Hospital, identified on the City Tax Map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6 (collectively, the "Property") is located within the Central Orange Redevelopment Area, an area in need of redevelopment designated in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"), and is governed by the Central Orange Redevelopment Plan (the "Redevelopment Plan"); and

**WHEREAS**, SYMREC Orange JV, LLC (the "Redeveloper") has, by resolution of the Municipal Council of the City of Orange Township (the "City"), been designated as the exclusive redeveloper for the Property under the LRHL so that the Redeveloper may redevelop the Property with phased redevelopment projects consistent with the requirements of the Redevelopment Plan and applicable bulk standards and as approved by the City; and

**WHEREAS**, the Redeveloper is proposing to redevelop the Property as three (3) distinct development parcels identified as Site A, consisting of Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38 ("Site A"), Site B, consisting of Block 3601, Lots 2, 3, 4, 5 and 18 ("Site B"), and Site C, consisting of Block 3702, Lots 4, 5, 6 ("Site C"); and

**WHEREAS**, the City, the Redeveloper and the current owners of the Property, who are Orange Flats, LLC, Orange NJ Holdings, LLC, 256 Henry Holding, LLC and 184 Matthew Holding, LLC (collectively, the "Property Owner"), previously entered into a Memorandum of Understanding executed on April 19, 2023 regarding the proposed redevelopment of the Property, as amended by the First Amendment to Memorandum of Understanding approved as of the date hereof (the "MOU"); and

**WHEREAS**, in furtherance of the MOU, the City and the Redeveloper have entered into a Redevelopment Agreement approved by the attached Resolution 275-2023 on July 5, 2023 (the "Redevelopment Agreement"); and

**WHEREAS**, the City and the Redeveloper now desire to enter into a Purchase and Sale Agreement related to the purchase by the Redeveloper of Site A in substantially the form attached to this resolution and to authorize the execution of the same.

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Council of the City of Orange Township that:

**SECTION 1:** The Municipal Council hereby authorizes the sale of Site A to the Redeveloper for the purposes set forth in the Redevelopment Agreement and MOU.

**SECTION 2:** The Municipal Council hereby approves the Purchase and Sale Agreement (the "PSA") in substantially the form attached hereto.





*Handwritten signature or scribble.*

**SECTION 3:** The Mayor, Clerk, and/or other City Officials are hereby authorized to execute the PSA in substantially the form attached hereto, along with any other documents and/or agreements, and to take such actions as are, necessary to implement to sale of Site A to the Redeveloper.

**SECTION 4:** All other resolutions or parts of resolutions in conflict or inconsistent with this resolution are hereby repealed, but only to the extent of such conflict or inconsistency.

**SECTION 5:** All headings within this resolution are for convenience only and are not deemed to be part of this resolution.

**SECTION 6:** This resolution shall take effect as provided by law.

ADOPTED: September 19, 2023

---

Joyce L. Lanier  
Municipal Clerk

---

Tency A. Eason  
Council President



**PURCHASE AND SALE AGREEMENT**

between

**CITY OF ORANGE TOWNSHIP, Seller**

and

**SYMREC ORANGE JV LLC, Purchaser**

dated as of

September \_\_, 2023

This PURCHASE AND SALE AGREEMENT (this "**Agreement**"), dated as of the \_\_\_ day of September, 2023 (the "**Effective Date**"), is entered into between City of Orange Township, a municipal corporation of the State of New Jersey, with offices located at 29 North Day Street, Orange, New Jersey 07050 ("**Seller**"), and SYMREC Orange JV LLC, a New Jersey limited liability company, with an address at 211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701 ("**Purchaser**").

## RECITALS

WHEREAS, Seller, Purchaser, and Orange Flats, LLC, Orange NJ Holdings, LLC, 256 Henry Holding, LLC and 184 Matthew Holding, LLC (collectively, the "**Property Owner**") have previously entered into a Memorandum of Understanding dated April 19, 2023 (the "**MOU**") related to redevelopment of the former site of Orange Hospital, identified on the City Tax Map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6 (collectively, the "**Hospital Site Property**") which are currently owned by the Property Owner; and

WHEREAS, the MOU further defines the Hospital Site Property as three (3) distinct development parcels identified as Site A, consisting of Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38 ("**Site A**"), Site B, consisting of Block 3601, Lots 2, 3, 4, 5 and 18 ("**Site B**"), and Site C, consisting of Block 3702, Lots 4, 5, 6 ("**Site C**"); and

WHEREAS, the Seller and the Purchaser have entered into a Redevelopment Agreement approved by the attached Resolution 275-2023 on July 5, 2023 (the "**Redevelopment Agreement**") in furtherance of the MOU and the redevelopment of the Hospital Site Property in phases; and

WHEREAS, pursuant to the MOU, the Property Owner shall convey Site A to the Seller for nominal consideration upon satisfaction of certain conditions, and thereafter, and subject to further conditions in the MOU, the Seller shall convey Site A to the Purchaser; and

WHEREAS, subject to the terms and conditions hereof, Seller desires to sell to Purchaser Site A and Purchaser desires to purchase Site A from Seller in order for the Purchaser to develop Site A pursuant to the terms of the MOU and Redevelopment Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I DEFINITIONS

"**Agreement**" has the meaning set forth in the Preamble.

"**Broker**" has the meaning set forth in Section 12.01.

"**Business Day**" has the meaning set forth in Section 15.06.

"**Closing**" has the meaning set forth in Section 5.01.

"**Closing Date**" has the meaning set forth in Section 5.01.

"**Closing Statement**" has the meaning set forth in Section 9.02.

"**Conveyance Deed**" has the meaning set forth in Section 7.01(a).

"**Effective Date**" has the meaning set forth in the Preamble to this Agreement.

"**Environmental Laws**" has the meaning set forth in Section 13.03.

"**Facts**" has the meaning set forth in Section 6.01(d).

"**FIRPTA Certificate**" has the meaning set forth in Section 7.01(c).

"**Hazardous Substances**" has the meaning set forth in Section 13.03.

"**Holiday**" has the meaning set forth in Section 15.06.

"**Laws and Regulations**" has the meaning set forth in Section 6.01(b).

"**Non-Objectionable Encumbrances**" has the meaning set forth in Section 6.02(c).

"**Party or Parties**" has the meaning set forth in Section 15.03(b).

"**PCBs**" has the meaning set forth in Section 13.03.

"**Permitted Exceptions**" has the meaning set forth in Section 6.01.

"**Person or Persons**" has the meaning set forth in Section 15.05(c).

"**Property**" or "**Site A**" has the meaning set forth in Section 2.01.

"**Purchase Price**" has the meaning set forth in Section 3.01.

"**Purchaser**" has the meaning set forth in the preamble to this Agreement.

"**Purchaser's Representatives**" has the meaning set forth in Section 4.01.

"**Rights**" has the meaning set forth in Section 6.01(c).

"**Seller**" has the meaning set forth in the preamble to this Agreement.

"**Seller Related Parties**" has the meaning set forth in Section 4.03.

"**Title Company**" has the meaning set forth in Section 6.02(b).

"**Title Insurance Policy**" has the meaning set forth in Section 11.02(d).

"**Title Report**" has the meaning set forth in Section 6.02(b).

"**Title Report Objection Date**" has the meaning set forth in Section 6.02(b).

"**Title Report Objection Notice**" has the meaning set forth in Section 6.02(b).

"Violations" has the meaning set forth in Section 6.01(e).

## **ARTICLE II PURCHASE AND SALE**

**Section 2.01 The Property.** Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller in accordance with the terms and conditions of this Agreement, Site A, including all right, title, and interest therein, and all improvements thereon ("Site A" or the "Property").

## **ARTICLE III PURCHASE PRICE**

**Section 3.01 Purchase Price.** Purchaser shall pay Seller the sum of Fifteen Million and 00/100 Dollars (\$15,000,000) (the "Purchase Price"), subject to the credits as are provided in Article IX, and further subject to the conditions and prorations set forth in Article V.

**Section 3.02 Payment of Purchase Price.** Purchaser shall pay the Purchase Price to Seller on the Closing Date, simultaneously with the delivery of the Conveyance Deed, by federal funds wire transfer of immediately available funds to an account at such bank or banks as shall be designated by Seller by notice to Purchaser at least two (2) Business Days prior to the Closing Date.

**Section 3.03 No Financing Contingency.** Purchaser expressly agrees and acknowledges that Purchaser's obligations to pay the Purchase Price and otherwise consummate the transactions contemplated hereby are not in any way conditioned upon Purchaser's ability to obtain financing of any type or nature whatsoever, whether by way of debt financing or equity investment, or otherwise.

## **ARTICLE IV ACCESS**

**Section 4.01 Purchaser's Access.** Subject to the provisions of Section 4.02, Purchaser and its agents, employees, consultants, inspectors, appraisers, engineers, and contractors (collectively "Purchaser's Representatives") shall have the right, through the Closing Date, to enter upon and pass through Site A to examine and visually inspect the same, and to perform any necessary environmental remediation. Notwithstanding any such inspection, or anything to the contrary herein contained, Purchaser's obligations hereunder shall not be limited or otherwise affected as a result of any fact, circumstance, or other matter of any kind discovered from the Effective Date in connection with any such inspection, access, or otherwise; it being agreed that Seller is permitting Purchaser such right of inspection and access as a courtesy to Purchaser in its preparation for taking title to Site A. Without limiting the generality of the foregoing: (a) Purchaser agrees that it shall not have any so-called "due diligence period" and that it shall have no right to terminate this Agreement or obtain a reduction of the Purchase Price as a result of any such fact, circumstance, or other matter so discovered (including, without limitation, relating to the physical condition of Site A, or otherwise); and (b) Purchaser shall have no right to terminate this Agreement except as otherwise expressly provided in this Agreement; provided however, that to the extent the Site Remediation Costs, as evidenced by environmental reports and remediation costs estimates provided to the Purchaser from its third party consultants (who are reasonably acceptable to the Seller) and submitted to the Seller,



exceed \$15,000,000, the Purchaser may terminate this Agreement with no further obligations to the Seller under this Agreement.

**Section 4.02 Purchaser's Right to Inspect or Remediate.**

(a) In conducting any inspection or remediation of Site A or otherwise accessing Site A, Purchaser shall at all times: (i) comply with all laws and regulations of all applicable governmental authorities; and (ii) maintain or ensure Purchaser's Representative to maintain, a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to Seller and naming Seller as an additional insured covering all of the activities to be undertaken by the Purchaser on Site A with a single limit of liability (per occurrence and aggregate) of not less than \$1,000,000.00, and such other insurance as may be reasonably required by Seller, and deliver to Seller a certificate of insurance evidencing that such insurance is in force and effect prior to Purchaser's or Purchaser's Representatives first entry onto Site A to conduct any inspection. Purchaser shall schedule and coordinate all inspections of Site A or other access thereto with Seller and shall give Seller at least two (2) Business Days prior notice thereof. In no event shall Seller unreasonably interfere or impede Purchaser or Purchaser's Representatives from entering Site A. Seller shall be entitled to have a representative present at all times during each such inspection or other access but shall not unreasonably interfere with Purchaser or Purchaser's Representatives from accessing Site A. All inspection fees, appraisal fees, engineering fees, and other costs and expenses of any kind incurred by Purchaser or Purchaser's Representatives relating to such inspection and its other access shall be at the sole expense of Purchaser, and none of these costs shall be considered Site Remediation Costs. The provisions of this Section 4.20(a) shall survive the Closing or any termination of this Agreement.

(b) Copies of any environmental reports, including site remediation reports shall be provided to Seller.

**Section 4.03 Seller Indemnification.** Purchaser agrees to indemnify and hold Seller and its disclosed or undisclosed, elected officials, employees, agents, representatives, consultants, accountants, contractors, and attorneys or other advisors, and any successors or assigns of the foregoing (collectively with Seller, the "**Seller Related Parties**"), harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) incurred by any Seller Related Parties arising from or by reason of Purchaser's and/or Purchaser's Representatives' access to, or inspection of, Site A, or any tests, inspections, or other due diligence conducted by or on behalf of Purchaser, except to the extent such losses, costs, damages, liens, claims, liabilities, or expenses are caused by an existing condition at Site A or are caused by the gross negligence or willful misconduct of any of the Seller Related Parties. The provisions of this Section 4.03 shall survive the Closing or any termination of this Agreement.

**ARTICLE V  
CLOSING**

**Section 5.01 Closing; Closing Date.** The closing of the transaction contemplated hereby (the "**Closing**") shall occur shall take place within thirty-six (36) months of the Effective Date (the "**Closing Date**"), upon 30-day notice from the Purchaser of its intent to close on Site A; provided however that, so

long as the Purchaser is diligently and in good faith pursuing the approvals and/or financing for the development and acquisition of Site A, the Seller will consider any reasonable request(s) by the Purchaser for extensions (“**Extension Request**”), the timeframe of which will be mutually determined by the Parties at the time of such Extension Request. The Purchaser shall provide the reasons for the extension in the Extension Request and the Seller in good faith will consider the same. Notwithstanding the foregoing, pursuant to the MOU and the Redevelopment Agreement the Purchaser shall have the right, in its sole discretion, to “phase” the development of Site A into no more than three (3) “phases”. In the event that the Purchaser elects to phase to the development of Site A, the Purchaser shall have the right to acquire only such portion of Site A as necessary for such phase of the development and at a prorated purchase price, subject to the Environmental Closing Credit. By way of example and not limitation, in the event that the first phase of the development of Site A consists of forty percent (40%) of the acreage of Site A, the purchase price for the portion of Site A necessary for such first phase shall be equal to forty percent (40%) of the Purchase Price, subject to the Environmental Closing Credit. The Closing shall be in accordance with the terms and conditions of this Agreement, at the offices of Murphy Schiller & Wilkes LLP, 24 Commerce Street, 12<sup>th</sup> Floor, Newark, New Jersey 07102 or by the Title Company acting as settlement agent, pursuant to written instructions from the Purchaser and Seller. If the Purchaser elects to purchase Site A in phases, Closing Date shall mean each separate Closing Date for such phase, and Purchase Price shall mean the Purchase Price for such phased Closing Date.

## **ARTICLE VI EXCEPTIONS TO TITLE; TITLE MATTERS**

**Section 6.01 Permitted Exceptions.** The Property shall be sold, assigned, and conveyed by Seller to Purchaser, and Purchaser shall accept and assume same, subject only to the following matters (collectively, the “**Permitted Exceptions**”):

- (a) All presently existing and future liens for unpaid real estate taxes and water and sewer charges not due and payable as of the Closing Date.
- (b) All present and future zoning, building, environmental, and other laws, ordinances, codes, restrictions, and regulations of all governmental authorities having jurisdiction with respect to Site A, including, without limitation, landmark designations and all zoning variances and special exceptions, if any (collectively, “**Laws and Regulations**”).
- (c) All covenants, restrictions, and rights of record and all easements and agreements of record for the erection and/or maintenance of water, gas, steam, electric, telephone, sewer, or other utility pipelines, poles, wires, conduits, or other like facilities, and appurtenances thereto, over, across, and under Site A (collectively, “**Rights**”), provided as to any such exceptions that are not set forth in the Title Report, such exceptions do not interfere with the present use of Site A.
- (d) Any state of facts which would be shown on or by an accurate current survey of Site A, together with any additional state of facts that a subsequent accurate survey of Site A would show (collectively, “**Facts**”).

(e) All violations of property, building, fire, sanitary, environmental, housing, and similar Laws and Regulations (collectively, "**Violations**") prior to the Effective Date through the Closing Date.

(f) De-minimis variations between tax lot lines and lines of record title that do not impact the quality or marketability of title or cause title not to be insured at regular rates.

(g) The standard conditions and exceptions to title contained in the form of title policy or "marked-up" title commitment issued to Purchaser by the Title Company.

(h) The Non-Objectionable Encumbrances and any liens, encumbrances, or other title exceptions approved or waived by Purchaser as provided in this Agreement.

(i) Any other matter which the Title Company may raise as an exception to title, provided the Title Company will insure against collection or enforcement of same out of Site A and/or that no prohibition of present use or maintenance of Site A will result therefrom, as may be applicable.

(j) Any lien or encumbrance arising out of the acts or omissions of Purchaser.

(k) Any special assessments including but not limited to any and all special assessments that are presently assessed, a lien against or imposed on Site A, not yet due and payable and payable in installments or in a lump sum.

(l) Any exceptions to title that exist as of the date the Property Owner conveys the Site A to the Seller.

## **Section 6.02 Title.**

(a) Seller's title to Site A shall be conveyed in fee simple and shall be insurable at regular rates by a reputable title insurance company authorized to do business in New Jersey, subject only to the Permitted Exceptions.

(b) Purchaser shall promptly order from [TITLE COMPANY NAME] (the "**Title Company**"), a title commitment for an ALTA title insurance policy (the "**Title Report**") and survey and shall cause a copy of the Title Report and survey to be delivered to Seller's attorney concurrently with the delivery thereof to Purchaser's attorney. No later than ten (10) Business Day[s] after the date hereof (the "**Title Report Objection Date**"), Purchaser shall furnish to Seller's attorney written notice (the "**Title Report Objection Notice**") specifying any exceptions to title to Site A set forth in the Title Report which are not Permitted Exceptions (each, a "**Title Objection**"). Purchaser's failure to timely deliver the Title Report Objection Notice on or prior to the Title Report Objection Date shall constitute Purchaser's irrevocable acceptance of the Title Report and Purchaser shall be deemed to have unconditionally waived any right to object to any matters set forth therein. If, after giving the Title Report Objection Notice to Seller, Purchaser receives a continuation report showing any exceptions to title to Site A which are not Permitted Exceptions, Purchaser shall give written notice thereof to Seller no later than two (2) Business Day[s] after the date Purchaser receives such continuation report. If Purchaser fails to give Seller

such notice, Purchaser shall be deemed to have unconditionally waived any additional matters as to which it fails to give such notice to Seller.

(c) For the avoidance of doubt, Purchaser and Seller hereby acknowledge and agree that Purchaser shall only have the right to object to those exceptions to title disclosed on Schedule B of the Title Report that are not Permitted Exceptions. Permitted Exceptions shall be deemed to include, without limitation, any liens, encumbrances, or other title exceptions: (i) which the Title Company is willing to omit as exceptions to title (without additional cost to Purchaser or where Seller pays such cost for Purchaser provided that the Title Company shall also agree to provide the same coverage to subsequent purchasers without cost); or (ii) which shall be extinguished upon the transfer of Site A (collectively, the "**Non-Objectionable Encumbrances**").

(d) If the Seller is not able to convey title to Site A on the Closing Date due to any Title Objection, Seller and Purchaser shall have the following rights and obligations:

(i) Seller shall be entitled to no more than three (3), thirty (30) day adjournments of the Closing in order to enable Seller to convey title to Site A without the Title Objections. In the event Seller cannot remove the Title Objections within this time period, Purchaser shall be entitled to terminate this Agreement in which event this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement;

(ii) If Seller does not so elect to adjourn the Closing, and on the Closing Date, fails or is unable to convey title subject to and in accordance with the provisions of this Agreement, Purchaser shall be entitled, to either: (A) terminate this Agreement by written notice to Seller delivered on or before the Closing Date, in which event this Agreement shall thereupon be deemed terminated and of no further effect, and neither party hereto shall have any obligations to the other hereunder or by reason hereof, except for the provisions hereof that expressly survive termination of this Agreement; or (B) complete the purchase (with no reduction in the Purchase Price) with such title as Seller is able to convey on the Closing Date. If Purchaser shall fail to give such notice as aforesaid, Purchaser shall be deemed to have elected clause (B) above and the Closing shall take place on the Closing Date;

(iii) If Seller elects to adjourn the Closing as provided above, this Agreement shall remain in effect for the period or periods of adjournment, in accordance with its terms. If, on the Closing Date, Seller fails or is unable to convey title to Site A subject to and in accordance with the provisions of this Agreement, Purchaser shall make its election between clauses (A) and (B) of Section 6.02(d)(ii) above, by written notice to Seller given not later than the Closing Date. If Purchaser shall fail to give such notice as aforesaid, Purchaser shall be deemed to have elected clause (A) above and the Agreement will be terminated, void and of no further force or effect; and

(e) Notwithstanding anything to the contrary contained in this Agreement, Seller shall not be required to take or bring any action or proceeding or any other steps to remove any defect in or objection to title or to fulfill any condition precedent to Purchaser's obligations under this

Agreement or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller therefor, at law or in equity.

**Section 6.03 Title As Seller Can Convey.** Notwithstanding anything in Section 6.02 above to the contrary, Purchaser may at any time accept such title as Seller can convey, without reduction of the Purchase Price or any credit or allowance on account thereof or any claim against Seller. The acceptance of the Conveyance Deed by Purchaser shall be deemed to be full performance of, and discharge of, every agreement and obligation on Seller's part to be performed under this Agreement, except for such matters which are expressly stated to survive the Closing hereunder.

**Section 6.04 Unpaid Taxes and Violations.** The Purchaser shall within fifteen (15) days of the Effective Date pay the amount of any unpaid taxes and Violations, which are the subject of summons, on or related to Site A.

## **ARTICLE VII CLOSING DELIVERIES**

**Section 7.01 Seller's Closing Deliveries.** Seller shall deliver or cause to be delivered to Purchaser, at or prior to the Closing Date, all of the following:

(a) Provided the Property Owner has delivered a bargain and sale deed with covenant's against grantor's acts to the Seller, the Seller will deliver one (1) original bargain and sale deed with covenant's against grantor's acts (the "**Conveyance Deed**"), executed by Seller and acknowledged, and in recordable form, conveying to Purchaser Site A, subject only to the Permitted Exceptions.

(b) One (1) original of an affidavit of consideration for the realty transfer fee to be filed with the Conveyance Deed, executed by Seller.

(c) One (1) original affidavit executed by Seller and stating its taxpayer identification number for federal income tax purposes and that Seller is not a foreign person within the meaning of Section 1445, *et seq.* of the Internal Revenue Code (the "**FIRPTA Certificate**").

(d) One (1) seller's residency certificate, executed by Seller with respect to the withholding requirements for New Jersey Income Tax.

(e) To the extent in the possession of Seller, all keys, key cards, passwords, and access codes for entrance to Site A and identification of the locks to which they correspond.

(f) A resolution of Seller authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.

(g) A written certificate stating that all representations and warranties contained in Section 10.01 remain, as of the Closing Date, true, correct, and complete in all material respects as when first made hereunder.

(h) One (1) original title affidavit in a form reasonably acceptable to Seller and the Title Company.

- (i) One (1) original 1099-S.
- (j) One (1) copy of the recorded discharge of mortgage which is held/owned by the Seller.
- (k) Two (2) original Closing Statements.
- (l) All other documents reasonably necessary or otherwise required by Title Company or Purchaser to consummate the transactions contemplated by this Agreement.

**Section 7.02 Purchaser's Closing Deliveries.** Purchaser shall deliver or cause to be delivered to Seller, at prior to the Closing Date, all the following:

- (a) The Purchase Price.
- (b) An affidavit of consideration for the mansion tax, if applicable.
- (c) A consent of the members of Purchaser authorizing the transaction contemplated hereby and the execution and delivery of the documents required to be executed and delivered hereunder.
- (d) Such evidence as the Title Company may require as to the authority of the person or persons executing documents on behalf of Purchaser.
- (e) Two (2) original Closing Statements.
- (f) All other documents reasonably necessary or otherwise required by the Title Company or Seller to consummate the transactions contemplated by this Agreement.

## **ARTICLE VIII CLOSING COSTS**

**Section 8.01 Seller's Closing Costs.** Seller shall incur no closing costs in connection with the transaction contemplated by this Agreement, all of which shall be paid for by the Purchaser.

**Section 8.02 Purchaser's Closing Costs.** Purchaser shall pay all closing costs including the following costs and expenses in connection with the transaction contemplated by this Agreement:

- (a) Recording fees for the recording of the Conveyance Deed and any mortgage.
- (b) Any applicable mansion tax and/or other purchaser transfer fees due at Closing.
- (c) The cost of the Title Report.
- (d) The cost of the Title Insurance Policy.
- (e) The cost of the survey.

(f) Any and all costs associated with any financing Purchaser may obtain to consummate the acquisition of Site A.

(g) Any and all costs incurred by Purchaser or Seller in connection with the preparation, review, and negotiation of this Agreement and the transactions and the Closing contemplated by this Agreement, including any expenses associated with Purchaser's investigation of Site A, and any Purchaser or Seller attorneys' or consultancy fees.

## **ARTICLE IX CREDITS**

**Section 9.01 Environmental Credit.** The Parties understand and agree that Site A has multiple buildings that need to be demolished prior to commencing construction, and certain known and unknown environmental conditions and remediation costs (the "**Environmental Conditions**"). The Parties, pursuant to the MOU, agreed that the Purchaser shall be responsible for the remediation of the Environmental Conditions on Site A as well as any Environmental Conditions on Site B and Site C that originated at Site A (the "**Site Remediation Costs**") at its sole cost subject to the receipt of a credit at Closing of up to \$7,200,000 against the Purchase Price (the "**Environmental Credit**"), which Environmental Credit will be based on the estimated cost of the total remediation of the entire Site A (as determined by Purchaser's environmental consultant)(the "**Estimated Remediation Costs**"). In furtherance of the foregoing, the Purchaser shall have the right to conduct such environmental remediation pursuant to Section 4.02 of this Agreement, and following the Closing on Site A (or any "phase" thereof). The Purchase Price shall be allocated as follows: (a) of the first \$2,600,000, \$1,248,000 (i.e. 48% of such amount) shall be withheld from the sale proceeds payable to Seller and placed into an escrow account with the Title Company (the "**Environmental Escrow**"), and \$1,352,000 (i.e. 52% of such amount) shall be payable to the Seller; (b) the next \$5,000,000 shall be deposited into the Environmental Escrow, provided the Estimated Remediation Costs equals or exceeds \$6,248,000; and (c) of the next \$7,400,000, \$952,000 shall be deposited into the Environmental Escrow, provided the Estimated Remediation Costs equals or exceeds \$7,200,000, and \$6,448,000 (or such greater amount if the Estimated Remediation Costs are less than \$7,200,000 shall be payable to the Seller. Following such Closing (or any "phase" thereof), the Purchaser shall have the right to use and draw down on the Environmental Escrow to pay for the Site Remediation Costs.

**Section 9.02 Closing Statement.** On or prior to the Closing Date, Seller and Purchaser shall agree to the amount of the Environmental Credit to be paid on the Closing Date, and Seller and Purchaser and/or their respective agents or designees shall jointly prepare, and at the Closing, Seller and Purchaser shall execute and deliver, a closing statement (the "**Closing Statement**") which shall reflect the amount of the Environmental Credit to be subtracted from the Purchase Price to be paid to Seller at the Closing.

## **ARTICLE X REPRESENTATIONS AND WARRANTIES**

### **Section 10.01 Seller's Representations and Warranties.**

(a) Except as expressly set forth in this Section 10.01, Seller has not made and does not make any representations or warranties, including any representations or warranties as to the

physical and environmental condition, layout, footage, rents, income, expenses, zoning, or other matters with respect to Site A.

(b) Seller represents and warrants that:

(i) Seller is a municipal corporation of the State of New Jersey. Seller has full power and authority to enter into and perform this Agreement in accordance with its terms. All requisite action has been taken by Seller in connection with this Agreement or shall have been taken on or prior to the Closing Date. Seller's execution, delivery, and performance of this Agreement have been duly and validly authorized and all required consents or approvals have been obtained. The individuals executing this Agreement on behalf of Seller have the power and authority to bind Seller to the terms and conditions of this Agreement;

(ii) This Agreement is valid and binding upon Seller, enforceable against Seller in accordance with its terms, subject to bankruptcy, reorganization, and other similar laws affecting the enforcement of creditors' rights generally;

(iii) Seller is not a "foreign person" within the meaning of Section 1445 of the Internal Revenue Code 1986, as amended, or any regulations promulgated thereunder (collectively, the "Code");

(iv) Seller will dismiss any and all legal proceedings, lawsuits or claims by Seller and against any predecessor in interest for Site A; and

(v) Seller will cooperate with the Purchaser to resolve any outstanding Violations that cannot be resolved prior to Closing.

#### **Section 10.02 Purchaser's Representations and Warranties.**

(a) Purchaser represents and warrants that:

(i) Purchaser has full power and authority to enter into and perform this Agreement in accordance with its terms. Purchaser is a New Jersey limited liability company validly formed and in good standing under the laws of the State of New Jersey. All requisite action (corporate, trust, partnership, or otherwise) has been taken by Purchaser in connection with this Agreement or shall have been taken on or prior to the Closing Date. Purchaser's execution, delivery, and performance of this Agreement have been duly authorized and all required consents or approvals have been obtained. The individuals executing this Agreement on behalf of Purchaser have the power and authority to bind Purchaser to the terms and conditions of this Agreement;

(ii) This Agreement is a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, or other similar laws affecting the enforcement of creditors' rights generally;



(iii) Except for the express representations and warranties of Seller found in Section 10.01, Purchaser is acquiring Site A on an "AS IS, WHERE IS" basis, without any representation or warranty of any kind or nature whatsoever, express or implied, and Purchaser acknowledges that no such representations or warranties have been made except as set forth in writing herein. In deciding whether to acquire Site A, Purchaser is relying solely on Purchaser's investigation of Site A;

(iv) Purchaser has received from Seller all environmental assessments/environmental reports within its possession; and

(v) Purchaser is not, and shall not become, a person or entity with whom United States persons or entities are restricted or prohibited from doing business under regulations OFAC (including those named on OFAC's specially designated and blocked persons list) or under any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action and is not and shall not engage in any dealings or transactions or be otherwise associated with such persons or entities.

**Section 10.03 No Representations.** PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.01, NEITHER SELLER, NOR ANY PERSON ACTING ON BEHALF OF SELLER, NOR ANY PERSON OR ENTITY WHICH PREPARED OR PROVIDED ANY OF THE MATERIALS REVIEWED BY PURCHASER IN CONDUCTING ITS DUE DILIGENCE, NOR ANY ELECTED OFFICIAL, EMPLOYEE, AGENT, REPRESENTATIVE, ACCOUNTANT, ADVISOR, ATTORNEY, PRINCIPAL, CONSULTANT, CONTRACTOR, SUCCESSOR, OR ASSIGN OF ANY OF THE FOREGOING PARTIES (SELLER, SELLER RELATED PARTIES, AND ALL THE OTHER PARTIES DESCRIBED IN THE PRECEDING PORTIONS OF THIS SENTENCE (OTHER THAN PURCHASER) SHALL BE REFERRED TO HEREIN COLLECTIVELY AS THE "EXCULPATED PARTIES") HAS MADE OR SHALL BE DEEMED TO HAVE MADE ANY ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION WARRANTIES OF HABITABILITY, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE PROPERTY, THE PERMITTED USE OF THE PROPERTY, OR THE ZONING AND OTHER LAWS, REGULATIONS, AND RULES APPLICABLE THERETO OR THE COMPLIANCE BY THE PROPERTY THEREWITH, OR OTHERWISE RELATING TO THE PROPERTY OR THE TRANSACTIONS CONTEMPLATED HEREIN. PURCHASER FURTHER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL MATERIALS WHICH HAVE BEEN PROVIDED BY ANY OF THE EXCULPATED PARTIES HAVE BEEN PROVIDED WITHOUT ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, AS TO THEIR CONTENT, SUITABILITY FOR ANY PURPOSE, ACCURACY, TRUTHFULNESS, OR COMPLETENESS AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER SHALL NOT HAVE ANY RECOURSE AGAINST SELLER OR ANY OF THE OTHER EXCULPATED PARTIES IN THE EVENT OF ANY ERRORS THEREIN OR OMISSIONS THEREFROM. PURCHASER IS ACQUIRING THE PROPERTY BASED SOLELY ON ITS OWN INDEPENDENT INVESTIGATION AND INSPECTION OF THE PROPERTY AND NOT IN

RELIANCE ON ANY INFORMATION PROVIDED BY SELLER OR ANY OF THE OTHER EXCULPATED PARTIES, EXCEPT FOR THE REPRESENTATIONS, WARRANTIES, AND COVENANTS EXPRESSLY SET FORTH HEREIN. EXCEPT AS EXPRESSLY SET FORTH HEREIN, PURCHASER EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS PROVIDED TO IT BY SELLER IN CONNECTION WITH ITS DUE DILIGENCE AND AGREES THAT IT SHALL RELY SOLELY ON ITS OWN INDEPENDENTLY DEVELOPED OR VERIFIED INFORMATION.

## **ARTICLE XI CONDITIONS TO CLOSING**

**Section 11.01 Conditions Precedent to Obligations of Seller.** Notwithstanding anything to the contrary contained herein, the obligation of Seller to close title in accordance with this Agreement is expressly conditioned upon the delivery to the Seller of title to Site A from the Property Owner, and the fulfillment by and as of the time of the Closing of each of the conditions listed below, provided that Seller, at its election, evidenced by written notice delivered to Purchaser at or prior to the Closing, may waive any of such conditions:

(a) Purchaser shall have: (i) executed and delivered to Seller all the documents required to be executed and delivered under this Agreement; (ii) paid the Purchase Price in accordance with Section 3.02 above; (iii) paid all other sums of money required under this Agreement; and (iv) taken or caused to be taken all the other action required of Purchaser pursuant to this Agreement.

(b) Purchaser shall not be in default of any covenant or agreement to be performed by Purchaser under this Agreement and there is no uncured Event of Default (as defined in the Redevelopment Agreement) by the Purchaser on its obligations under the Redevelopment Agreement or the MOU, and shall have performed all other reasonable obligations required to be performed by it under this Agreement on or prior to the Closing Date.

(c) Purchaser shall not have terminated the Redevelopment Agreement pursuant to Section 10.8 of the Redevelopment Agreement.

(d) On the Closing Date all representations and warranties made by Purchaser in Section 10.02 shall be true and correct as if made on the Closing Date.

**Section 11.02 Conditions Precedent to Obligations of Purchaser.** Notwithstanding anything to the contrary contained herein, the obligation of Purchaser to close title and pay the Purchase Price in accordance with this Agreement is expressly conditioned upon the fulfillment by and as of the time of the Closing of each of the conditions listed below, provided that Purchaser, at its election, evidenced by written notice delivered to Seller at or prior to the Closing, may waive all or any of such conditions:

(a) Seller shall have executed and delivered to Purchaser all the documents required to be executed and delivered under this Agreement and required to be delivered by Seller at the Closing and shall have taken all other action required of Seller at the Closing.

(b) All representations and warranties made by Seller in Section 10.01 shall be true and correct in all material respects as if made on the Closing Date, provided, however, to the extent

the facts and circumstances underlying such representations and warranties may have changed as of the Closing Date, Seller shall have the right to update its representations and warranties as of the Closing Date and Purchaser shall be obligated to consummate the transactions contemplated by this Agreement on the Closing Date.

(c) Purchaser shall not have terminated the Redevelopment Agreement pursuant to Section 10.8 of the Redevelopment Agreement.

(d) The Title Company shall be willing to insure title to Site A pursuant to an ALTA Title Insurance Policy in the amount of the Purchase Price, subject only to the Permitted Exceptions and as otherwise provided in this Agreement (the "**Title Insurance Policy**").

### **Section 11.03 Failure of Conditions to Closing.**

(a) If Purchaser is unable to timely satisfy (and Seller has not waived in writing), then Purchaser may, if it so elects and without any abatement in the Purchase Price: (i) adjourn the Closing Date for no more than three (3) thirty (30) day periods; and (ii) if, after any such extension, the conditions precedent to Seller's obligation to effect the Closing continue not to be satisfied (and Seller has not waived the same in writing) or Purchaser does not elect such extension and, in either case, such failure or condition precedent is not the result of Purchaser's default hereunder, the Purchase or Seller shall be entitled to terminate this Agreement by notice thereof to the other Party in accordance with the terms of this Agreement. If this Agreement is so terminated, then neither party shall have any further obligations hereunder, except those expressly stated to survive the termination hereof.

(b) If Seller is unable to timely satisfy (and Purchaser has not waived in writing) the conditions precedent to Purchaser's obligation to effect the Closing (and Purchaser has not waived the same in writing), then Seller may, if it so elects and without any abatement in the Purchase Price: (i) adjourn the Closing Date for no more than three (3) thirty (30) day periods; and (ii) if, after any such extension, the conditions precedent to Purchaser's obligation to effect the Closing continue not to be satisfied (and Purchaser has not waived the same in writing) or Seller does not elect such extension and, in either case, such failure of condition precedent is not the result of Seller's default hereunder, then Purchaser or Seller shall be entitled to terminate this Agreement by notice thereof to the other party in accordance with the terms of this Agreement. If this Agreement is so terminated, then neither party shall have any further obligations hereunder, except those expressly stated to survive the termination hereof.

## **ARTICLE XII BROKERAGE COMMISSIONS**

**Section 12.01 Purchaser Representation.** Purchaser represents and warrants to Seller that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, either directly or indirectly, any broker, finder, consultant, advisor, or professional in the capacity of a broker or finder (each a "**Broker**") in connection with this Agreement or the transactions contemplated hereby. Purchaser hereby agrees to indemnify, defend, and hold Seller and its elected officials, employees, agents, contractors, and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses, costs, and expenses (including reasonable attorneys' fees, court costs, and disbursements)

arising from any claim for commission, fees, or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with Purchaser in connection with this Agreement or the transactions contemplated hereby.

**Section 12.02 Seller Representation.** Seller represents and warrants to Purchaser that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, either directly or indirectly, any Broker in connection with this Agreement or the transactions contemplated hereby. Seller hereby agrees to indemnify, defend, and hold Purchaser and its disclosed and undisclosed direct and indirect shareholders, officers, directors, partners, principals, members, employees, agents, contractors, and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses, costs, and expenses (including reasonable attorneys' fees, court costs, and disbursements) arising from any claim for commission, fees, or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with Seller in connection with this Agreement or the transactions contemplated hereby.

**Section 12.03 Survival.** The provisions of this Article XII shall survive the termination of this Agreement or the Closing.

### **ARTICLE XIII AS-IS**

**Section 13.01 AS-IS, WHERE-IS.** Except as expressly set forth in this Agreement to the contrary, Purchaser is expressly purchasing Site A in its existing condition "AS-IS, WHERE-IS, AND WITH ALL FAULTS" with respect to all facts, circumstances, conditions, and defects, and Seller has no obligation to determine or correct any such facts, circumstances, conditions, or defects or to compensate Purchaser for same. Seller has specifically bargained for the assumption by Purchaser of all responsibility to investigate Site A, Laws, and Regulations, Rights, Facts, Violations, and of all risk of adverse conditions and has structured the Purchase Price and other terms of this Agreement in consideration thereof. Purchaser has undertaken all such investigations of Site A, Laws, and Regulations, Rights, Facts, and Violations, as Purchaser deems necessary or appropriate under the circumstances as to the status of Site A and, based upon same, Purchaser is and shall be relying strictly and solely upon such inspections and examinations and the advice and counsel of its own consultants, agents, legal counsel, and officers. Purchaser is and shall be fully satisfied that the Purchase Price is fair and adequate consideration for Site A and, by reason of all the foregoing, Purchaser assumes the full risk of any loss or damage occasioned by any fact, circumstance, condition, or defect pertaining to Site A.

**Section 13.02 No Warranty or Other Representation.** Except as expressly set forth in this Agreement to the contrary, Seller hereby disclaims all warranties of any kind or nature whatsoever (including, without limitation, warranties of habitability and fitness for particular purposes), whether expressed or implied, including, without limitation, warranties with respect to Site A. Except as is expressly set forth in this Agreement to the contrary, Purchaser acknowledges that it is not relying upon any representation of any kind or nature made by Seller, or any of its elected officials, employees, or agents (collectively, the "**Seller Related Parties**") with respect to Site A, and that, in fact, except as expressly set forth in this Agreement to the contrary, no such representations were made. To the extent required to be operative, the disclaimers and warranties contained herein are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation, or order.

**Section 13.03 Environmental Laws; Hazardous Materials.** Seller makes no warranty with respect to the presence of Hazardous Materials on, above, or beneath Site A (or any parcel in proximity thereto) or in any water on or under Site A. The Closing hereunder shall be deemed to constitute an express waiver of Purchaser's right to cause Seller to be joined in any action brought under any Environmental Laws. As used herein, the term "**Hazardous Materials**" shall mean: (a) those substances included within the definitions of any one or more of the terms "hazardous materials," "hazardous wastes," "hazardous substances," "industrial wastes," and "toxic pollutants," as such terms are defined under the Environmental Laws, or any of them; (b) petroleum and petroleum products, including, without limitation, crude oil and any fractions thereof; (c) natural gas, synthetic gas, and any mixtures thereof; (d) asbestos and or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite, and/or actinolite, whether friable or non-friable; (e) polychlorinated biphenyl ("**PCBs**") or PCB-containing materials or fluids; (f) radon; (g) any other hazardous or radioactive substance, material, pollutant, contaminant, or waste; and (h) any other substance with respect to which any Environmental Law or governmental authority requires environmental investigation, monitoring, or remediation. As used herein, the term "**Environmental Laws**" shall mean all federal, state, and local laws, statutes, ordinances, and regulations, now or hereafter in effect, in each case as amended or supplemented from time to time, including, without limitation, all applicable judicial or administrative orders, applicable consent decrees, and binding judgments relating to the regulation and protection of human health, safety, the environment, and natural resources (including, without limitation, ambient air, surface, water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species, and vegetation), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 *et seq.*), the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 5101 *et seq.*), the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. §§ 136 *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. §§ 6901 *et seq.*), the Toxic Substances Control Act, as amended (15 U.S.C. §§ 2601 *et seq.*), the Clean Air Act, as amended (42 U.S.C. §§ 7401 *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 *et seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. §§ 300f *et seq.*), the New Jersey Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 *et seq.*), the New Jersey Industrial Site Recovery Act (N.J.S.A. 13:1K-6 *et seq.*), the New Jersey Site Remediation Reform Act (N.J.S.A. 58:10C-1 *et seq.*), the New Jersey Brownfield and Contaminated Site Remediation Act (N.J.S.A. 58:10B-1.1 *et seq.*), the New Jersey Environmental Rights Act (N.J.S.A. 2A:35A-1 *et seq.*), the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C-1 *et seq.*), the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 *et seq.*), and any other state or local counterpart or equivalent of any of the foregoing, and any federal, state, or local transfer of ownership notification or approval statutes.

**Section 13.04 Seller Release.** Purchaser shall rely solely upon Purchaser's own knowledge of Site A based on its investigation of Site A and its own inspection of Site A in determining Site A's physical condition, and Purchaser agrees that it shall, subject to the express warranties, representations, and conditions contained in this Agreement, assume the risk that adverse matters, including, but not limited to, construction defects and adverse physical and environmental conditions may not have been revealed by Purchaser's investigations. Except as expressly set forth in this Agreement to the contrary, Purchaser releases Seller, the Seller Related Parties, and their respective successors and assigns from and against any and all claims which Purchaser or any party related to or affiliated with Purchaser (each, a "**Purchaser Related Party**") has or may have arising from or related to any matter or thing related to or in connection with Site A except as expressly set forth in this Agreement to the contrary, including the documents and information referred to herein, any construction defects, errors or omissions in the design or construction, and any environmental conditions and, except as expressly set forth in this Agreement to the contrary, neither

Purchaser nor any Purchaser Related Party shall look to Seller, the Seller Related Parties, or their respective successors and assigns in connection with the foregoing for any redress or relief. This release shall be given full force and effect according to each of its express terms and provisions, including those relating to unknown and unsuspected claims, damages, and causes of action. To the extent required to be operative, the disclaimers and warranties contained herein are "conspicuous" disclaimers for purposes of any applicable law, rule, regulation, or order.

**Section 13.05 Survival.** The provisions of this Article XVI shall survive the Closing or the earlier termination of this Agreement and shall not be deemed to have merged into any of the documents executed or delivered at the Closing.

## **ARTICLE XIV REMEDIES**

**Section 14.01 Seller's Remedies in the Event of Purchaser's Breach or Default.** In the event of Purchaser's default or breach in its obligations under this Agreement, after written notice and thirty (30) days to cure, the Seller shall have the right as its sole and exclusive remedy to terminate this Agreement by delivery of written notice to Purchaser and seek reimbursement for any reasonable legal fees, and costs incurred in the enforcement of any dispute arising from this Agreement related to such default or breach. Upon payment of the legal fees and costs to Seller, this Agreement shall be terminated, and the parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement.

**Section 14.02 Purchaser's Remedies in the Event of Seller's Breach or Default.** In the event Seller should default in its obligations under this Agreement, after written notice and thirty (30) days to cure, the Purchaser shall have the right as its sole and exclusive remedy to choose to either: (a) terminate this Agreement by delivery of written notice to Seller and seek reimbursement for any reasonable legal fees, and costs incurred in the enforcement of any dispute arising from this Agreement related to such default or breach; or (b) continue this Agreement and obtain and enforce specific performance of Seller's obligations hereunder, provided that any such action for specific performance must be commenced within thirty (30) days after such default. PURCHASER EXPRESSLY WAIVES ALL RIGHTS TO SEEK OTHER DAMAGES, INCLUDING WITHOUT LIMITATION, ACTUAL OR CONSEQUENTIAL DAMAGES IT MAY HAVE ON ACCOUNT OF ANY DEFAULT BY SELLER HEREUNDER. If the Purchaser elects the right under (a) above, then, upon payment of the legal fees and costs to Purchaser, this Agreement shall be terminated, and the parties shall be released from further liability to each other hereunder, except for those obligations and liabilities that are expressly stated to survive termination of this Agreement.

**Section 14.03 Survival.** The provisions of this Article XIV shall survive the termination of this Agreement and the Closing.

## **ARTICLE XV GENERAL PROVISIONS**

**Section 15.01 Notices.** Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required under this Agreement shall be in writing and delivered to all other Parties, at the addresses below, by one of the following methods:

- (a) Hand delivery, whereby delivery is deemed to have occurred at the time of delivery;
- (b) A nationally recognized overnight courier company, whereby delivery is deemed to have occurred the Business Day following deposit with the courier;
- (c) Registered U.S. Mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third Business Day following deposit with the United States Postal Service; or
- (d) Electronic transmission (facsimile or email) provided that the transmission is completed no later than 4:00 p.m. on a Business Day and the original also is sent via overnight courier or U.S. Mail, whereby delivery is deemed to have occurred at the end of the Business Day on which electronic transmission is completed.

To Purchaser: SYRMEC Orange JV LLC  
211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701  
Attention:  
Telephone:  
Facsimile:  
Email:

with a copy to: Murphy Schiller & Wilkes LLP  
24 Commerce Street, 12<sup>th</sup> Floor, Newark, New Jersey 07102  
Attention: Kellen F. Murphy, Esq.  
Telephone: 201-650-3126  
Facsimile:  
Email: kmurphy@murphyllp.com

To Seller: City of Orange  
29 North Day Street, Orange, New Jersey 07050  
Attention: Christopher M. Hartwyk, Business Administrator  
Telephone:  
Facsimile:  
Email: chartwyk@orangenj.gov

with a copy to: Dilworth Paxson LLP  
4 Paragon Way, Suite 400, Freehold, New Jersey 07728  
Attention: Christopher M. Walrath, Esq.  
Telephone: 732-530-8822  
Facsimile: 732-530-6770  
Email: cwalrath@dilworthlaw.com

Any Party shall change its address for purposes of Section 15.01 by giving written notice as provided in this Section 15.01.

All notices and demands delivered by a Party's attorney on a Party's behalf shall be deemed to have been delivered by said Party. Notices shall be valid only if served in the manner provided in this Section 15.01.

**Section 15.02 Complete Agreement; Amendments and Modifications; Partial Invalidity; Waivers.**

(a) This Agreement may be executed in counterparts, and when executed by all Parties shall become one (1) integrated agreement enforceable on its terms. This Agreement, along with the MOU and the Redevelopment Agreement, supersedes all prior agreements between the Parties with respect to Site A and all discussions, understandings, offers, and negotiations with respect thereto, whether oral or written. This Agreement shall not be amended or modified, except in a writing signed by each Party hereto. If amended or modified as permitted by this Section 15.02(a), the term "**Agreement**" shall thereafter be read as including all said amendments and modifications. All exhibits that are referenced in this Agreement or attached to it are incorporated herein and made a part hereof as if fully set forth in the body of the document.

(b) Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable.

(c) Any waiver of any provision or of any breach of this Agreement shall be in writing and signed by the Party waiving said provision or breach. No waiver of any breach of any agreement or provision herein contained shall be deemed a waiver of any preceding or succeeding breach thereof or of any other agreement or provision herein contained. No extension of time for performance of any obligations or acts shall be deemed an extension of the time for performance of any other obligations or acts. Effective as of the Closing, any breaches or conditions not waived previously (including any Title Report objections) in accordance with this Section 15.02(c) are deemed waived.

**Section 15.03 Parties; Assignment of Interests in This Agreement; Successors and Assigns.**

(a) Except as specifically permitted under the Redevelopment Agreement, Purchaser may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder or any of the direct or indirect ownership interests in Purchaser, without first obtaining Seller's prior consent and approval thereto, which may be given or withheld in Seller's sole and absolute discretion.

(b) The terms "**Party**" and "**Parties**" include Seller, Purchaser, their respective constituent entities and their respective successors, assigns, and legal representatives. In the event either Seller or Purchaser is an individual, a "Party" or "Parties" includes that individual's heirs.



(c) This Agreement and all its covenants, terms, and provisions shall be binding on and inure to the benefit of each Party and its successors and assigns.

**Section 15.04 Further Assurances.** From the Effective Date, Seller and Purchaser each agrees to do such things, perform such acts, and make, execute, acknowledge, and deliver such documents as may be reasonably necessary and customary to complete the transactions contemplated by this Agreement. This Section 15.04 shall survive the Closing for a period of sixty (60) days thereafter.

**Section 15.05 Interpretation and Construction.**

(a) The Parties acknowledge that, in connection with negotiating and executing this Agreement, each has had its own counsel and advisors and that each has reviewed and participated in the drafting of this Agreement. The fact that this Agreement was prepared by Seller's counsel as a matter of convenience shall have no import or significance to the construction of this Agreement. Any uncertainty or ambiguity in this Agreement shall not be construed against Seller because Seller's counsel prepared this Agreement in its final form. Any rule of construction that requires any ambiguities to be interpreted against the drafter shall not be employed in the interpretation of: (i) this Agreement; (ii) any exhibits to this Agreement; or (iii) any document drafted or delivered in connection with the transactions contemplated by this Agreement.

(b) Any captions or headings used in this Agreement are for convenience only and do not define or limit the scope of this Agreement.

(c) The singular of any term, including any defined term, shall include the plural, and the plural of any term shall include the singular. The use of any pronoun with respect to gender shall include the neutral, masculine, feminine, and plural. The term "Person" or "Persons" includes a natural person or any corporation, limited liability company, partnership, trust, or other type of entity validly formed.

**Section 15.06 Days; Performance on a Saturday, Sunday, or Holiday.** Whenever the term "day" is used in this Agreement, it shall refer to a calendar day unless otherwise specified. A "Business Day" shall mean any weekday except for those weekdays that a banking institution within the State of New Jersey is required by said state to be closed (a "Holiday"). Should this Agreement require an act to be performed or a notice to be given on a Saturday, Sunday, or Holiday, the act shall be performed or notice given on the following Business Day.

**Section 15.07 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of New Jersey. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE OF NEW JERSEY, UNLESS SUCH ACTIONS OR PROCEEDINGS ARE REQUIRED TO BE BROUGHT IN ANOTHER COURT TO OBTAIN SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS*, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS, OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS

BROUGHT IN ACCORDANCE WITH THIS ARTICLE XX. SERVICE OF PROCESS, SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST ANY PARTY HERETO, MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ANY SUCH PARTY'S ADDRESS INDICATED IN SECTION 15.01 HEREOF.

**Section 15.08 No Survival.** Except as otherwise provided in this Agreement, no representations, warranties, covenants, or other obligations of Seller set forth in this Agreement shall survive the Closing hereunder and no action based thereon shall be commenced after the Closing.

**Section 15.09 Attorneys' Fees.**

(a) Seller and Purchaser each acknowledge that: (i) they have been represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel; (iii) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel; and (iv) because Seller and Purchaser have been represented by independent counsel in connection with this Agreement, this Agreement shall not be construed against Seller.

(b) If any action is brought by either Party against the other in connection with or arising out of this Agreement, or any of the documents and instruments delivered in connection herewith or in connection with the transactions contemplated hereby, the prevailing party shall be entitled to recover from the other party its reasonable out-of-pocket costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action.

**Section 15.10 Waiver of Jury Trial.** Except as otherwise expressly stated in this Agreement, to survive the Closing hereunder, all obligations the Parties have to each other under this Agreement shall survive neither the Closing nor the earlier termination of this Agreement. In the unlikely event that a dispute survives the Closing or termination, EACH OF SELLER AND PURCHASER HEREBY EXPRESSLY AND UNCONDITIONALLY WAIVES, IN CONNECTION WITH ANY SUIT, ACTION, OR PROCEEDING BROUGHT BY THE OTHER PARTY HERETO UNDER THIS AGREEMENT OR IN CONNECTION WITH ANY TRANSACTION CONTEMPLATED HEREBY, ANY AND EVERY RIGHT EACH OF SELLER AND PURCHASER MAY HAVE TO: (A) INJUNCTIVE RELIEF (EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT TO THE CONTRARY); (B) A TRIAL BY JURY; (C) INTERPOSE ANY COUNTERCLAIM THEREIN (EXCEPT FOR ANY COMPULSORY COUNTERCLAIM WHICH, IF NOT ASSERTED IN SUCH SUIT, ACTION, OR PROCEEDING, WOULD BE WAIVED); AND (D) HAVE THE SAME CONSOLIDATED WITH ANY OTHER OR SEPARATE SUIT, ACTION, OR PROCEEDING.

**Section 15.11 Bulk Sale Notification.** Pursuant to N.J.S.A. 54:32B-22(c) and N.J.S.A. 54:50-38, Purchaser may be required to notify the Division of Taxation in the Department of the Treasury of the State of New Jersey (the "Department"), at least ten (10) days prior to the Closing Date, of the proposed sale and of the price, terms, and conditions of the transaction (the "Bulk Sale Notification"). Seller agrees to fully cooperate with Purchaser, and provide any such necessary information, in connection with Purchaser's filing of a Bulk Sale Notification. If Purchaser files a Bulk Sale Notification and the Department determines that any or all of Seller's proceeds are to be held in escrow following the Closing, then such funds as determined by the Department shall be held in escrow by the Purchaser's Title Company until such time as the parties

are in receipt of a tax clearance letter from the Department authorizing the release of the escrow. Purchaser shall be responsible for submitting the required notification of the pending sale to the Department, to the extent it is required in connection with this transaction, and Seller agrees to fully cooperate with any such submissions. Seller shall be solely responsible for all taxes, interest, and penalties due and owing to the State of New Jersey by Seller, and hereby agrees to indemnify and hold Purchaser harmless against any and all taxes, interest, and penalties that may be due to the State of New Jersey by Seller. Upon receipt of notice of the sums owed to the State of New Jersey, Purchaser's Title Company is authorized to disburse such amounts from the escrow in satisfaction of such outstanding obligation. The escrow established shall not terminate until the requirements of the Department in establishing the escrow have been satisfied as evidence by a clearance letter. This Section 15.11 shall survive the Closing. .

**Section 15.12 No Third-Party Beneficiary.** The provisions of this Agreement and of the documents to be executed and delivered at Closing are and will be for the benefit of Seller and Purchaser (and their successors and assigns) only and are not for the benefit of any third party, and accordingly, no third party shall have the right to enforce any of the provisions of this Agreement or of the documents to be executed and delivered at Closing.

**Section 15.13 Recordation.** This Agreement may not be recorded by any party hereto without the prior written consent of the other party(s) hereto. This Section shall survive the Closing or any termination of this Agreement.

**Section 15.14 Execution of Agreement; Electronic Signatures.** This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the parties hereto and delivered to all parties. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic mail (email) in "portable document format" (".pdf") form shall constitute effective execution and delivery of this Agreement and may be used in lieu of the original Agreement for all purposes.

**Section 15.15 Execution and Delivery.** This Agreement shall be effective upon the delivery of this Agreement fully executed by the Seller and Purchaser.

**Section 15.16**

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

**PURCHASER:**

SYMREC Orange JV LLC, a New Jersey limited liability company

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

Name:

Title:

**ATTEST:**

**SELLER:**

City of Orange Township, a municipal corporation of the State of New Jersey

\_\_\_\_\_  
Joyce L. Lanier  
Clerk

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

Name: Dwayne D. Warren

Title: Mayor

**CITY COUNCIL**

**The City of Orange Township, New Jersey**

**DATE** April 18, 2023

**NUMBER** 186-2023

**TITLE: A RESOLUTION OF THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY, APPROVING A MEMORANDUM OF UNDERSTANDING WITH SYMREC ORANGE JV LLC, ORANGE FLATS LLC, ORANGE NJ HOLDINGS LLC, 256 HENRY HOLDINGS LLC AND 184 MATTHEW HOLDING LLC REGARDING ACQUISITION AND REDEVELOPMENT OF THE FORMER SITES OF ORANGE MEMORIAL HOSPITAL AND IPPOLITO FUNERAL HOME LOCATED ON HENRY STREET, IVY COURT, MATTHEW STREET, SOUTH ESSEX AVENUE AND CENTRAL AVENUE.**

**WHEREAS**, in August 2005, following closure of Orange Memorial Hospital, the almost 8.25-acre site, comprising 9 separate lots fronting Henry Street, South Essex Avenue and Central Avenue ("Hospital Site"), was acquired by Essex Orange Urban Renewal Company LLC f/k/a Essex Orange Equity LLC ("Essex Orange"), with the intent to redevelop same; and,

**WHEREAS**, Essex Orange's redevelopment efforts failed to materialize, and in November 2013, the Hospital Site was sold again to Orange Flats LLC ("Orange Flats"), also with the intent to redevelop same; and,

**WHEREAS**, in April 2015, following closure of the Ippolito Funeral Home, an entity affiliated with Orange Flats, 256 Henry Holdings LLC ("Henry Holdings"), acquired the almost 1.40-acre site, comprising 4 separate lots fronting Henry Street and Ivy Court ("Ippolito Site"), with the intent to incorporate same into redevelopment of the Hospital Site; and,

**WHEREAS**, also in April 2015, another entity affiliated with Orange Flats, 184 Matthew Holding LLC ("Matthew Holding", together with Orange Flats and Henry Holdings, "Flats Companies"), acquired an approximately 0.28-acre lot fronting Matthew Street and adjoining the Hospital Site ("Matthew Property", together with the Hospital and Ippolito Sites, "Hospital Redevelopment Site") alongside the former hospital parking lot on South Essex Avenue ("Hospital Parking Lot"), with the intent to incorporate same into redevelopment of the Hospital and Ippolito Sites; and,

**WHEREAS**, in late 2015, the New Jersey Department of Environmental Protection and the National Park Service listed 9 buildings located on the Hospital Site in the New Jersey and National Registers of Historic Places respectively—the North Building, the Boiler Plant & Power House, the Service Building, the Bingham Building, Mary Austen Hall, the Medical & Surgical Building, the Metcalf Foundation Institute Building, the Orthopedic Hospital, and the Professional Building; and,

**WHEREAS**, the Flats Companies' redevelopment efforts failed to materialize, and over the next 7 years, the Hospital Redevelopment Site fell into substantial disrepair, becoming an attractive nuisance and a risk to public health and safety; and,

**WHEREAS**, between 2017 and 2019, the City sold and issued Tax Sale Certificates against 13 of the parcels within the Hospital and Ippolito Sites, ultimately becoming holder



of 10 of said Tax Sale Certificates (“City Tax Liens”), currently valued at approximately \$3,500,000.00; and,

**WHEREAS**, the Flats Companies acquired the Hospital Redevelopment Site using proceeds of a loan from CP Capital Fund I LLC, which was secured by a mortgage against all parcels except the Hospital Parking Lot; and,

**WHEREAS**, in January 2017, CP Capital Partners I LLC commenced foreclosure proceedings against the Flats Companies, which was assigned, along with the mortgage against the Hospital Redevelopment Site, to OHC Holdings LLC in October 2017, Century Orange Partners LLC in October 2017, and AHAF Investments LLC in January 2020; and,

**WHEREAS**, the City acquired ownership of said mortgage and foreclosure proceedings in January 2020 through assignment from AHAF Investments LLC, the value of which is currently approximately \$9,000,000.00 (“City Mortgage Lien”); and,

**WHEREAS**, in March 2022, the City commenced *in rem* tax foreclosure proceedings against 10 of the parcels located within the Hospital Redevelopment Site, seeking to enforce the City Tax Liens; and,

**WHEREAS**, in November 2022, Orange Flats transferred ownership of the Hospital Parking Lot to another affiliated entity, Orange NJ Holdings LLC (included in subsequent references to “Flats Companies”); and,

**WHEREAS**, while the City’s tax foreclosure action was pending, the Flats Companies entered into an agreement with SYMREC Orange JV LLC (“SYMREC”) for acquisition and development of the Hospital Redevelopment Site; and,

**WHEREAS**, SYMREC and the Flats Companies (together, “Project JV”) approached the City’s Administration to negotiate an arrangement under which the SYMREC will acquire and develop the Hospital Redevelopment Site in 3 phases, as well as redeem the City Tax Liens and pay off the City Mortgage Lien; and,

**WHEREAS**, the City and the Project JV reached consensus on the terms of an agreement regarding those issues, which have been set forth in the appended Memorandum of Understanding (“MOU”); and,

**WHEREAS**, the Municipal Council now wishes to approve the MOU as attached.

**NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF ORANGE TOWNSHIP, ESSEX COUNTY, NEW JERSEY** that the appended MOU between the City and the Project JV is hereby approved; and,

**BE IT FURTHER RESOLVED** that the Mayor and/or other City Officials are hereby authorized to take whatever action is necessary to conclude the aforementioned action.

Adopted: April 18, 2023

Tamara Robinson

**Tamara Robinson  
Deputy Municipal Clerk**

Tency A. Eason

**Tency A. Eason  
Council President**

**RESOLUTION NO. 186-2023**

**ON CONSENT AGENDA**

**REGULAR COUNCIL MEETING – April 18, 2023**

**MOTION TO ADOPT: Montague, III**

**SECOND: Ross**

**YEAS: Coley, Montague, III, Ross, Summers-Johnson & Council President Eason**

**NAYS: None**

**ABSTENTIONS: None**

**ABSENCES: Hilbert & Wooten**



## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("**MOU**") entered into this \_\_\_ day of April, 2023, by and between the **City of Orange Township**, a Municipal Corporation in the State of New Jersey, County of Essex, with offices located at 29 North Day Street, City of Orange, New Jersey 07050 (hereinafter referred to as the "**City**") and **SYMREC Orange JV, LLC** and/or its assigns, (hereinafter referred to as the "**Redeveloper**") with offices located at 211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701, and **Orange Flats, LLC, Orange NJ Holdings, LLC, 256 Henry Holding, LLC and 184 Matthew Holding, LLC** with offices located at 199 Lee Avenue, Suite 374, Brooklyn, New York, 11211 (collectively, the "**Property Owner**").

**WHEREAS**, the Parties are desirous to enter into the MOU to redevelop the former site of Orange Hospital, identified on the City Tax Map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6 (collectively, the "**Property**"); and

**WHEREAS**, the Property is located in the Central Orange Redevelopment Plan Area, adopted initially as the Hope VI Redevelopment Plan, thereafter renamed and last amended by Ordinance 45-2020 on October 20, 2020, and is designated as an area in need of redevelopment in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "**Redevelopment Law**"); and

**WHEREAS**, the Redevelopment Law authorizes the City to arrange or contract with a redeveloper for the planning, construction or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment; and

**WHEREAS**, the Redevelopment Law at Section 8(g) authorizes the City to lease or convey property or improvements to any other party, without public bidding and at such prices and upon such terms as it deems reasonable, provided that the lease or conveyance is made in conjunction with a redevelopment plan; and

**WHEREAS**, the City has not yet designated a developer with respect to the proposed redevelopment of the Property and the Redeveloper is desirous of redeveloping the Property as three (3) distinct development parcels identified as Site A, consisting of Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38 ("**Site A**"), Site B, consisting of Block 3601, Lots 2, 3, 4, 5 and 18 ("**Site B**"), and Site C, consisting of Block 3702, Lots 4, 5, 6 ("**Site C**") ; and

**WHEREAS**, there are existing tax liens on the Property that will be paid off in connection with the redevelopment of the Property as contemplated herein and, in consideration for the satisfaction and discharge of the tax lien, the Property Owner is desirous of entering into this MOU and of conveying the Property to the City for redevelopment by the Redeveloper; and

**WHEREAS**, portions of the Property are encumbered by a mortgage securing a promissory note for a loan originated by CP Capital (the "**Mortgage**") having an accrued balance of [~\$9,000,000] that is presently held by the City; and

**WHEREAS**, Site A has multiple buildings that need to be demolished prior to commencing construction and Site A has known and unknown environmental remediation costs; and

**WHEREAS**, given the scope of the proposed redevelopment and various complications associated with redevelopment of the Property, the Parties desire to define the basic terms of the agreement between them with respect to the redevelopment of the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, it is agreed as follows:

1. **Purpose**. The purpose of this binding MOU is to define the basic terms agreed to by the Parties with respect to the redevelopment of the Property.

2. **Property**. The Property Owner presently owns the Property to be identified as three (3) parcels for the purposes of this MOU as follows - Site A - identified on the City Tax Map as Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38; Site B - identified on the City Tax Map as Block 3601, Lots 2, 3, 4, 5 and 18, and Site C - identified on the City Tax Map as Block 3702, Lots 4, 5, 6. Site A, Site B, and Site C are referred herein collectively as the "**Sites**" or the "**Property**".

3. **Tax Liens**. The Parties acknowledge there are existing tax liens, penalties, and other charges totaling approximately \$3,500,000 (as of the date hereof), with the amount of the tax lien for each lot and block comprising the Property to be determined immediately prior to Initial Closing (the "**Tax Lien Payment**").

4. **Redevelopment Agreements and Approvals**.

(a) **Redeveloper Designation and Agreement**. Upon the Effective Date of this Agreement, the Redeveloper shall make application(s) to the City of Orange for designation as the "Redeveloper" of Site A, Site B, and Site C under the Redevelopment Law. The City shall approve the Redeveloper's application within sixty (60) days of the Effective Date hereof. If the City fails to approve the Redeveloper's application, the City will be obligated to provide explicit line item detail regarding the Redeveloper's application deficientness. The City shall have [30] days from the time of the Redeveloper's resubmission to approve its application. Following such approval and prior to the Initial Closing (as defined herein), the City and the Redeveloper shall enter into a Redevelopment Agreement for Site A, Site B, and Site C. In addition, the City shall amend the current Redevelopment Plan governing the Property, so that the Redevelopment Plan provides the City with condemnation/eminent domain power with respect to Site C.

(b) **Development Approval**. After the execution of the Redevelopment Agreement and the Initial Closing, the Redeveloper shall make application(s) to the City of Orange Township Planning Board for site plan approval, inclusive of any deviation, variance or design waiver relief for the phased development of the Property, whether it be as multiple distinct applications for Site A, Site B and/or Site C, or as a combined development application for multiple phases (the "**Development Approvals**"). The Parties acknowledge that it is anticipated that development will occur in phases and that Site B is anticipated to be the first site to be developed;

however, the Parties further acknowledge that the order of site development is subject to change and is subject to Redeveloper's discretion.

(c) **Financial Agreement.** The Parties acknowledge that redevelopment of the Sites is not financially feasible without the implementation of a long term tax exemption, and the City agrees to enter into financial agreement(s) with the Redeveloper providing for a payment in lieu of taxes pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq., as amended and supplemented (the "**Exemption Law**") and the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A – 64, et seq (the "**RAB Law**") for the Property, provided the Redeveloper submits an application (the "**Exemption Application**") pursuant to the Exemption Law and the City's ordinances regarding the same. The Exemption Application will provide such information as required by the Exemption Law, the RAB Law and the City's ordinances. The City will, upon adoption of appropriate ordinance(s) required under the Exemption Law and the RAB Law, enter into a financial agreement setting forth the terms of the payments in lieu of taxes consistent with the requested terms set forth in such financial agreement which shall be an exhibit to the Redeveloper's application (the "**Financial Agreement**"), and approving the issuance of Redevelopment Area Bonds (the "**RAB Bonds**") pursuant to the RAB Law to finance various infrastructure improvements to the Property, which RAB Bonds will be secured solely by payments made under the Financial Agreement. The RAB Bonds shall be issued in such principal amount as deemed necessary by the City and the payments under the Financial Agreement shall be increased to cover debt service on the RAB Bonds.

5. **Initial Closing.**

(a) **Transfer of Site A to City.** At the Initial Closing (defined herein), the Property Owner shall convey and transfer Site A to the City for nominal consideration (\$10.00). In addition, at the Initial Closing, the Redeveloper shall pay off all existing tax liens encumbering the Property (the "**Tax Lien Payment**"), and such tax liens shall be discharged of record by the City. In exchange for, and in consideration of, the deed to Site A and the Tax Lien Payment, the City shall forgive, release, and discharge the Mortgage encumbering the Property (i.e., Site A, Site B, and Site C), and discontinue and dismiss all legal proceedings, lawsuits and claims against the Property Owner, and the Property Owner shall discontinue and dismiss any and all legal proceedings, lawsuits, or claims against the City. Further, from and after the Initial Closing the Redeveloper will pay to the City an amount equal to debt service accrued or paid on and after Initial Closing on the City's obligations which were issued to finance the purchase of the judgement lien on the Property, and in consideration shall receive a credit toward the principal only of such debt service paid to the City against the Site A Purchase Price (the "**Principal Credit**").

(b) **Transfer of Site B to Redeveloper.** At the Initial Closing, the Property Owner shall convey and transfer Site B to the Redeveloper for nominal consideration (\$10.00). Site B shall be conveyed by the Property Owner to the Redeveloper free and clear of any monetary encumbrances or liens.

(c) **Retention of Site C by Property Owner.** At the Initial Closing, the Property Owner shall retain ownership of Site C and shall have the right to sell Site C to a qualified third-party developer, provided, however, the Property Owner shall grant the Redeveloper a continuous

non-terminating right of first refusal to purchase of any lots in Site C owned by the Property Owner (the "ROFR"), a memorandum of which shall be recorded in the County Clerk's office in connection with the Initial Closing.

(d) Closing Obligations. The Initial Closing of the transaction contemplated by this Agreement shall be subject to fulfillment, at or prior to the Closing, of the following conditions, any one or more of which may be waived in writing by the party benefiting therefrom: (a) all of the terms, covenants and conditions to be performed or complied with by each party under this Agreement on or before the Initial Closing shall have been performed or complied with in all material respects; and (b) each party shall have provided all documents and other items required as may be reasonably necessary or appropriate to effect the consummation of the transactions which are the subject of this Agreement, including, but not limited to, (i) the delivery of bargain and sale deeds with covenant's against grantor's acts, executed by the Property Owner, conveying Site A to the City and Site B to the Redeveloper; (ii) the delivery of a recordable discharge, executed by the City, releasing and discharging the Mortgage currently held by the City and encumbering the Property; (iii) the payment of the Tax Lien Payment by the Redeveloper to the City, and (iv) the City shall forgive all property maintenance fines/violations on the Property, and to the extent such fines/violations are subject to summons, the City will appear in court to resolve the outstanding violations in such manner as in the best interest of the Property. The Property Owner shall convey good and marketable fee simple title to Site A to the City and Site B to the Redeveloper, insurable as such by a reputable title company licensed to do business in the State of New Jersey at regular rates with such endorsements as the City and the Redeveloper may reasonably require.

(e) Time and Place of Initial Closing. The consummation of the transactions contemplated by this Agreement (the "Initial Closing") shall take place within fifteen (15) calendar days after the later of (i) the City's approval of the Redeveloper as the "redeveloper" for Site A and Site B, and (ii) the approval of this MOU by the City (the "Initial Closing Date"). The Closing shall take place at the office of the Redeveloper's attorney, or may be administered by the Redeveloper's title company, acting as settlement agent, pursuant to written instructions from the Redeveloper, the City, and the Property Owner.

## 6. Redevelopment and Transfer of Site A.

(a) Purchase Price. Subject to the "phasing" of the development of Site A (as set forth below), at the Site A Closing (defined herein), the City shall convey and transfer Site A to the Redeveloper for the Site A Purchase Price (as defined herein). For purposes of this MOU the "Site A Purchase Price" shall be \$15,000,000, provided, however, that the Redeveloper shall receive closing cost credit against the Site A Purchase Price in the amount of the Site A Remediation Costs (defined herein) up to \$6,000,000 (the "Environmental Closing Credit") and a credit for the Principal Credit.

(b) Demolition and Environmental Remediation. The City and the Redeveloper understand and agree that Site A has multiple buildings that need to be demolished prior to commencing construction, and certain known and unknown environmental conditions and

remediation costs (the "Environmental Conditions"). The parties further agree that the Redeveloper shall be responsible for the remediation of the Environmental Conditions at its sole cost subject to the Environmental Closing Credit defined above. To that end, from and after the Effective Date hereof and continuing through the Site A Closing, the City hereby grants the Redeveloper the right to conduct any and all demolition, environmental testing and remediation necessary to remediate Site A in accordance with all applicable environmental laws and regulations. The actual cost incurred by the Redeveloper in connection with the demolition and remediation of Site A, and any additional costs of environmental remediation of Site B or Site C required due to environmental contamination that originated at Site A, shall be referred to as the "Site A Remediation Costs". The Redeveloper shall provide the City with a copy of all environmental reports and any Site A Remediation Costs estimates.

(c) Approvals. After the execution of the Redevelopment Agreement and the Initial Closing, the Redeveloper shall make application(s) to the City of Orange Township Planning Board for site plan and/or subdivision approvals, inclusive of any deviation, variance or design waiver relief for the development of Site A, whether it be as multiple distinct applications or as a combined development application for multiple phases (the "Site A Development Approvals").

(d) Site A Closing. The consummation of sale of Site A from the City to the Redeveloper (the "Site A Closing") shall take place within thirty-six (36) months of the Initial Closing Date, upon 30-day notice from the Redeveloper of its intent to close on Site A; provided however that, so long as the Redeveloper is diligently and in good faith pursuing the approvals and/or financing for the development and acquisition of Site A, the City will consider any reasonable request(s) by the Redeveloper extensions ("Extension Request"), the timeframe of which will be determined by the at the time of such Extension Request. The Redeveloper shall provide the reasons for the extension in the Extension Request and the City in good faith will consider the same. Notwithstanding the foregoing, the Redeveloper shall have the right, in its sole discretion, to "phase" the development of Site A into no more than three (3) "phases". In the event that the Redeveloper elects phase the development of Site A, the Redeveloper shall have the right to acquire only such portion of Site A as necessary for such phase of the development and at a prorated purchase price, subject to the Environmental Closing Credit. By way of example and not limitation, in the event that the first phase of the development of Site A consists of forty percent (40%) of the acreage of Site A, the purchase price for the portion of Site A necessary for such first phase shall be equal to forty percent (40%) of the Site A Purchase Price, subject to the Environmental Closing Credit. The Site A Closing shall take place at the office of the Redeveloper's attorney, or may be administered by the Redeveloper's title company, acting as settlement agent, pursuant to written instructions from the Redeveloper, the City, and the Property Owner. Each party shall have provided all documents and other items required as may be reasonably necessary or appropriate to effectuate the consummation of the Sale of Site A to the Redeveloper.

## 7. Miscellaneous.

(a) Force Majeure. For purposes of this MOU, "Force Majeure" shall mean and include all those situations beyond the control of the party claiming Force Majeure, including but not limited to, acts of God; pandemics, epidemics or other public health emergencies; order or

regulation of governmental authority; accidents; repairs; casualties; strikes; war or terrorist acts; financial market dislocation; shortages of labor, materials or supplies; inclement weather; where applicable, the passage of time while awaiting for an adjustment of insurance proceeds or delays in excess of four (4) weeks while waiting for receipt of necessary permits or approvals; or any other causes of any kind whatsoever that are beyond the parties' reasonable control. Whenever a period of time is herein prescribed for action to be taken, whether such be herein designated as a specific date, a fixed period of time or a reasonable time, the parties shall not be liable or responsible for, and there shall be excluded from the computation of such period of time, any delays due to a Force Majeure event.

(b) Enforcement. The City acknowledges that the Redeveloper is relying on the City's promise to perform its obligations pursuant to this MOU. In the event the City should default in its obligations, the Redeveloper may seek any and all remedies available at law and equity, including but not limited to actual damages (and not special, limited or consequential damages) and specific performance.

(c) Effective Date. This MOU shall become effective upon approval and execution by the Parties.

(d) Entire Agreement. This MOU represents the entire agreement between the Parties relating to the subject matter hereof and no representations or agreements made by either party or any representations of either party in the negotiations leading to this MOU or otherwise which are not expressed in this MOU shall be binding on either party. No change in, addition to or modification of any provision of this MOU shall be effective unless made by written agreement signed by the party to be charged with such change, addition or modification.

(e) Recitals. The Recitals set forth at the beginning of this MOU are hereby incorporated into its terms and provisions by this reference.

(f) Controlling Law. Controlling law of the State of New Jersey shall govern this MOU.

(g) Successors and Assigns. Each party to this MOU is hereby bound to the terms and conditions contained in this MOU and the legal representatives, successors and assigns of this MOU, if any, shall be bound to the terms and conditions contained herein. The Redeveloper may not assign this MOU without the express written approval of the City.

(h) Severability. Any provision of this MOU held to be void or unenforceable under any law or regulation shall be stricken and all remaining provisions shall continue to be valid and binding upon the parties to this MOU.

**[Remainder of Page Intentionally Left Blank]**

**IN WITNESS WHEREOF**, the City, the Redeveloper and the Property Owner have caused these presents to be executed by their duly authorized representatives, as of the day and year first written above.

**ATTEST:**

  
\_\_\_\_\_  
Joyce L. Lanier  
City Clerk

  
\_\_\_\_\_  
Dwayne D. Warren  
Mayor, City of Orange Township

**ATTEST**

\_\_\_\_\_

**SYMREC Orange JV, LLC**

  
\_\_\_\_\_  
By: Yosef Magid  
Title: Authorized Representative

**ATTEST**

\_\_\_\_\_

**Orange Flats, LLC, Orange NJ  
Holdings, LLC, 256 Henry Holding,  
LLC & 184 Matthew Holding, LLC**

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





**CITY COUNCIL****The City of Orange Township, New Jersey**DATE July 5, 2023NUMBER 275-2023

**TITLE: RESOLUTION DESIGNATING SYMREC ORANGE JV, LLC AS THE REDEVELOPER FOR THE FORMER SITE OF ORANGE HOSPITAL IDENTIFIED ON THE CITY TAX MAP AS BLOCK 3601, LOTS 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 AND BLOCK 3702, LOTS 4, 5, AND 6 AND APPROVING AND AUTHORIZING THE EXECUTION OF A REDEVELOPMENT AGREEMENT WITH SYMREC ORANGE JV, LLC FOR THE REDEVELOPMENT OF THIS PROPERTY**

**WHEREAS**, the former site of Orange Hospital located in the City of Orange Township identified on the City tax map as BLOCK 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6 (collectively, the "Property") is located within an "area in need of redevelopment" designated in accordance with the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"), known as the Central Valley Redevelopment Area (the "Redevelopment Area") and is governed by the Central Valley Redevelopment Plan (the "Redevelopment Plan"); and

**WHEREAS**, SYMREC Orange JV, LLC has filed an application with the City seeking to be designated as the redeveloper of the Property and has represented within the Redeveloper Application that it is the contract purchaser of the Property; and

**WHEREAS**, SYMREC Orange JV, LLC is proposing to redevelop the Property as three (3) distinct development sites identified as Site A, consisting of Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38 ("Site A"), Site B, consisting of Block 3601, Lots 2, 3, 4, 5 and 18 ("Site B"), and Site C, consisting of Block 3702, Lots 4, 5, 6 ("Site C");, and more which can be read fully within the Redeveloper Application (the "Project"); and

**WHEREAS**, based upon its review of the submissions and presentations made by representatives of SYMREC Orange JV, LLC within the Redeveloper Application, the City has determined that SYMREC Orange JV, LLC has the professional experience and financial capabilities to carry out the redevelopment of the Property in accordance with the Redevelopment Plan; and

**WHEREAS**, the City wishes to designate SYMREC Orange JV, LLC to serve as the redeveloper of the Property in accordance with the LRHL and wishes to authorize the Mayor to sign a Redevelopment Agreement between the City and SYMREC Orange JV, LLC, in substantially the form attached hereto, governing their respective rights and obligations with regard to the redevelopment of the Property with the Project.

  
A. MIZRAHI

**NOW, THEREFORE, BE IT RESOLVED** by the Municipal Council of the City of Orange Township that:

**SECTION 1:** The Municipal Council hereby designates SYMREC Orange JV, LLC as the redeveloper of the Property, contingent upon the establishment and funding (and periodic replenishment if necessary) of an escrow to be held by the City in such an amount as may be deemed appropriate by the City's Business Administrator, in order to provide for the payment of any and all fees and expenses that may be incurred by the City in connection with the Redevelopment Agreement and with this Project.

**SECTION 2:** The Municipal Council hereby approves the Redevelopment Agreement for the Property in substantially the form attached hereto and authorizes the Mayor to sign the Redevelopment Agreements with SYMREC Orange JV, LLC on behalf of the City.

**SECTION 3:** All other resolutions or parts of resolutions in conflict or inconsistent with this resolution are hereby repealed, but only to the extent of such conflict or inconsistency.

**SECTION 4:** All headings within this resolution are for convenience only and are not deemed to be part of this resolution.

**SECTION 5:** This resolution shall take effect as provided by law.

ADOPTED: July 5, 2023



Joyce L. Lanier  
Municipal Clerk



Tracy R. Eason  
Council President

**RESOLUTION NO. 275-2023**

**ON CONSENT AGENDA**

**REGULAR COUNCIL MEETING – July 5, 2023**

**MOTION TO ADOPT: Coley**

**SECOND: Montague, III**

**YEAS: Coley, Hilbert, Montague, III, Ross, Summers-Johnson, Wooten & Council President Eason**

**NAYS: None**

**ABSTENTIONS: None**

**ABSENCES: None**

**THIS REDEVELOPMENT AGREEMENT** (the “Agreement” or the “Redevelopment Agreement”) made on or as of the \_\_\_ day of \_\_\_\_\_, 2023 by and between the **CITY OF ORANGE TOWNSHIP**, a municipal corporation of the County of Essex and the State of New Jersey, having its offices at 29 North Day Street, Orange, New Jersey 07050, acting as redevelopment entity pursuant to N.J.S.A. 40A:12A-4(c) (the “City” or the “Redevelopment Entity”), and **SYMREC ORANGE JV, LLC**, a New Jersey limited liability company, with an address at 211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701 (the “Redeveloper”) (collectively, the “Parties”).

**WITNESSETH:**

**WHEREAS**, the former site of Orange Hospital, identified on the City Tax Map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6 (collectively, the “Property”) is located within the Central Orange Redevelopment Area, an area in need of redevelopment designated in accordance with the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “LRHL”) and is governed by the Central Orange Redevelopment Plan, which was adopted initially as the Hope VI Redevelopment Plan, and which was thereafter renamed and last amended by Ordinance 45-2020 on October 20, 2020 (the “Redevelopment Plan”), and which is attached as **Exhibit A** to this Agreement; and

**WHEREAS**, Redeveloper has requested that the City designate the Redeveloper as the exclusive redeveloper for the Property under the LRHL so that the Redeveloper may redevelop the Property with phased redevelopment projects consistent with the requirements of the Redevelopment Plan and applicable bulk standards and as approved by the City in the manner as more fully described herein; and

**WHEREAS**, the Redeveloper is proposing to redevelop the Property as three (3) distinct development sites identified as Site A, consisting of Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38 (“Site A”), Site B, consisting of Block 3601, Lots 2, 3, 4, 5 and 18 (“Site B”), and Site C, consisting of Block 3702, Lots 4, 5, 6 (“Site C”); and

**WHEREAS**, the City, the Redeveloper, and the current owners of the Property, who are Orange Flats, LLC, Orange NJ Holdings, LLC, 256 Henry Holding, LLC and 184 Matthew Holding, LLC (collectively, the “Property Owner”), previously entered into a Memorandum of Understanding executed on April 19, 2023 regarding the proposed redevelopment of the Property (the “MOU”) which is attached hereto as **Exhibit B**; and

**WHEREAS**, the MOU noted that the City had not yet designated a developer with respect to the proposed redevelopment of the Property; and

**WHEREAS**, the City has determined that the Redeveloper has the professional experience and financial capabilities to carry out the redevelopment of the Property in accordance with the Redevelopment Plan; and

**WHEREAS**, the City wishes to designate the Redeveloper to serve as the redeveloper of the Property in accordance with the LRHL; and

**WHEREAS**, the Parties wish to enter into this Redevelopment Agreement in order to memorialize the terms and conditions of their agreement with regard to the redevelopment of the Property.

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

## **ARTICLE 1** **DEFINITIONS**

**1.1. Defined Terms.** The Parties agree that the defined capitalized terms used in this Agreement shall have the meaning specified in the recitals above (each of which is hereby incorporated into and made part of this Agreement) or as set forth in the list below, or as may be expressly ascribed to such capitalized terms elsewhere in this Agreement, such definitions to be applicable equally to the singular and plural forms of such terms:

**“Affiliate”** means an entity which is controlled by either the Redeveloper or by any individual or entity that owns or controls more than 50% of the voting stock of, or beneficial interest in, the Redeveloper. The term “control” as used with respect to any party, means (i) the ownership, directly or indirectly of more than 50% of the voting stock of such corporation (or its equivalent for a limited liability company or partnership), or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such corporation, partnership, association or other entity or organization, or (iii) to receive, directly or indirectly, more than 50% of the profits of such corporation, partnership, association or other entity or organization (whether through the ownership or voting stock, by contracts or otherwise).

**“Agreement” or “Redevelopment Agreement”** shall mean this redevelopment agreement between the City and the Redeveloper.

**“Applicable Laws”** shall mean all federal, state and local laws, ordinances, approvals, rules, regulations statutes, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses and other similar requirements applicable to this Agreement, the Project and/or the Property, including but not limited to the following: the LRHL; the Municipal Land Use Law, N.J.S.A. 40:55D -1 et seq.; the Eminent Domain Act, N.J.S.A. 20:3-1 et seq.; the Fair Housing Act, N.J.S.A. 50:27D-301 et seq.; the New Jersey Housing and Mortgage Finance City Law, N.J.S.A. 55:14K-1 et seq.; the New Jersey Green Acres Land Acquisition and Recreation Opportunities Act, N.J.S.A. 13:8A-35 et. seq. and the Green Acres regulations, N.J.A.C. 7:36-1.1 et seq.; all State and City laws governing historic preservation, including but not limited to N.J.S.A. 13:1B-15.128 et seq., the regulations promulgated thereunder, N.J.A.C. 7:4-2.4 et seq., and Title 40, all applicable provisions of the City Code, as and to the extent applicable pursuant to the terms of the Redevelopment Plan; relevant construction codes including construction codes governing access for people with disabilities; and all other applicable federal, state or local zoning, land use, environmental, health and safety laws, ordinances, rules and regulations, and federal and state labor standards or regulations, if any, including but not limited to the Prevailing Wage Act (if determined to be applicable to the Project).

**“Application”** means any application for Governmental Approval submitted by or on behalf of the Redeveloper, including all plans, drawings, documentation and presentations necessary and appropriate for the purpose of obtaining any and all Governmental Approvals required to implement and complete the Project.

**“Authorized City Representative”** shall mean the Mayor of the City, the City’s Business Administrator their designee.

**“Capitalized”** means the acquisition by the Redeveloper of a particular Site and the closing of financing by the Redeveloper on such acquisition of any Phase or building within that Phase related to such Site.

**“Certificate of Completion”** means written acknowledgment by the City in recordable form that the Redeveloper has completed construction of the Project, or any phase of the Project, on the Property in accordance with the requirements of this Redevelopment Agreement and with the exception of any obligations which expressly survive the Redevelopment Agreement, has no further obligations to the City under the Redevelopment Agreement.

**“Certificate of Occupancy”** shall be as defined in the City’s Municipal Code and in the applicable provisions of the Uniform Construction Code.

**“City”** shall mean the City of Orange Township, a municipal corporation of the County of Essex and the State of New Jersey, having its offices at 29 North Day Street, Orange, New Jersey 07050, acting as redevelopment entity pursuant to N.J.S.A. 40A:12A-4(c) of the LRHL.

**“City Costs”** shall have the meaning set forth within the Escrow Agreement between the Parties.

**“City Costs Escrow”** shall have the meaning set forth within the Escrow Agreement between the Parties.

**“Commence Construction”, “Commencement of Construction”, or “Commencement Date”** shall mean the date on which the construction force and machinery are mobilized for construction of the Project, or of any phase of the Project, on the Property and physical construction begins, which may include clearing and grading, as applicable in accordance with Governmental Approvals.

**“Completion of Construction”, “Complete Construction” or “Completion Date”** means the date on which the Redeveloper has completed construction of the Project, or of any phase of the Project, on the Property as evidenced by the issuance of a Certificate of Occupancy for the Property to be used in the manner proposed under this Agreement.

**“Completion Notice” or “Notice of Completion”** means a written notification of Completion of Construction of the Project or of any phase of the Project and request by the Redeveloper for the

issuance by the City of a Certificate of Completion for the Project or for any phase of the Project on the Property.

**“Construction Period”** means the period of time beginning on the Commencement Date and ending on the Completion Date for the Property.

**“Construction Schedule”** means the timetable and performance milestones for design, obtaining Governmental Approvals, environmental remediation (if necessary), site preparation, and Completion of Construction of the Project, or of any phase of the Project, on the Property. The Construction Schedule for the phased redevelopment of Sites A, B, and C shall be established through the procedures described within Section 2.4(c) of this Redevelopment Agreement.

**“Days”** shall mean calendar days.

**“Debt Service”** shall be calculated as required annual principal and interest payment based on published Fannie Mae Interest Rates

**“Debt Service Coverage Ratio”** shall be calculated as Pro forma Net Operating Income divided by Debt Service

**“Declaration of Covenants and Restrictions”** or **“Declaration of Restrictions”** means the redevelopment covenants and restrictions that will encumber the Property and run with the land, setting forth certain undertakings of and restrictions applicable to Redeveloper and its permitted successors and assigns in connection with the ownership and redevelopment of the Property, all as more particularly described in Article 7 of this Agreement and within the short form Declaration of Covenants and Restrictions attached as **Exhibit C** to this Agreement.

**“Default”** means a condition or event which constitutes or would constitute, after notice and a right to cure or lapse of time or both, an Event of Default as more particularly defined in Article 10 of this Agreement. As set forth herein, the Project consists of Site A, B, and C, and the Redeveloper has the right to develop each Site as a separate Phase. It is expressly understood that a Default on any aspect of one Phase or building will not constitute a Default on any other Phase or building that is Capitalized but shall constitute a Default on any building or Phase that is not Capitalized.

**“Effective Date”** means the date of complete execution of this Agreement by the Redeveloper and the City.

**“Environmental Laws”** means any and all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to environmental contamination, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of hazardous substances materials or wastes, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. sect. 9601-9675; the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. sect. 6901, et seq.; the Clean Water Act, 33 U.S.C. sect. 1251, et seq.; the New Jersey Spill Compensation

and Control Act (the "Spill Act"), N.J.S.A. 58:10-23.11, et seq.; the Industrial Site Recovery Act, as amended ("ISRA"), N.J.S.A. 13:1K-6, et seq.; the New Jersey Underground Storage of Hazardous Substances Act, N.J.S.A. 58:10A-21, et seq.; the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the New Jersey Environmental Rights Act, N.J.S.A. 2A:35A-1, et seq.; and the rules and regulations promulgated thereunder, as now in force or as may hereinafter be modified or amended.

**"Escrow Agreement"** shall mean the agreement which has or which will be entered between the Redeveloper and the City wherein the Redeveloper has agreed to post, and to thereafter replenish as directed by the City, a monetary escrow payment with the City and to allow the City to draw against that escrow in order to reimburse the City for City Costs.

**"Event of Default"** shall have the meaning set forth within Section 10 of this Agreement.

**"Force Majeure Event"** means causes beyond the reasonable control and not due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods not reasonably foreseeable at the time the Construction Schedule is established); acts of the public enemy; acts of war; fire; epidemics; quarantine restrictions; blackouts; power failures or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters; Interest Rates which result in a Debt Service Coverage Ratio lower than 1.25; or unavailability of necessary building materials (provided that the Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project). During any Force Majeure Event that affects only a portion of the Project, the Redeveloper shall to the maximum extent feasible continue to perform its obligations for the balance of the Project unaffected by the Force Majeure Event. The existence of a Force Majeure Event shall not prevent the City from issuing a Notice of Default or from the occurrence of an Event of Default by the Redeveloper if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.

**"Governmental Approvals"** means all final and un-appealable local, state and federal governmental approvals necessary or appropriate for implementation and completion of the Project on the Property in accordance with the terms of this Agreement, including without limitation preliminary and final site plan approval; preliminary and final subdivision approval, if and as applicable; environmental permits, including but not limited to wetlands and storm water drainage permits; permits, consents, permissions or approvals relating to historic preservation matters; utilities-related permits, including permits related to water supply and sewer service; and all other necessary permits, licenses, consents, permissions or approvals from or required by governmental agencies.

**"Interest Rates"** means Federal National Mortgage Association (Fannie Mae) interest rates for ten (10) year fixed rate financing as published by a top 5 national real estate brokerage house assuming a loan to value ratio of 75%.

**"Land Use Application"** means the application filed by the Redeveloper with the City Planning Board seeking approval of its Project.



**“Licensed Site Remediation Professional” or “LSRP”** shall have the meaning set forth in N.J.S.A 58:10C-2.

**“LRHL”** shall mean the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

**“Minority” or “Minorities”** means a person who is a citizen or lawful permanent resident of the United States and who is either one or a combination of: (i) African American (a person having origins in any of the black racial groups of Africa), (ii) Alaskan Native and/or American Indian (a person having origins in any of the original peoples of North America), (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, Hawaii or the Pacific Islands), (iv) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race), or (v) Female (a person of the female gender).

**“MOU”** shall mean the Memorandum of Understanding between the City, the Redeveloper, and the Property Owner executed on April 19, 2023 which is attached as **Exhibit B** to this Redevelopment Agreement.

**“NJDEP”** shall mean the New Jersey Department of Environmental Protection.

**“Notice of Default”** shall have the meaning set forth in Section 10.1(a) of this Agreement.

**“Parties”** means the City and the Redeveloper.

**“Planning Board”** shall mean the City Planning Board.

**“Phase”** shall mean the development of Site A, B, or C, it being expressly understood that each Phase may contain multiple buildings.

**“Phasing Proposal”** shall have the meaning set forth within Section 2.4(c) of this Agreement.

**“Prevailing Wage Act”** shall mean the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et. seq.

**“Proforma Net Operating Income”** shall be calculated using then current market rents and estimated operating expenses as evidenced in a detailed market study that will be commissioned and paid for by the Redeveloper no more than 120 days prior to date of calculation. The market study will be provided by a mutually agreeable third party market research firms using data from apartment communities consisting of 175 or more units for multifamily rental properties within 15 miles of the Property.

**“Project”** shall have the meaning set forth within Section 2.4 of this Agreement.

**“Property”** shall mean the former site of Orange Hospital, identified on the City Tax Map as Block 3601, Lots 1, 2, 3, 4, 5, 18, 33, 34, 35, 36, 37, 38 and Block 3702, Lots 4, 5, and 6.

**“Property Owner”** shall mean the current owners of the Property, who are Orange Flats, LLC, Orange NJ Holdings, LLC, 256 Henry Holding, LLC and 184 Matthew Holding, LLC.

**“Redeveloper”** shall mean SYMREC Orange JV, LLC, a New Jersey limited liability company, with an address at 211 Boulevard of the Americas, Suite 109, Lakewood, New Jersey 08701.

**“Redevelopment Area”** means the Central Orange Redevelopment Area, as such redevelopment area may be amended and supplemented, and/or any other redevelopment area adopted by the City which in any way governs, concerns, relates to, and/or regulates the Project or the Property.

**“Redevelopment Plan”** means the Central Orange Redevelopment Plan which is attached as **Exhibit A** to this Agreement, as such redevelopment plan may be amended and supplemented, and/or any other redevelopment plan adopted by the City which in any way governs, concerns, relates to, and/or regulates the Project or the Property.

**“Remediation”** or **“Remediate”** means all necessary actions required under Environmental Laws or any other Applicable Law to investigate and clean up, remove, or otherwise respond to the known or suspected presence or threatened discharge of hazardous substances or hazardous wastes on or migrating from the Property, including, as necessary, preliminary assessment, site investigation, remedial investigation, and remedial action.

**“Site A”** shall mean the parcels identified on the City tax map as Block 3601, Lots 1, 33, 34, 35, 36, 37 and 38.

**“Site B”** shall mean the parcels identified on the City tax map as Block 3601, Lots 2, 3, 4, 5 and 18.

**“Site C”** shall mean the parcels identified on the City tax map as Block 3702, Lots 4, 5, 6.

**“SRRA”** means the Site Remediation Reform Act, N.J.S.A 58:10C-1 et seq.

**“Termination Notice”** shall have the meaning set forth within Section 10.2 of this Agreement.

## **ARTICLE 2**

### **REDEVELOPER DESIGNATION; TERM OF AGREEMENT; THE PROJECT**

**2.1 Redeveloper Designation.** The City hereby designates and appoints the Redeveloper as the redeveloper of the Property. In connection with such designation and appointment, the Redeveloper shall have the exclusive right and obligation to perform development and redevelopment activities on the Property under the framework and in accordance with the terms of this Agreement, the Redevelopment Plan and Applicable Laws.

**2.2 Redevelopers’ Scope Of Undertaking.** The services and responsibilities undertaken by the Redeveloper, as more particularly set forth in this Agreement, shall include the following: all aspects of the design; development; Remediation (if necessary); site preparation; construction and operation

of the Project on the Property, including, without limitation, engineering, permitting, and the performance of or contracting for and administration and supervision of all construction required in connection with the Project; arrangement for interim and final inspections and any other actions required to satisfy the requirements of all Governmental Approvals necessary to develop the Project on the Property; all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing; and the ongoing maintenance of the Property.

**2.3 Term Of Agreement.** This Agreement shall commence on the Effective Date and shall expire upon the termination of this Agreement or the issuance of a Certificate of Completion for the Project, except with regard to those provisions which expressly survive the issuance of a Certificate of Completion.

**2.4 The Project.**

**2.4(a) The Project Generally.** The project shall consist of phased redevelopment projects consistent with the requirements of the Redevelopment Plan and applicable bulk standards and as approved by the City in the manner described herein (collectively, the "Project"). All Applications submitted by or on behalf of the Redeveloper shall conform in all material respects to the Redevelopment Plan and bulk standards that governs the Property, and all Applicable Laws.

**2.4(b) Project Phasing.** It is currently anticipated that the redevelopment of the Property will occur in separate phases and that Site B will be the first site to be redeveloped; however, the parties further acknowledge that the order of the development of each Phase is subject to change in the discretion of the Redeveloper upon consultation with the Authorized City Representative. Thus, it is acceptable to redevelop the Property through multiple distinct applications for Site A, Site B, and Site C, or as a combined development application for multiple phases, so long as the Redeveloper follows the procedures set forth within Section 2.4(c) of this Redevelopment Agreement.

**2.4(c) Approval Procedures For Project Phases.** The Parties recognize and acknowledge that the Redeveloper's plans for the redevelopment of the Property, both in terms of the improvements to be constructed on the Property and the phasing of the site development, are still being formulated. The Parties further recognize and acknowledge that the City, as the redevelopment entity responsible for the redevelopment of the Property under the LRHL, has the rights (among other things) to review and approve concept plans for each phase of the proposed site redevelopment and also to review and approve the Construction Schedule for each Phase of the Project. For these reasons, prior to submitting Applications for Governmental Approvals for any Phase of this Project, the Redeveloper shall submit a proposed concept plan, which identifies the location, size, and type of building(s) to be developed but does not include architectural drawings or engineering plans, estimated project budget, estimated total costs of the Phase, and Construction Schedule, and any other documents reasonably required by the City (collectively, the "Phasing Proposal") to the Authorized City Representative for his review and approval, which approval shall not be unreasonably withheld. If the Authorized City Representative approves the Phasing Proposal, the Parties anticipate that the Phasing Proposal will be memorialized by a separate redevelopment agreement executed by the Parties. The Redeveloper may only submit Applications for Governmental Approval for a particular Phase of the Project once it has obtained approval from the BA for a Phasing Proposal for that phase as set forth in this Section.

**2.4(d) Timing For Redeveloper's Submission Of Phasing Proposals.** The Redeveloper must comply with the following schedule for the submission of Phasing Proposals to the City:

- (i) The Redeveloper must submit the first Phasing Proposal for a phase of the Project to the City by no later than nine (9) months from the Effective Date of this Agreement;
- (ii) The Redeveloper must submit any second Phasing Proposal for a phase of the Project to the City by no later than eighteen (18) months from the Effective Date of this Agreement; and
- (iii) The Redeveloper must submit any third Phasing Proposal for a phase of the Project to the City by no later than twenty-seven (27) months from the Effective Date of this Agreement.

Nothing herein shall be deemed to prohibit the Redeveloper from submitting Phasing Proposals to the City earlier than the deadlines set forth herein or from submitting multiple Phasing Proposals to the City for multiple Phases of the Project. However, these provisions are intended to establish firm deadlines by which the Redeveloper must submit its Phasing Proposals to the City. The failure of the Redeveloper to comply with these deadlines shall constitute an Event of Default as forth in Section 10.1(i) herein.

### **ARTICLE 3** **SITE CONVEYANCE/TRANSFERS**

**3.1 Conveyance of Site A.** The Parties recognize that the only portion of the Property that will be conveyed by the City to the Redeveloper for redevelopment purposes is Site A. So long as there is no uncured Event of Default by the Redeveloper on its obligations under this Redevelopment Agreement and this Redevelopment Agreement is still in effect and has not been terminated with respect to Site A, the City shall convey Site A to the Redeveloper for the purchase price and within the time period set forth within Section 6 of the MOU, which is contemplated to be amended or modified by agreement between the Parties.

**3.2 Conveyance of Site B.** The conveyance of Site B will occur in accordance with the terms of Section 5 of the MOU for the Initial Closing, which is contemplated be amended or modified by agreement between the Parties..

**3.3 Condemnation/Eminent Domain of Site C.** The Parties recognize that condemnation/eminent domain powers with respect to Site C is a critical component of the redevelopment of that Site and the Project overall. Promptly upon receipt of the Phasing Proposal for Site C, the City shall start the process to amend the current Redevelopment Plan governing the Property, so that the Redevelopment Plan provides the City with condemnation/eminent domain powers with respect to Site C, it being understood by the Redeveloper that the process may take four (4) months. The City shall thereafter institute condemnation proceedings as necessary for the implementation of the Project, provided the

Redeveloper deposits funds in an escrow account in an amount as is necessary to undertake the condemnation.

**ARTICLE 4**  
**IMPLEMENTATION OF THE PROJECT**

**4.1 Implementation Of The Project.** For so long as this Agreement shall remain in effect, the Redeveloper shall have the exclusive right to redevelop or rehabilitate the Property. The Redeveloper agrees to redevelop or rehabilitate the Property in accordance with the terms and conditions of this Agreement, the Redevelopment Plan, Applicable Laws, and all Governmental Approvals applicable thereto. All redevelopment activities performed under this Agreement shall be performed timely and diligently and provided in accordance with the level of skill and care ordinarily exercised by developers of comparable first-class developments.

**4.2 Governmental Approvals.**

**4.2(a) Governmental Approvals.** The Redeveloper shall cause to be prepared and filed, at Redeveloper's sole cost and expense, all applications as may be necessary and appropriate for the purpose of obtaining all Governmental Approvals required to implement the Project consistent with an agreed upon Construction Schedule. All of the applications shall be in conformity with the applicable Redevelopment Plan, this Redevelopment Agreement and Applicable Laws. The Redeveloper shall provide the City with a copy of each application at the same time those applications are submitted to the governmental City having jurisdiction over the same and shall have a continuing obligation, at the request of the City, to promptly provide the City with copies of all correspondence to and from each governmental City relating to these applications.

**4.2(b) Diligent Pursuit Of Governmental Approvals.** The Redeveloper agrees to prosecute all of the Redeveloper's applications for Governmental Approvals diligently and in good faith. Subject to the requirements of Applicable Law and unless expressly provided otherwise in this Agreement, the Redeveloper shall determine when and in what order to file each specific application. At the Redeveloper's reasonable request, the City will, in its reasonable judgment, sign consents or other documents required in connection with the Redeveloper's applications for Governmental Approvals and will supply information which is in the City's possession respective thereto. The City will, in its reasonable judgment, otherwise cooperate with and support the Redeveloper in connection with the applications for Governmental Approvals as the Redeveloper and the Redeveloper's counsel may reasonably request.

**4.2(c) Appeals.** If one or more of the Redeveloper's applications for Governmental Approvals is denied, or approved with conditions that the Redeveloper in its commercially reasonable judgment deems unacceptable, the Redeveloper may, in its discretion, appeal or defend against such action, at its sole cost, and during the pendency of the appeal proceeding otherwise continue as the Redeveloper deems appropriate to seek the remaining Governmental Approvals. Redeveloper shall not be obligated to defend against an action by any person contesting or challenging the grant of Governmental Approvals to the Redeveloper, unless in Redeveloper's reasonable discretion it determines that such course of action is prudent.

**4.2(d) Application For “Building Permits”.** The Redeveloper shall promptly and in a commercially reasonable manner, and in no case later than one hundred and twenty (120) Days from the date that final un-appealable Governmental Approvals for any phase of the Project is obtained, submit applications for building permits and use commercially reasonable efforts to diligently prosecute the applications to conclusion for the Property.

#### **4.3 Commencement And Completion Of Construction**

**4.3(a) Commencement And Completion Of Construction.** Except as otherwise provided herein, the Redeveloper shall Commence Construction of the Project of each approved phase of the Project within the time period set forth within an agreed upon Construction Schedule, but no later than sixty (60) Days following issuance of building permits for the Property, subject only to the occurrence of Force Majeure Events. The Redeveloper shall Complete Construction of each approved phase of the Project within the time period set forth within the Construction Schedule, subject only to the occurrence of Force Majeure Events. Any material changes in the scope of any Phase of the Project, changes or updates to the Construction Schedule, or extension of the projected Completion Date for any phase of the Project shall require the Authorized City Representative’s prior written approval, which approval may not be unreasonably withheld, except that said extension shall be automatic for a Force Majeure Event. If the BA denies such approval, upon the Redeveloper’s reasonable request the Authorized City Representative shall provide the reason(s) for such denial. The Redeveloper agrees to simultaneously provide to the City copies of all Construction Schedules and project budgets that Redeveloper submits to potential lenders in connection with the financing of the Project for the Property. The Redeveloper agrees to Commence Construction and diligently Complete Construction of each phase of the Project on the Property, subject only to Force Majeure Events, and any extensions approved by the Authorized City Representative. The Redeveloper understands that absent extraordinary and unforeseeable circumstances, the City will require strict compliance by Redeveloper as to the schedule for Commencement of Construction and Completion of Construction for each phase of the Project, interim deadlines or milestones and time periods for the various activities and actions to be taken by the Redeveloper hereunder, subject only to the occurrence of a Force Majeure Event.

**4.3(b) Work To Be Performed By Redeveloper.** The Redeveloper at its sole cost and expense shall perform all demolition, environmental Remediation, site preparation, construction, operation, administration and management of the Project on the Property. The Redeveloper hereby agrees that following an Event of Default or a termination of this Agreement, the City and anyone acting on the City’s behalf shall be entitled to use the Redeveloper’s Site Plan Approval Documents, governmental applications, and Governmental Approvals to complete the Project on the Property, without cost to or liability of the City (other than for actual services rendered to the City subsequent to the Event of Default or termination) and all agreements between the Redeveloper and its sub-contractors and consultants shall so provide. In addition, all performance or completion bonds provided by the Redeveloper’s sub-contractors shall name the City as an intended beneficiary thereof, as its interests may appear.

**4.3(c) Existing and Public Utility Rights and Improvements.** The Redeveloper acknowledges that local public utility providers may have certain rights with respect to the Property and may own certain facilities located therein. The Redeveloper agrees that it is its sole responsibility, at its sole cost and expense, to undertake the appropriate measures to negotiate with, acquire, relocate

or otherwise address the existence of these utilities and improvements and easements therefore, in order to complete the Project as provided by this Redevelopment Agreement, provided that the City shall provide any appropriate letter of support to accomplish such relocation, consistent with the provisions of N.J.S.A. 40A:12A-10. The Redeveloper shall consult local public utility providers with respect to all Project preparation and construction, and shall take all precautions to prevent personal injury, property damage and other liabilities related to utilities above, at or under the Property, including, but not limited to, assuring uninterrupted utility service to all properties during construction. The City will cooperate with the Redeveloper to determine the adequacy of existing municipal infrastructure. The City agrees to provide access to and permit connection to all such infrastructure and shall permit the Redeveloper to improve and/or expand such infrastructure as may be deemed necessary by the Redeveloper, as needed.

**4.3(d) Water and Sewer Connection Fees.** The Redeveloper shall be responsible, for any additional infrastructure improvements required to accommodate full development of the Project, including but not limited to streets, sanitary sewers, storm sewers, utility lines and drainage facilities. The City shall reasonably utilize any authority which it may have under Applicable Law to assist the Redeveloper in the approval and construction of infrastructure improvements required for the Project. The City shall also cooperate with the Redeveloper as an applicant or in any other capacity to assist the Redeveloper in obtaining approvals for any infrastructure improvements required for the Project. In furtherance of same, the Redeveloper shall pay all water and sewer connection fees due to the City or other agency. If any payments are due to the City (vs another agency), these payments shall be due as follows per Phase: one-half (1/2) upon issuance by the City of building permits and one-half upon receipt of a certificate of occupancy.

**4.3(e) Progress Reports And Project Oversight By The City.** From the Commencement of Construction until the date that the Certificate of Completion is issued for the Project, the Redeveloper shall make reports, in such detail and at such times as may reasonably be requested by the City no more than quarterly, as to the actual progress of the Redeveloper with respect to such construction. If so requested by the City, the Redeveloper agrees to attend progress meetings during the period of implementation of the Project, as follows:

(i) **Progress Meetings.** From the Commencement of Construction, a representative of the Redeveloper shall attend and participate in periodic progress meetings as called by the City based on reasonable need therefore no more than quarterly to report on the status of the Project and to review the progress under the Construction Schedule.

(ii) **Progress Reports.** At each progress meeting, and at such other times as may be reasonably requested by the City, the Redeveloper shall submit to the City a detailed written progress report which shall include, among other things, a description of activities completed, milestones achieved, status of the Project with respect to its Construction Schedule, activities to be undertaken prior to the next regularly scheduled progress report, and any unanticipated problems or delays and the explanation therefor. If the Redeveloper fails to meet a milestone or completion date set out in the Construction Schedule and is notified of same in writing by the City, or if Redeveloper conclusively determines between progress meetings that it will fail to meet a milestone or completion date on the Construction Schedule, the Redeveloper shall promptly provide written notice to City stating: (a) the reason for the failure to complete the applicable task, (b) the Redeveloper's proposed method for

correcting such failure, (c) the Redeveloper's schedule for completing such task, and (d) the method or methods by which the Redeveloper proposes to achieve subsequent tasks by the Completion Date. This Section shall not in any way be construed as entitling the Redeveloper to an extension of the Completion Date or modification of the Construction Schedule for the Property, absent the City's prior written consent.

**4.3(f) Construction Period Conditions.** As pertains to construction period conditions, in the event of a conflict between this Section and a public safety ordinance of the City, the public safety ordinance shall control.

(i) **Construction Practices and Hours.** Construction practices and hours shall be in accordance with City ordinances and all other Applicable Laws.

(ii) **Site Maintenance.** During construction of the Project, or any portion thereof, by the Redeveloper, such portion of the Project (and adjacent public rights of way, if affected by construction activities related to such portion of the Project) will be cleaned or caused to be cleaned on a regular basis by Redeveloper. Redeveloper agrees to clean up within twenty-four (24) hours of a specific request by the City that Redeveloper do so, or by the close of the following business day, whichever is later. Should Redeveloper fail to comply with this obligation, the City may undertake cleaning within the public right of way and charge Redeveloper for the any costs incurred by the City for the same. The Redeveloper shall repair, at Redeveloper's cost, any damage occurring within the public right of way arising out of or in connection with the construction of the Project, or any portion thereof, by Redeveloper, except to the extent caused by the City, Redevelopment Entity or any of the City's or the Redevelopment Entity's employees, contractors or agents.

(iii) **Pedestrian Access and Safety.** Redeveloper will provide for safe pedestrian passage adjacent to the Property during construction of the Project by Redeveloper. Redeveloper shall supply to the City Building Department plans and specifications providing for pedestrian safety for such portion of the Property. The Redeveloper shall keep the sidewalks clean and free of debris, ice and snow during the construction of the Project by Redeveloper.

(iv) **Construction Parking.** The Redeveloper shall arrange with the City Construction Code Official and the Police Department for the parking of construction vehicles and construction worker's vehicles if such vehicles cannot be parked on the Project Site. The City agrees to place from time to time temporary "Emergency, No Parking" signs on the adjacent streets as reasonably requested by Redeveloper to accommodate Redeveloper's construction activities.

(v) **Preconstruction Meeting.** There shall be a preconstruction coordination meeting held at least seven (7) days prior to the Commencement of Construction of the Project or any phase of the Project, which meeting shall include the City's Planning Director, Construction Code Official, the City Engineer, a representative from the Police Department, a representative from the Fire Department and representatives from the various utility companies, to the extent applicable and able.

**4.3(g) Performance Security.** Prior to the commencement of any public improvements for any Phase or building, the Redeveloper shall post such security in such form, and in such amounts and



for such periods of time as is required by the City pursuant to the New Jersey Municipal Land Use Law (N.J.S.A. 40:55D-1 *et seq.*).

**4.4 Certificate Of Occupancy And Certificate Of Completion.** The Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy when necessary and appropriate for the Property as required under Applicable Laws. Following the issuance of the Certificate of Occupancy for the Property, and the satisfaction of the terms and conditions of this Agreement with respect to the Project on the Property by Redeveloper, and upon receipt of a Notice of Completion from Redeveloper, the City agrees to issue a Certificate of Completion for the Property, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations for the Property under this Agreement and has completed construction of the Project on the Property in accordance with the requirements of this Agreement. Within thirty (30) Days after receipt of the Notice of Completion for the Property from the Redeveloper, the City provide the Redeveloper with the Certificate of Completion for that particular Property or with a written statement setting forth in detail the reasons why it believes that the Redeveloper has failed to complete the Project in accordance with the provisions of this Agreement or is otherwise in Default under this Agreement, and what reasonable measures or acts will be necessary in the opinion of the City in order for the Redeveloper to be entitled to the Certificate of Completion. When issued, the Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants (as limited herein) in this Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Project on the Property. Unless otherwise required by a related Financial Agreement, Governmental Approval or Applicable Law, upon the issuance of the Certificate of Completion, the provisions of this Agreement shall no longer encumber the Property; provided, however, that any other documents theretofore delivered pursuant to this Agreement that by their terms are intended to survive Completion of Construction for the Property (including, without limitation and by of example only, any Deed restrictions, the Declaration of Restrictions, tax abatement agreements, and the like) shall not be affected by delivery of the Certificate of Completion for the Property.

**4.5 Estoppel Certificates (Prior To Issuance Of Certificate Of Completion).** At any time and from time to time prior to the issuance of a Certificate of Completion for the Property, the City shall, within fourteen (14) Days of its receipt of a written request by the Redeveloper or of any mortgagee, lender, purchaser, tenant or other party having an interest in the Project, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, investor, tenant, etc.) designated by the Redeveloper, an instrument in which the City (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only modifications which shall be set forth), (ii) states whether to the best knowledge of the City the Redeveloper is in Default under this Agreement, and, if so, specifying each such Default of which the City shall have knowledge; and (iii) confirms such other factual matters within the City's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Property.

## **ARTICLE 5**

### **REDEVELOPER'S FINANCIAL COMMITMENT AND PERFORMANCE SECURITY**

**5.1 Redeveloper's Financial Commitment.** The Redeveloper represents that it has obtained or can obtain and will commit the requisite equity and debt financing in an amount necessary to purchase

the Property on the terms and conditions set forth herein, and to perform all of the Redeveloper's obligations hereunder in order to Commence Construction and to Complete Construction of the Project on the Property within the time periods required under this Agreement.

## **ARTICLE 6**

### **REPRESENTATIONS AND WARRANTIES**

**6.1 Representations And Warranties By The Redeveloper.** The Redeveloper makes the following representations and warranties:

(a) The Redeveloper has the legal capacity to enter into this Agreement and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.

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

(c) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed or is contemplated as of the date of this Agreement, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper has been filed or is contemplated as of the Effective Date.

(d) No indictment has been returned against any member, manager or officer of the Redeveloper.

(e) To the best of the Redeveloper's knowledge and belief after diligent inquiry, 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, the Redeveloper's execution hereof, or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair the Redeveloper's ability to perform the Project on the Property under this Agreement.

(f) The Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any operating agreement of the Redeveloper or, to the Redeveloper's knowledge, any other agreement, mortgage, indenture, instrument or judgment to which the Redeveloper is a party.

(g) All information and statements included in any information submitted by the Redeveloper to the City and its agents (including, but not limited to, Gluck Walrath, LLP) are complete, true and accurate in all material respects. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper, incorporated herein by

reference, are being relied upon by the City and are a material factor in the decision of the City to enter into this Agreement.

(h) The Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating and maintaining the Project on the Property.

(i) The party or parties signing the Agreement on behalf of the Redeveloper is or are fully authorized to sign on behalf of the current members of the Redeveloper and to bind it with respect thereto.

(j) The ownership and management structure of the Redeveloper is set forth within the Redeveloper's development application to the City are true as of the Effective Date of this Agreement. The Redeveloper shall, upon any change in the ownership and management structure of the Redeveloper, furnish the City with a complete statement subscribed and sworn to by the managing member of the Redeveloper, setting forth all of the changes in the ownership and management structure of the Redeveloper.

**6.2 Representations And Warranties By The City.** The City hereby makes the following representations and warranties:

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

(b) This Agreement is duly executed by the City and is valid and legally binding upon the City and enforceable in accordance with its terms on the basis of Applicable Laws currently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a Default under or violate the terms of any indenture, agreement or other instrument to which the City is a party.

(c) To the best of the City's knowledge there is no action, proceeding or investigation now pending nor any basis therefor, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the City pursuant to this Agreement.

(d) To the best of the City's knowledge there is no pending litigation which affects the designation of the Redevelopment Area or the adoption of the Redevelopment Plan.

(e) The party or parties signing the Agreement on behalf of the City is or are fully authorized to sign on behalf of the City and to bind it with respect thereto.

## **ARTICLE 7** **COVENANTS AND RESTRICTIONS**

**7.1 Description Of Redeveloper's Covenants.** The Redeveloper hereby covenants that it shall:

(a) in connection with its use or occupancy of the Project on the Property, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property or the Project is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and the Redeveloper, its successors and assigns, shall comply with all applicable laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status. Nothing herein shall prohibit the Redeveloper from developing a Project that is age restricted, in whole or in part, to accommodate senior housing, in accordance with local, state, and federal law; provided such senior housing isn't subject to income limitations.

(b) comply with the applicable provisions and public purposes of the LRHL and all obligations under this Agreement and shall at all times develop, design, finance, construct and operate the Project or cause the Project to be developed, designed, financed, constructed and operated pursuant to the conditions and requirements of Applicable Laws, Governmental Approvals, this Agreement and the Redevelopment Plan, provided however, that Redeveloper shall not be deemed to be in breach if the Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws. All uses to which the Project on the Property may be devoted are controlled by the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Redevelopment Agreement and under no circumstances can the Redeveloper undertake any construction or development of the Project for the Property not in accordance with the Redevelopment Plan, the Governmental Approvals, Applicable Laws and this Agreement.

(c) in order to effectuate the purposes of this Agreement, make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or entities and in general do all things which may be requisite or proper for the construction and development of the Project on the Property in accordance with the Redevelopment Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws, provided however, that the Redeveloper shall not be deemed to be in breach of this covenant if the Redeveloper diligently contests, in good faith and by appropriate proceedings, such compliance with any of the aforesaid Applicable Laws.

(d) use diligent efforts to (i) obtain all Governmental Approvals requisite to the construction and development of the Project on the Property including evidence satisfactory to the City that the Redeveloper's use of the Project on the Property complies with this Agreement, the Redevelopment Plan and all Applicable Laws, and (ii) ensure Completion of Construction of the Project within the time periods specified in the Construction Schedule.

(e) use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated herein. The Redeveloper shall enter into such other agreements with respect to its development, financing, construction and management and operation of the Project containing such provisions as may be required by Applicable Law and such other provisions as may reasonably be requested by the City or as may reasonably be required by Governmental Approvals.

(f) except as otherwise permitted hereunder in the case of the occurrence of a Force Majeure Event, not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein) for any reason, including,

without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project on the Property.

(g) diligently undertake the construction and development of each individual component of the Project on the Property throughout the Construction Period and use commercially reasonable efforts to complete each component of the Project on the Property on or before the applicable Completion Date.

(h) not encumber, hypothecate or otherwise use the Project or the Property, or any part thereof, as collateral for an unrelated transaction.

(i) during construction of the Project, keep debris and/or waste materials containerized and/or stored and disposed of within normal industry standards

(j) cause the Project to be developed, designed, financed and constructed at its sole cost and expense, except as otherwise set forth in this Agreement.

(k) immediately notify the City of any material change in its financial condition from the information provided to the City by the Redeveloper, or any other material change in the Redeveloper's financial capability to design, develop, finance, construct and operate the Project on the Property in furtherance of the City's consideration in executing this Agreement with the Redeveloper if such change will materially impair the Redeveloper's ability to perform its obligations pursuant to the terms of this Agreement.

(l) keep and maintain in good condition any improvements required under the Governmental Approvals, including but not limited to any landscaping required to be planted or cause an entity in control of the Project on the Property (i.e. condominium or homeowner association) to maintain such improvements until the Redeveloper's conveyance of title pursuant to this Agreement.

The covenants and restrictions listed within this Section shall be binding upon the Redeveloper, its successors and assigns and shall be recorded against the Property either by recording this entire Redevelopment Agreement or by recording a separate short form Declaration of Covenants and Restrictions consistent with the form Declaration attached to this Redevelopment Agreement at **Exhibit C**, within forty-five (45) Days of the Effective Date of this Agreement. To the extent that the City arranges for the recording of the Declaration of Covenants, the costs relating such recording shall be City Costs. These covenants and restrictions shall remain in effect for the period set forth in Section 7.2 below.

**7.2 Effect And Duration Of Redeveloper Covenants.** It is intended and agreed that the agreements and covenants set forth in this Agreement shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the City, its successors and assigns, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project or any part thereof. The

covenants shall cease and terminate when a Certificate of Completion for the Project has been issued, provided however, that the covenants in Sections 7.1(a) and (l) shall remain in effect without limitation as to time except as otherwise provided herein.

## **ARTICLE 8**

### **PROHIBITION AGAINST ASSIGNMENT AND TRANSFER**

**8.1 Prohibition Against Transfer Of Interests In Redeveloper, The Agreement Or The Property.** (a) The Redeveloper recognizes the importance of the Property to the general welfare of the community and that the identity of the owners of the Redeveloper and their qualifications are critical to the City in entering into this Agreement. The Redeveloper recognizes that it is because of such qualifications and identity that the City is entering into this Agreement with the Redeveloper, and, in so doing, the City is relying on the obligations of the Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by the Redeveloper hereunder. The City considers that a transfer of the ownership in the Redeveloper or of a substantial part thereof, or any other act or transaction involving or resulting in a significant change in the ownership of or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, is for practical purposes a transfer or disposition of the Project.

As a result, prior to completion of the Project on the Property, as evidenced by the issuance of a Certificate of Completion, except with the express prior written consent of the City's Business Administrator, the Redeveloper agrees for itself and all successors in interest that, unless otherwise permitted under this Agreement, there shall be no sale, transfer or assignment of (i) a controlling ownership interest in the Redeveloper, (ii) this Redevelopment Agreement, (iii) the Property, or (iv) any portion of the Project. Additionally, if either Terrence Murray or Yosef Magid, or both, relinquish their ownership interests in the Redeveloper, this Redevelopment Agreement, the Property, and/or in any portion of the Project, any of these events shall also constitute a prohibited sale, transfer or assignment that cannot occur without the express prior written consent of the Authorized City Representative which consent shall not be unreasonably withheld.

Nothing herein shall prohibit the Redeveloper, without express consent of the Authorized City Representative, from including an institutional Limited Partner to assist with any portion of the Project so long as the current owners of the Redeveloper maintain control of that portion of the Project (for purposes of this Article 8 of this Agreement, the term "control" shall have the same meaning as used in the definition of Affiliate included within Section 1.1 of this Agreement).

(b) In the event that the prior written consent of the City's Business Administrator is requested to a sale, transfer or assignment, the Redeveloper shall provide the City's Business Administrator with evidence of the proposed transferee and/or assignee's financial capacity and experience evidencing their ability to complete the Project on the Property and the City's Business Administrator shall thereafter either grant such consent or provide reasons as to his denial of consent. Any such approval for a sale, transfer or assignment will be granted only if the City's Business Administrator determines that (i) the assignee is capable of completing the Project (or any portion of the Project being assigned), and that (ii) the assignee is assuming all responsibilities of the Redeveloper under this Agreement as to the Project (or any portion of the Project being assigned).

**8.2 Exemption From Prohibited Transfers.** Notwithstanding the foregoing, with prior written notice from the Redeveloper to the City's Business Administrator, the following shall not constitute a prohibited transfer for purposes of Section 8.1 and shall not require the consent of the City's Business Administrator:

Conveyance of the Property or an interest therein and/or assignment by the Redeveloper of its rights under this Agreement, but only upon the following conditions: (a) if such conveyance is to third parties to which easements would conventionally be granted in connection with services (i.e. utility companies); or (b) if such conveyance is to an Affiliate, including but not limited to an urban renewal entity formed by the Redeveloper pursuant to N.J.S.A. 40A:20-4, provided that (i) the successor and assignee of the Redeveloper shall assume all of the obligations of the Redeveloper hereunder, but the Redeveloper shall remain primarily liable for the performance of the Redeveloper's obligations; (ii) a copy of the written instrument of conveyance and assignment and assumption of this Redevelopment Agreement shall be delivered to the City for review and approval prior to execution, which approval shall not be unreasonably withheld and shall not take longer than thirty (30) days, and once approved and executed, fully executed copies provided to the City promptly; and (iii) such conveyance or assignment does not violate any of the Government Approvals.

**8.3 Consent To Permitted Transfers.** The City hereby consents, without the necessity of further approvals from any entity, to the following permitted transfers: (a) a mortgage or related security granted by the Redeveloper to a mortgagee for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Agreement provided, however, that: (i) the Redeveloper shall give the City's Business Administrator at least fifteen (15) Days prior written notice of such permitted transfer, including a description of the nature of such permitted transfer, and the name(s) and address(es) of the transferee and any parties, individuals or entities involved in such permitted transfer; (ii) the Redeveloper shall simultaneously provide to the City's Business Administrator true and complete copies of all Construction Schedules and project budgets submitted to such mortgagee; and (iii) the amount of such mortgage, lien or other encumbrance does not exceed the Redeveloper's costs associated with the acquisition, development, construction and marketing of the Project (including soft costs); and (b) the sale and/or lease of the Property subsequent to the issuance of a Certificate of Completion for the Property.

**8.4 Prohibition Against Speculative Development.** Because of the importance of the development of the Property to the general welfare of the community, the Redeveloper represents and agrees that its acquisition of the Property and the Redeveloper's undertakings pursuant to this Redevelopment Agreement are, and will be used, for the purpose of the redevelopment or rehabilitation the Property as provided herein, and not for speculation in land holding.

**8.5 Information As To Ownership Of Redeveloper.** In order to assist in the effectuation of the purpose of this Article 8, within seven (7) Days of the Effective Date, the Redeveloper shall submit to the City an incumbency certificate of the Redeveloper as of the Effective Date, subscribed and sworn to by a manager of the Redeveloper, setting forth the name(s) and address(es) of all entities owning at least a 10% interest in the Redeveloper, and, as to each such entity, all entities owning at least a 10%

interest therein, such disclosure being intended to be the same disclosure that the Redeveloper will be required to make in connection with its Governmental Applications for land use approvals pursuant to N.J.S.A. 40:55D-48.2 and as is required under N.J.S.A. 52:25-24.2.

- (a) At least annually during the period between the Effective Date and Completion of the Project as evidenced by the issuance of a Certificate of Completion, and at such other times as reasonably requested by the City, the Redeveloper will submit to the City an updated incumbency certificate and keep same current.
- (b) The Redeveloper will immediately notify the City in writing of any and all changes whatsoever in the ownership of the Redeveloper, legal or beneficial, or of any other act or transaction involving or resulting in any change in such ownership or in the relative distribution thereof, or with respect to the identity of the parties in control of the Redeveloper or the degree thereof, of which it or any of its officers or members have been notified or otherwise have knowledge or information.
- (c) The Redeveloper shall, at such time or times as the City may request, furnish the City with a complete statement subscribed and sworn to by managing member of the Redeveloper, setting forth all of managing members, or other owners of equity interests of the Redeveloper and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Redeveloper's entity, their names and the extent of such interest.

## **ARTICLE 9**

### **MORTGAGE FINANCING**

**9.1 Mortgages, Liens, Or Other Encumbrances.** Prior to the issuance of a Certificate of Completion, the Redeveloper shall promptly notify the City of any encumbrance or lien that has been created on or attached to the Project on the Property, by mortgage or involuntary act of the Redeveloper or others, upon obtaining knowledge or notice of same.

**9.2 Obligations Of Mortgagee.** Notwithstanding any of the provisions of this Redevelopment Agreement, including but not limited to those which are or are intended to be covenants running with the land, the holder of any mortgage authorized by this Redevelopment Agreement (including any such holder who obtains title to the Property or any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through any such holder or (b) any other purchaser at foreclosure sale, other than the holder of the mortgage itself) shall in no way be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project for any of the Property or to guarantee such construction or completion; provided that nothing in this Article or any other Article or provision of this Redevelopment Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any project thereon, other than those uses provided or permitted under this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws.



**9.3 Notice Of Default To Mortgagee And Right To Cure.** Whenever the City shall deliver any notice or demand to the Redeveloper with respect to any breach or Default by the Redeveloper under this Redevelopment Agreement, the City shall at the same time deliver to each lender (or equity participant in Redeveloper) a copy of such notice or demand, provided that the Redeveloper has delivered to the City a written notice of the name and address of such lender and equity participant. The Redeveloper and Each such lender shall (insofar as the rights of the City are concerned) have the right, at its option, within thirty (30) Days after receipt of a Notice of Default, to cure any such Default with respect to that portion of the Project which is being financed by such lender and which is subject to being cured and to add the cost thereof to the debt and the lien which it holds, or to the obligations of the lessees under any lease-back or of the guarantor under any other conveyance for financing; provided, however, that if the Default is one that cannot be completely cured within thirty (30) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the lender promptly begins to take actions to correct the Default upon its receipt of notice thereof or, if required, upon its obtaining possession of the Property, and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than ninety (90) Days unless the City otherwise consents in writing to an extension of time.

## **ARTICLE 10**

### **EVENTS OF DEFAULT**

**10.1 Events Of Default.** Any one or more of the following shall constitute an Event of Default hereunder, subject to a Force Majeure Extension as provided elsewhere in this Agreement:

(a) Failure of the Redeveloper or the City to observe or perform any covenant, condition, representation, warranty or agreement hereunder, and any act or omission characterized elsewhere in this Agreement as a Default, and the continuance of such failure, act or omission for a period of thirty (30) Days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure, act or omission be remedied (a "Notice of Default"); provided, however, that if the Default is one that cannot be completely cured within thirty (30) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the defaulting party promptly begins to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than ninety (90) Days unless the non-defaulting party consents, in writing, to an extension of time to cure.

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

application, approval or consent of the Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive Days; or (ix) the Redeveloper shall have suspended the transaction of its usual business.

(c) The Redeveloper (i) fails to perform its obligations with respect to the implementation of the Project on the Property in accordance with this Agreement and the Construction Schedule, the Redevelopment Plan, Governmental Approvals or Applicable Laws, including but not limited to failure to Commence Construction or Complete Construction in accordance with the Construction Schedule related to the Project; or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the City (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension shall not be cured, ended, or remedied within thirty (30) Days after receipt by the Redeveloper of a Notice of Default; provided, however, that if the Default is one that cannot be completely cured within thirty (30) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the Redeveloper promptly begins to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than ninety (90) Days unless the non-defaulting party consents, in writing, to an extension of time to cure.

(d) There is a transfer of the Property, or interest therein, or an assignment of Redeveloper's interest in this Agreement that does not comply with the requirements of Article 8.

(e) The material breach of any warranty or representation made by the Redeveloper or the City.

(f) The violation by the Redeveloper of any covenant or restriction contained in the Declaration of Covenants and Restrictions, which violation is not cured within thirty (30) Days after receipt by the Redeveloper of a Notice of Default from the City; provided, however, that if the Default is one that cannot be completely cured within thirty (30) Days after receipt of the Notice of Default, it shall not be an Event of Default as long as the Redeveloper promptly begins to take actions to correct the Default upon its receipt of notice thereof and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than ninety (90) Days unless the non-defaulting party consents, in writing, to an extension of time to cure.

(g) The Redeveloper's failure to pay or delinquency in the payment of real property taxes or assessments or payments in lieu of taxes applicable to the Property conveyed to Redeveloper pursuant to the terms of this Agreement, which violation is not cured within thirty (30) Days after receipt by the Redeveloper of a Notice of Default from the City.

(h) Failure of the Redeveloper or the City to observe or perform any covenant, condition, representation, warranty or agreement in any other contracts between the Parties, including but not limited to the Redeveloper's failure to fund or to replenish the funding of the Escrow Agreement or to comply with any other obligations set forth within the Escrow Agreement, and any act or omission characterized elsewhere in those contracts as a Default (subject to any cure provisions in such contracts).

- (i) The Redeveloper's failure to submit a Phasing Proposal to the City within the deadlines set forth within Section 2.4(d) of this Agreement and the continuance of such failure, act or omission for a period of thirty (30) Days after the end of any deadlines; provided, however, that if the Default is one that cannot be completely cured within thirty (30) Days after the end of such deadline, it shall not be an Event of Default as long as the defaulting party promptly begins to take actions to correct the Default and is proceeding with due diligence to remedy the Default as soon as practicable, but in no event longer than ninety (90) Days unless the non-defaulting party consents, in writing, to an extension of time to cure.

**10.2 Remedies Upon Event Of Default.** Whenever any Event of Default of the Redeveloper shall have occurred, the City may, on written notice to the Redeveloper (a "Termination Notice"), terminate this Agreement and the Redeveloper's designation as the exclusive Redeveloper for the Property, as to the particular Phase or building upon which the Event of Default occurred, or as to any Phase that is not Capitalized, and take whatever other action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper under this Agreement. In addition, the Redeveloper shall be responsible for any and all costs or expenses incurred by the City, including reasonable attorney's fees, incurred in connection with the termination of this Agreement, and all other actions taken at law or in equity by the City to enforce the terms of this Agreement. Whenever any Event of Default of the City shall have occurred, the Redeveloper, after issuance of a Termination Notice to the City, may take whatever action at law or in equity as may appear necessary or desirable to enforce the terms of this Agreement.

**10.3 Force Majeure Extension.** For the purposes of this Agreement, neither the City nor the Redeveloper shall be considered in breach or in Default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the City or the Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. To invoke the tolling provisions hereunder, the party invoking the provisions hereof must give written notice to the other party of the occurrence of a Force Majeure Event as soon as practicable but in no event more than ninety (90) Days after the occurrence thereof.

**10.4 No Waiver.** Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by the City in asserting any of its rights or remedies as to any Default by Redeveloper, shall not operate as a waiver of such Default, or of any such rights or remedies, or to deprive the City of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**10.5 Remedies Cumulative.** No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing

at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

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

**10.7 Delivery and Assignment of Plans upon Termination.** In the event of a termination of the Redeveloper as redeveloper, Redeveloper shall promptly deliver to the City, and assign to the City, all of its right, title and interest in and to any Governmental Approvals, Plans, drawings, surveys, studies, test, investigations, permits, approvals and all other Project documents for the Property to the extent that such documents are in the possession and control of the Redeveloper or its consultants, contractors, engineers, architects or agents, and shall upon request execute assignments of all Project documents for the Property and other rights and agreements pertaining to the Project on the Property in favor of the City.

**10.8 Redeveloper Termination Rights.** It is expressly provided and understood among the Parties that the Redeveloper may, at any time prior to issuance of any building permits for any Phase, terminate this Agreement, or any redevelopment agreement executed in connection with any such Phase, and its status as Redeveloper without any further obligations or liabilities under the Agreement.

## **ARTICLE 11** **INSURANCE**

**11.1 Insurance – General Requirements.** As of the Effective Date of this Agreement and at all times thereafter during the Remediation, and/or construction of the Project, and until such time as the City shall issue a Certificate of Completion for the Project in accordance with the provisions of this Agreement, the Redeveloper shall maintain, or cause to be maintained by its contractors, who shall name the City as an additional named insured and provide proof of same, insurance for the mutual benefit of the City and the Redeveloper as their interests may appear:

(a) Loss or damage by fire, and such other risks as may be included in the standard form of extended coverage insurance from time to time available, in amounts sufficient to prevent the City or Redeveloper from becoming a co-insurer within the terms of the applicable policies, and in any event, in amounts not less than 100% of the then full insurable value (as hereinafter defined) of the Project;

(b) All claims for bodily injury and property damage, under a policy of comprehensive general public liability insurance, with such limits as may reasonably be required by the City from time to time, but not less than \$2,000,000.00 per occurrence in respect of injury or death and \$4,000,000.00 aggregate general liability policy;

(c) Workers compensation insurance in an amount not less than \$1,000,000.00 or as statutorily may be required under Applicable Laws for employees of Redeveloper and its contractors;

(d) Builder's risk insurance; and

(e) Such coverage may be maintained through policies obtained by contractors retained by the Redeveloper so long as such policies identify the Redeveloper and the City as additional insureds thereunder.

The Redeveloper's obligation to provide insurance, or to arrange for its contractors to provide insurance, as to the Project on the Property shall cease upon the issuance of a Certificate of Completion for the Project.

The Redeveloper shall furnish the City with satisfactory proof that it has obtained all applicable insurance as described in this section from insurance companies or underwriters reasonably satisfactory to the City. The Redeveloper shall furnish to the City certificates of the preceding types of insurance showing the type, amount, and class of operations insured and the effective and expiration dates of the policies. The certificates shall be submitted promptly prior to the date that the Redeveloper enters onto the Property pursuant to the terms of this Agreement and the Redeveloper shall not be entitled to enter onto the Property or to exercise any other rights hereunder until the certificate has been received and verified. Until construction of the Project on the Property is completed and a Certificate of Completion issued, the Redeveloper shall, on an annual basis, provide the City with proof that the aforesaid insurance policies are being maintained.

**11.2 Insurance-Restrictions.** All insurance provided for under this Agreement will be procured under valid enforceable policies issued by insurers rated "A" or better by A.M. Best and reasonably acceptable to the City. On or before the Closing Date for the Property, a certificate procured by the Redeveloper pursuant to Section 11.1 (or certificates thereof) will be delivered to the City at least thirty (30) Days prior to the expiration date of any policy, the original renewal policy (or certificates thereof) for such insurance will be delivered by the Redevelopers to the City as aforesaid, together with satisfactory evidence of payment of the premium thereon. All policies referred to in Section 11.1 will, to the extent then generally obtainable, contain agreements by the insurers that (a) any loss will be payable to the City, notwithstanding any act or negligence of the Redeveloper which might otherwise result in forfeiture of said insurance, (b) such policies may not be canceled except upon thirty (30) Days prior written notice to each named insured and loss payee, and (c) the coverage afforded thereby must not be affected by the performance of any work in or about the Property.

**11.3 City as Insured.** All policies of insurance required herein shall name the City as an insured, as its interests may appear.

**11.4 Additional Insurance.** Nothing in this Article shall prevent the Redeveloper from taking out insurance of the kind and in the amounts and with companies provided for under Section 11.1 under a blanket insurance policy or policies which can cover other property as well as the Property; provided, however, that any such policy of insurance provided for under Section 11.1 must (a) specify therein, or the Redeveloper shall furnish the City with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Project, which amount will not be less

than the amount required by Section 11.1 to be carried, and (b) not contain any clause which would result in the insured thereunder being required to carry insurance with respect to the property covered thereby in an amount equal to a minimum specified percentage of the full insurable value of such property in order to prevent the insured therein named from becoming a co-insurer of any loss with insurer under such policy.

**11.5 Deductibles.** All insurance provided under this Article 11 may contain loss deductible clauses in such maximum amounts as the City approves in its reasonable discretion.

**11.6 Subrogation.** All insurance policies obtained pursuant to this Article must include waivers of subrogation against the City and the Redeveloper.

## **ARTICLE 12** **COMMUNITY INITIATIVES**

### **12.1 First Source Employment During and After Construction; First Source Pass Through.**

(a) If the Redeveloper, its successors and/or assigns and/or any subsequent purchasers and/or any third party management companies retained to manage the Property, intend to hire new or replacement employees, for either part time or full time employment, for the construction of the Project or for the operation of the Project once it is constructed, the Redeveloper, its successors and/or assigns and/or subsequent purchasers and/or any third party management companies retained to manage the Property, shall make good faith efforts to hire City residents to fill these jobs as specified below. The City, through the City's Office of Human Resources and/or a non-profit entity to be named by the City as the job referral center (hereinafter, the "Job Referral Center"), shall be available to assist in providing qualified candidates for the above 'first source' interviewing and hiring. The good faith efforts by Redeveloper, its successors and/or assigns and/or subsequent purchasers and/or any third-party management companies retained to manage the Property, shall include, but not be limited to, the following: (1) written notification to the Job Referral Center of any new full or part-time job opportunities at least five (5) business Days prior to the commencement of the interviewing process. Such notification shall include, but not be limited to, the number of positions available, projected start date, estimated level of compensation, the skills and experience required for successful applicants, and the anticipated term of employment; (2) hold a first source interview window of at least five (5) business Days during which only candidates referred by the Job Referral Center shall be interviewed. These first source interviews shall take place prior to interviewing candidates from the general public; (3) cooperate with efforts to recruit City residents for employment opportunities, including participation in job fairs or similar events held by the City; and (4) meet with appropriate City officials to determine the status of recruitment efforts and to plan future employment recruitment activities. Redeveloper, its successors and/or assigns and/or subsequent purchasers and/or any third-party management companies retained to manage the Property, shall maintain records of this first source notification, interviewing and hiring activity for review by the City upon the City's written request.

(b) Upon completion of the Project, as evidenced by the receipt of a Certificate of Occupancy, the Redeveloper and its successors and/or assigns and/or any subsequent purchasers, shall include a provision in all of their non-residential leases for space in a structure constructed as part of the Project providing that:

“If the lessee (tenant) intends to hire a new or replacement employee for either part time or full-time employment, the lessee shall use good faith efforts to hire City residents to fill those jobs as specified below. The City, through the Job Referral Center, shall be available to assist in providing qualified candidates for the above ‘first source’ interviewing and hiring. The lessee’s good faith effort shall include, but not be limited to: (1) written notification to the Job Referral Center of any new full or part-time job opportunities at least five (5) business Days prior to the commencement of the interviewing process. Such notification shall include, but not be limited to, the number of positions available, projected start date, estimated level of compensation, the skills and experience required for successful applicants, and the anticipated term of employment; (2) hold a first source interview window of at least five (5) business Days during which only candidates referred by the Job Referral Center shall be interviewed. These first source interviews shall take place prior to interviewing candidates from the general public; (3) cooperate with efforts to recruit City residents for employment opportunities, including participation in job fairs or similar events held by the City; and (4) meet with appropriate City officials to determine the status of recruitment efforts and to plan future employment recruitment activities. Lessee will maintain records of this ‘first source’ notification, interviewing and hiring activity (including but not limited to a written description of the reasons for the decision not to hire any candidate referred by the Job Referral Center for review by the City upon the City’s written request. Failure of the lessee to comply with this ‘first source’ requirement shall be considered by the lessor to be a material breach of the lease and shall entitle the lessor to exercise any and all remedies provided for in the lease for a material breach including eviction.”

(c) Upon written notice from the City to the Redeveloper or its successors and/or assigns and/or any subsequent purchasers that the tenant is not using good faith efforts to hire City residents and is not in compliance with the first source provisions of the lease, the Redeveloper and its successors and/or assigns and/or any subsequent purchasers agree to enforce the lease provisions set forth within Section 12.1(b) above to ensure compliance by all lessees. The Redeveloper and its successors and/or assigns and/or any subsequent purchasers also agree to include the terms of this Section 12.1 in any contract for sale or transfer of the Property or any structure constructed as part of the Project to any other person or entity and to explicitly provide within such contract that these terms shall survive the closing and that the City shall be a third party beneficiary as to the enforcement of these terms.

(d) In addition to any other remedy provided under this Redevelopment Agreement and any other remedy provided by law, the Parties hereby agree that the provisions of this Section 12.1 may be enforced by the City through specific performance.

## **12.2 Affirmative Action.**

The Redeveloper, for itself and its successors and assigns, agrees that during the construction of the Project:

(1) It will comply with the provisions of the Affirmative Action Language contained herein.

(2) When hiring workers in each construction trade, or when engaging contractors, the Redeveloper agrees, pursuant to the City's request, to use its best efforts to employ:

a. Minority workers in each construction trade; or

b. Minority contractors consistent with the following goals: (as to workers) - a goal of employing twenty (20%) percent Minority workers out of the total number of workers employed as part of the work force in connection with the Project; or (as to contractors) - a goal of contracting with Qualified Minority Business Enterprises for twenty percent (20%) of the dollar value of the hard costs of total procurements to be awarded in connection with the Project.

c. For purposes of this Section, the term "Minority" shall mean persons who are either one or a combination of: (i) African American (a person having origins in any of the black racial groups of Africa), (ii) Alaskan Native and/or American Indian (a person having origins in any of the original peoples of North America), (iii) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, Hawaii or the Pacific Islands), (iv) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race), or (v) Female (a person of the female gender). The term "Qualified Minority Business Enterprise" shall mean a business which has its principal place of business in New Jersey, is independently owned and operated, is at least 51% owned and controlled by Minority group members and is qualified.

(3) It will undertake a program of local preference to facilitate entering into contracts with and/or purchasing goods and services from local merchants and businesses located within the City.

(4) It will endeavor to comply with the above stated goals by, among other things, considering employment of applicants, contractors and vendors who are from a pool registered by the City or its designee.

(5) Where applicable, it will at all times conform to the laws, regulations, policies of the State, the federal government, and other governmental bodies with respect to affirmative action and equal employment opportunities requirements, and particularly those which are imposed as a condition to receipt of any government-sponsored funding for the Project, notwithstanding any other provision of this Redevelopment Agreement to the contrary.

**12.3 Compliance and Reporting.** The obligations contained in Sections 12.1 and 12.2 shall be binding on all contractors and subcontractors to the extent that any work is done by any contractor or subcontractor, and any contract entered into by the Redeveloper (or any other person or entity) in respect of the construction of the Project shall so provide. The Redeveloper covenants to enforce (and cause any other person or entity to enforce) its contracts with its contractors and subcontractors if such parties are not in compliance with Sections 12.1 and 12.2.



**ARTICLE 13**  
**OTHER REDEVELOPER OBLIGATIONS**

**13.1 Defense/Indemnification.** (a) Except if arising or caused by the gross negligence or willful misconduct of the City or any of its contractors, employees, agents or invitees, the Redeveloper agrees to indemnify and hold the City and its agents, employees and/or representatives harmless against any litigation filed against the City and its agents, employees and/or representatives challenging any aspect of the Agreement or the Project, including but not limited to, the validity of the Project or of any governmental action taken by the City to effectuate the Project, including but not limited to the City's entry into this Agreement and the City's transfer of the Property to the Redeveloper thereunder. If such litigation is filed, the City shall retain control over the defense of such litigation and shall appoint counsel of its choice to defend the City in such litigation. The Redeveloper shall reimburse the City for the City's reasonable costs in defending such litigation and shall indemnify and hold the City harmless against any monetary judgment entered against the City in such litigation. The City shall promptly inform the Redeveloper of the filing of any litigation challenging the validity of the Project or of any governmental action taken by the City to effectuate the Project and shall have a continuing obligation to keep the Redeveloper apprised of the status of such litigation until the litigation is concluded.

(b) Using the Redeveloper's counsel or such other counsel as designated by the Redeveloper or the Redeveloper's insurers, the Redeveloper agrees to indemnify and hold harmless the City and its agents, employees and/or representatives, against, and the Redeveloper shall pay any and all liability, loss, cost, damage, claims, judgment, or expenses, of any and all kinds or nature and however arising, imposed by law, except if arising or caused by the gross negligence or willful misconduct of the City or any of its contractors, employees, agents or invitees, which the City may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, relating to the Redeveloper's activities in constructing the Project on the Property or based upon or arising out of contracts entered into by the Redeveloper which relate to the construction of the Project, whether as a result of Redeveloper's Default or out of the Redeveloper's acquisition, construction or installation of the Project on the Property, including but not limited to any all claims by workmen, employees or agents of the Redeveloper and unrelated third parties, which claims arise from the construction of the Project on the Property, the maintenance and functioning of improvements installed pursuant to the Project on the Property, or any other activities of the Redeveloper during the construction of the Project on the Property. The Parties agree that neither the City nor its directors, officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that the Redeveloper shall save the City and its directors, officers, agents, servants or employees harmless from any claim or suit by a third party in connection with the Redeveloper's obligations under this Agreement, except for any claim arising from the gross negligence or willful acts of the City or its directors, officers, agents, servants or employees.

(c) The Redeveloper, at its own cost and expense, shall defend any and all claims, suits and actions, as described more fully within Section 13.1(b), which may be brought or asserted against the City and its directors, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance which may be

provide for in this Agreement from its obligation to defend the Redeveloper, the City, and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.

(d) The Redeveloper releases the City from, agrees that the City shall not be liable for, and agrees to hold the City harmless against any expense or damages incurred because of any litigation commenced as a result of any action taken by the City with respect to this Agreement and the Project on the Property, except if caused by the gross negligence or willful misconduct of the City or its contractors, directors, officers, agents, servants or employees.

(e) Upon the commencement of any litigation referred to in this Section, or if and when the City incurs any costs, expenses or damages described in this Section, the City shall give the Redeveloper prompt written notice thereof.

(f) All covenants, stipulations, promises, agreements and obligations of the City contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the City and not of any member, officer or employee of the City in his or her individual capacity and no recourse shall be had for any claim based hereunder against any member, officer or employee of the City or any natural person executing this Agreement.

(g) The covenants and other provisions of this Section shall survive the termination of this Agreement as to any and all claims arising from this Agreement or the Project.

**13.2 Security Cameras.** The Redeveloper shall, at its sole cost, cause the purchase and installation of security cameras on the exterior of the Property or in the vicinity of the Property at the direction of and at locations determined by the City. The City shall determine the number, locations and date of installation of the cameras. The Redeveloper shall be solely responsible for all costs associated with the purchase and installation of the security cameras, including but not limited to the cameras, the weather casing, all parts necessary for integration into the City's wireless network, and installation services. After the security cameras have been installed at the Redeveloper's expense, the City shall be solely responsible for all costs associated with the maintenance and replacement of any camera, when deemed necessary and appropriate by the City.

## **ARTICLE 14** **MISCELLANEOUS**

**14.1 Real Estate Taxes and Financial Agreement.** The Redeveloper shall be responsible for the payment of real estate taxes and any payment in lieu of taxes to the City on all parcels of the Property which it owns from the date of its ownership in the manner and at such times as are required by law or the Financial Agreement.

The Parties acknowledge that redevelopment of the Sites is not financially feasible without the implementation of a long term tax exemption, and the City agrees to enter into financial agreement(s) with the Redeveloper providing for a payment in lieu of taxes pursuant to the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1, et seq., as amended and supplemented (the "Exemption Law") and the Redevelopment Area Bond Financing Law, N.J.S.A. 40A: 12A-64, et seq (the "RAB Law")

for the Property, provided the Redeveloper submits an application (the "Exemption Application") pursuant to the Exemption Law and the City's ordinances regarding the same. The Exemption Application will provide such information as required by the Exemption Law, the RAB Law and the City's ordinances. The City will, upon adoption of appropriate ordinance(s) required under the Exemption Law and the RAB Law, enter into a financial agreement setting forth the terms of the payments in lieu of taxes consistent with the requested terms set forth in such financial agreement which shall be an exhibit to the Redeveloper's application (the "Financial Agreement"), which terms regarding duration of the tax exemption and the amount of annual service charges shall be based upon the need for such as is set forth in the Exemption Application, and approving the issuance of Redevelopment Area Bonds (the "RAB Bonds") pursuant to the RAB Law to finance various infrastructure improvements to the Property, which RAB Bonds will be secured solely by payments made under the Financial Agreement. The RAB Bonds shall be issued in such principal amount as deemed necessary by the City and the payments under the Financial Agreement shall be increased to cover debt service on the RAB Bonds.

**14.2 Cooperation.** The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The City further agrees to cooperate as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining financing for the Project; provided, however, that all costs and expenses of such cooperation by the City shall constitute City Costs. The City further agrees to take all actions reasonably requested by Redeveloper to expedite the Project, including without limitation designating City staff liaisons to assist the Redeveloper in interacting with City departments, commissions, boards, authorities and the like.

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

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

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

**14.6 Non-Liability of Officials and Employees of the Redeveloper.** Unless otherwise obligated hereunder as a guarantor, no member, officer, shareholders, director, partner or employee of the Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of the Redeveloper or the members of the Redeveloper shall be personally liable to the City, or any successor in interest, in the event of any Default or breach by the Redeveloper or for any amount which

may become due to the City, or their successors, on any obligation under the terms of this Redevelopment Agreement.

**14.7 Inspection of Books and Records.** The City shall have the right, upon reasonable written notice to the Redeveloper, to inspect the books and records of the Redeveloper pertinent to the purposes of this Redevelopment Agreement. Such inspections must be performed at a time and in a manner so as to not unreasonably interfere with the business operations of the party whose books and records are being inspected.

**14.8 Modification of Agreement.** No amendment to this Agreement shall be considered binding on either of the Parties unless such amendment is in writing and specifically recites that it is being entered into by and between the City and Redeveloper with the specific intention to modify the terms of this Agreement. In the event that any such amendment is agreed to by the Parties, such amendment shall not modify, change or amend any portion of this Agreement except those specific portions that are recited in such amendment as being modified by such amendment. All other portions of this Agreement not so specifically amended in writing shall remain in full force and effect. No waiver by the City or the Redeveloper of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official on behalf of both the City and the Redeveloper.

**14.9 Notices and Demands** A notice, demand or other communication under this Redevelopment 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 (with receipt acknowledged), or by facsimile transmission (with 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 Section.

**As to the City:**

The City of Orange Township  
29 North Day Street  
Orange, New Jersey 07050

**Attention:**

Christopher Hartwyk  
Business Administrator

Phone: 973-266-4010  
Fax: 973-677-7847  
Email: [chartwyk@ci.orange.nj.us](mailto:chartwyk@ci.orange.nj.us)

**Attention:**

Christopher Mobley  
Planning and Economic Development

Phone: 973-266-4061  
Fax: 973-677-7847  
Email: [cmobley@ci.orange.nj.us](mailto:cmobley@ci.orange.nj.us)

**Attention:**

Laquana Best  
Planning and Economic Development

Phone: 973-266-4201  
Fax: 973-677-7847  
Email: [lbest@ci.orange.nj.us](mailto:lbest@ci.orange.nj.us)

with copies to:

Christopher M. Walrath, Esq.  
Dilworth Paxson LLP  
4 Paragon Way, Suite 400  
Freehold, NJ 07728

As to the Redeveloper:

SYMREC Orange JV, LLC  
211 Boulevard of the Americas, Suite 109  
Lakewood, New Jersey 08701

with copies to:

Kellen F. Murphy, Esq.  
Murphy, Schiller & Wilkes, LLP  
24 Commerce Street, 12<sup>th</sup> Floor  
Newark, New Jersey 07102

From time to time either party may designate a different person or address for all the purposes of this notice provision by giving the other party no less than ten (10) Days' notice in advance of such change of address in accordance with the provisions hereof.

**14.10 Titles of Articles and Sections.** The titles of the several Articles and Sections of this Redevelopment Agreement, as set forth 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.

**14.11 Severability.** The validity of any Articles and Sections, clauses or provisions of this Redevelopment Agreement shall not affect the validity of the remaining Articles and Sections, clauses or provisions hereof.

**14.12 Successors Bound.** This Redevelopment Agreement shall be binding upon the respective Parties hereto and their permitted successors and assigns.

**14.13 Governing Law; Jurisdiction and Venue.** This Redevelopment Agreement shall be governed by and construed and enforced pursuant to the laws of the State of New Jersey, without regard to its conflict of laws principles. Any action hereunder shall be brought exclusively in a court of the State of New Jersey sitting in Essex County, New Jersey, and the Redeveloper hereby waives all objections to such venue. Notwithstanding the above, the Parties may, upon mutual written consent, pursue alternate dispute resolution (such as mediation or binding arbitration) to attempt to resolve any issues or disputes arising from this Agreement.

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

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

**14.16 Entire Agreement.** With the exception of the Escrow Agreement between the Parties and the MOU between the Parties and the Property Owner, each of which are independent and separate agreements which shall remain in full force and effect, this Redevelopment 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.

**14.17 Waiver.** No waiver made by any party with respect to any obligation of any other party under this Redevelopment Agreement shall be considered a waiver of any other rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

**14.18 Authorization.** Each of the Parties hereto which are business entities represent and warrant that each has complied with all necessary formalities and the undersigned signatory has been duly authorized to execute this Agreement on behalf of such entity.

[remainder of page intentionally left blank]

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

**ATTEST:**

**SYMREC ORANGE JV, LLC**

\_\_\_\_\_  
Witness

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

**ATTEST:**

**THE CITY OF ORANGE TOWNSHIP**

\_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Dwayne D. Warren, Esq., Mayor

**APPROVED AS TO FORM**

\_\_\_\_\_  
City Attorney

