

**AMENDED AND RESTATED  
REDEVELOPMENT AGREEMENT**

**by and between**

**TOWN OF MORRISTOWN**

**And**

**MORRISTOWN DEVELOPMENT, LLC  
(Speedwell Avenue Redevelopment Project)**

**Dated: \_\_\_\_\_, 2012**

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**THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT**, made as of the \_\_\_ day of \_\_\_\_\_, 2012, (the "Amended Agreement") by and between the **TOWN OF MORRISTOWN**, a body corporate and politic of the State of New Jersey (the "State") with offices located at 200 South Street, County of Morris, Town of Morristown, New Jersey 07963-0914 together with any successor public body hereinafter designated by or pursuant to law (hereinafter referred to as the "Town"), and **MORRISTOWN DEVELOPMENT, LLC**, a limited liability company formed and operated pursuant to the laws of the State of Delaware, and authorized to conduct business in the State, with corporate offices located at 135 Route 202/206, 3rd Floor, Bedminster, County of Somerset and State of New Jersey 07921 (the "Redeveloper") (the Town and the Redeveloper are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties").

**RECITALS:**

**A.** The Town Council of the Town of Morristown in its capacity as the municipal governing body (hereinafter referred to as the "Governing Body") is responsible for implementing redevelopment plans and carrying out redevelopment projects pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (hereinafter referred to as the "Redevelopment Law").

**B.** The Governing Body, pursuant to Resolution R-148-00, adopted on October 30, 2000, directed the Town Planning Board (the "Planning Board") to undertake a preliminary investigation in order to make recommendations as to whether certain parcels of property, including Tax Block 5803 and portions of Tax Blocks 5001 and 5702 (the "Study Area"), may be designated as an "area in need of redevelopment" pursuant to the Redevelopment Law.

**C.** The Planning Board commissioned a study by Phillips Preiss Shapiro Associates to determine whether the Study Area may be designated as an "area in need of redevelopment" pursuant to the Redevelopment Law.

**D.** Phillips Preiss Shapiro Associates prepared a report entitled "Redevelopment Study for Three Select Areas within the Town of Morristown, New Jersey," dated December

2002, which concluded that certain lots within the Study Area met the statutory criteria in the Redevelopment Law for designation as an “area in need of redevelopment.”

**E.** After public hearings held on April 28, 2003, May 22, 2003, July 24, 2003 and August 28, 2003, the Planning Board accepted the conclusions of Phillips Preiss Shapiro Associates and recommended to the Governing Body, pursuant to a Planning Board resolution adopted on August 28, 2003, that the recommended lots within the Study Area be designated as an “area in need of redevelopment” pursuant to the Redevelopment Law.

**F.** Following the preliminary investigation conducted by the Planning Board, including the public hearing, the Governing Body designated the Study Area as “an area in need of redevelopment”, by adoption of Resolution No. 31-04, on February 10, 2004, in accordance with the Redevelopment Law.

**G.** The lots designated by the Governing Body as an “area in need of redevelopment” (the “Redevelopment Area”) are specified in **Exhibit A** annexed hereto, are commonly referred to as the Speedwell Avenue Redevelopment Area and are depicted on the map annexed hereto as **Exhibit B**.

**H.** On August 8, 2007, pursuant to Ordinance O-30-07, the Governing Body introduced a redevelopment plan relating to the Redevelopment Area entitled “Speedwell Avenue Redevelopment Plan”, prepared by Phillips Preiss Shapiro Associates and dated August 2007 (hereinafter referred to as the “Original Redevelopment Plan”).

**I.** Pursuant to the Redevelopment Law the Governing Body referred the Original Redevelopment Plan to the Planning Board, which reviewed the Original Redevelopment Plan and recommended to the Governing Body that it approve and adopt the Original Redevelopment Plan by adopting Ordinance O-30-07.

**J.** The Governing Body (i) adopted the Original Redevelopment Plan on September 18, 2007, pursuant to Ordinance O-30-07, (ii) subsequently amended the Original

Redevelopment Plan on November 29, 2007, pursuant to Ordinance O-38-07, and (iii) further amended the Original Redevelopment Plan on October 13, 2011, pursuant to Ordinance O-19-11 (collectively, as amended, the “Redevelopment Plan”), which last amendment was adopted in order to, among other things, address certain amendments and modifications to the Parties’ agreement, as embodied in this Amended Agreement.

**K.** Trammell Crow Residential submitted to the Town a concept proposal for a mixed use project that would be developed and constructed in multiple phases within the Redevelopment Area.

**L.** The Governing Body reviewed and accepted the concept proposal for redevelopment submitted by Trammell Crow Residential, and the Governing Body, by Resolution R-135-06, adopted on July 20, 2006, conditionally designated Trammell Crow Residential to serve as the redeveloper of the Redevelopment Area.

**M.** Trammell Crow Residential formed the Redeveloper for the purpose of redeveloping the Redevelopment Area (as defined in Article I of this Amended Agreement). The Redeveloper’s members are NJ 106 Morristown Limited Partnership, a Delaware limited liability partnership (an Affiliate of Trammell Crow Residential) and PR II Morristown Apartments LLC, a Delaware limited liability company (an Affiliate of The Prudential Insurance Company of America) as more particularly described in Exhibit C attached hereto.

**N.** The Town and the Redeveloper have fulfilled the conditions of the conditional designation set forth in the Governing Body’s Resolution R-135-06, and by approval and execution of that certain “Redevelopment Agreement”, dated as of January 22, 2009, by and between the Town and the Redeveloper (the “Original Agreement”), which was authorized pursuant to Resolution R-177-08, adopted by the Governing Body on December 4, 2008, the Redeveloper was designated as exclusive redeveloper of the Project Premises (as defined in Article I of this Amended Agreement), subject to the terms and conditions of the Original Agreement, and the Original Agreement set forth the terms and conditions governing the scope of the redevelopment to be undertaken by the Redeveloper.

**O.** In light of the importance of the Project to the Town, the Parties acknowledge that proceeding with each Phase thereof in a timely fashion is essential. Furthermore, in light of the importance to the Town and the Redeveloper of the timely Completion (as such term is defined in Article I hereof) of each Phase of the Project, the Town and the Redeveloper have prepared and agreed upon separate redevelopment process timelines for each Phase, which respective redevelopment process timelines are hereinafter collectively referred to as the “Redevelopment Project Schedule” and are attached and annexed hereto as a single schedule in **Exhibit D**.

**P.** The Governing Body believes that the redevelopment of the Project Premises in the manner agreed to by the Parties herein is in the vital and best interests of the community and promotes the health, safety, morals and welfare of the Town’s residents and is in accord with the public purpose and provisions of the Redevelopment Law and all other Applicable Laws.

**Q.** The Town and the Redeveloper have determined to make certain amendments to the Original Agreement that they deem to be to their mutual best interest and in furtherance of the public purposes of the Original Agreement and the Redevelopment Plan, which amendments are embodied in this Amended Agreement and which Amended Agreement is (from and after the Effective Date) intended to replace and supersede the Original Agreement in its entirety.

**NOW, THEREFORE,** in consideration of the mutual promises and covenants contained herein and the undertakings of each Party to the other and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, mutually covenant, promise and agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**1.01 Defined Terms.** The Parties hereto agree that, unless the context otherwise specifies or requires, the following terms or phrases shall have the meanings specified below, such definitions shall be equally applicable to and shall include the corresponding masculine, feminine and neutral forms, and the singular and plural forms of such terms or phrases and the

use of the upper or lower case initial letter of each word contained in such terms or phrases. Unless otherwise noted, the words “include”, “includes” and “including” when used in this Amended Agreement shall be deemed to be followed by the phrase “without limitation”.

**Acquisition Costs:** Shall have the meaning specified in Section 2.11 of this Amended Agreement.

**Acquisition Notification:** Shall mean the written notification from the Redeveloper to the Town requesting that the Town acquire the parcel(s) of property identified therein either through negotiation and contract or through the exercise of the Town’s power of eminent domain.

**Administrative and Professional Costs Escrow Agreement:** Shall have the meaning specified in Section 2.17 of this Amended Agreement.

**Additional Phase One Public Improvements:** Shall have the meaning specified in Section 3.09(d) of this Amended Agreement.

**Affiliate:** Shall mean, with respect to any Person, any other Person directly or indirectly controlling or controlled by, or under common Control with such Person.

**Affordable Units:** Shall mean the affordable residential housing units to be constructed by the Redeveloper as part of the Project in accordance with this Amended Agreement and Applicable Law.

**Agent:** Shall have the meaning specified in Section 14.18 of this Amended Agreement.

**Alternate Phase Three Project:** Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**Alternate Redeveloper:** Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**Amended Agreement:** Shall mean this Amended and Restated Redevelopment Agreement between the Town and the Redeveloper for the redevelopment of the Project Premises within the Redevelopment Area situated within the Town of Morristown, County of Morris and State of New Jersey.

**Appeal Period:** Shall mean the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any of the Governmental Approvals, and includes the period for filing an appeal to the appellate court with jurisdiction after entry of a judgment or decision by a lower court or administrative agency.

**Applicable Law:** Shall mean, individually and collectively, as the case may be, any and all federal, State and local laws, rules, regulations, statutes, resolutions, orders and ordinances, including but not limited to the Redevelopment Plan, the Redevelopment Law, the Municipal Land Use Law, the Uniform Construction Code, and the regulations promulgated by the Council on Affordable Housing, applicable to the Project, the Project Premises, or any aspect thereof.

**Certificate of Completion:** Shall have the meaning specified in Section 4.10 hereof.

**Certificate of Occupancy:** Shall mean the written certificate issued by the Town's construction official in accordance with **N.J.S.A. 52:27D-133** relative to a residential unit or unit of commercial/retail space constructed as a part of the Project indicating that the subject residential unit or unit of commercial/retail space has been Completed in accordance with the construction permit, the Uniform Construction Code and the Applicable Law(s).

**Closing Date(s):** Shall mean, individually and/or collectively, as the case may be, the Phase One Closing Date, the Phase Two Closing Date and the Phase Three Closing Date.

**Closing Statement:** Shall have the meaning specified in Section 5.14(b) of this Amended Agreement.

**Commencement of Construction (also referred to as “Commence Construction”):**

Shall mean the undertaking by the Redeveloper of any actual physical demolition, clearing, environmental remediation, mitigation or clean-up, or any other site preparation work, construction of any new structure, Improvements, Public Improvements and other infrastructure included as a component of any Phase of the Project.

**Complete, Completed, or Completion:** Shall mean, with respect to each Phase (i) that all work has been completed and installed in accordance with the Governmental Approvals, the Final Site Plans, the Final Site Plan Approvals, and Applicable Law other than details of construction, decoration and mechanical adjustments which are minor in character and the non-completion of which will not unreasonably interfere with the use and occupancy of the Improvements comprising such Phase, and (ii) that all Governmental Approvals required for such Phase, other than a final Certificate of Occupancy, as the case may be, are in full force and effect; provided, however, that (a) the Redeveloper has prepared and delivered to the Town a “punch list” of such minor work items requiring completion or correction by the Redeveloper in order for the Redeveloper to fully comply with the terms of this Amended Agreement, (b) such “punch list” items have been reasonably agreed to by the Town, (c) such “punch list” items are capable of being completed within sixty (60) days of the date of Completion, and (d) the Guaranty remains in force and effect until all “punch list” items are completed.

**Concept Plans:** Shall mean the concept plans and renderings, prepared by the Redeveloper in strict compliance with the Redevelopment Plan and approved by the Governing Body, annexed hereto as **Exhibit E**.

**Condemnation Appraisal:** Shall have the meaning specified in Section 5.03(b) of this Amended Agreement.

**Construction Plans:** Shall mean the architectural and engineering plans prepared by the Redeveloper in conformance with approved Final Site Plans and Applicable Law, and approved by the Town Engineering Division and Building and Construction Department as a condition to the issuance of the necessary permits for Commencement of Construction of each Phase.

**Control** (also referred to as “Controlled by” and “under common Control with”): With respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

**Covenants and Restrictions**: Shall have the meaning set forth in Section 7.01 of this Amended Agreement.

**Days**: Shall mean calendar days when such term is used to denote time.

**Declaration**: Shall have the meaning specified in Section 7.01 of this Amended Agreement.

**Deed**: Shall have the meaning specified in Section 5.06 of this Amended Agreement.

**DPW Deposit**: Shall have the meaning specified in Section 5.10(d) of this Amended Agreement.

**DPW Environmental Investigation Work**: Shall have the meaning specified in Section 2.09(c) of this Amended Agreement.

**DPW Facility**: Shall have the meaning specified in Section 2.09(a) of this Amended Agreement.

**DPW Financing**: Shall have the meaning specified in Section 5.10(e) of this Amended Agreement.

**DPW Interest Payment**: Shall have the meaning specified in Section 5.10(e) of this Amended Agreement.

**DPW Interest Payment Escrow Agreement:** Shall have the meaning specified in Section 5.10(e) of this Amended Agreement.

**DPW Property:** Shall mean that parcel within the Project Premises designated as Block 5803, Lot 37 on the Town tax maps as more particularly described on **Exhibit F** annexed hereto, and shall include all buildings and improvements located thereon.

**DPW RAWPs:** Shall have the meaning specified in Section 2.09(d) of this Amended Agreement.

**DPW Remediation:** Shall have the meaning specified in Section 2.09(d) of this Amended Agreement.

**DPW Remediation Cost Estimates:** Shall have the meaning specified in Section 2.09(e) of this Amended Agreement.

**DPW Remediation Funding Amount:** Shall mean, collectively, the Phase One DPW Remediation Funding Amount and the Phase Two DPW Remediation Funding Amount.

**DPW Subdivision:** Shall have the meaning specified in Section 2.09(a) of this Amended Agreement.

**Effective Date:** Shall mean the date this Amended Agreement is last executed by either the authorized officer of the Town or by the authorized representative of the Redeveloper.

**Eminent Domain Law:** Shall mean the “Eminent Domain Act of 1971,” constituting P.L. 1971, c. 361, as amended and supplemented, and codified at N.J.S.A. 20:3-1, et seq.

**Engineering Controls:** Shall mean any physical mechanism to contain or stabilize contamination or ensure the effectiveness of a remedial action. Engineering controls may include, without limitation, caps, covers, dikes, trenches, leachate collection systems, signs,

fences, physical access controls, groundwater monitoring systems and groundwater containment systems including, without limitation, slurry walls and groundwater pumping systems.

**Environmental Cost Estimate**: Shall have the meaning specified in Section 5.03(c) of this Amended Agreement.

**Environmental Due Diligence**: Shall mean such soils analyses, site investigations, studies and/or other environmental evaluations commonly utilized in order to determine soil conditions, subsurface conditions, groundwater conditions, and/or the presence of any environmental contaminants or other hazardous materials, wastes or substances on or about the Project Premises or any portion thereof.

**Equity Investor**: Shall have the meaning specified in Section 10.04 of this Amended Agreement.

**Escrow Agent**: Shall mean Inglesino, Pearlman, Wyciskala & Taylor, LLC.

**Event of Default**: Shall mean, individually or collectively, as the case may be, a Town Event of Default or a Redeveloper Event of Default.

**Final Site Plan Approval**: Shall mean, individually or collectively, as the case may be, formal approval issued by the Planning Board in accordance with Applicable Law, of the Final Site Plans for each Phase of the Project.

**Final Site Plans**: Shall mean the plans submitted to and approved by the Planning Board for Final Site Plan Approval for each Phase in accordance with the Redevelopment Plan, this Amended Agreement, and Applicable Law.

**Financial Agreement(s)**: Shall have the meaning specified in Section 5.09 hereof.

**Financial Institution**: Shall mean a bank, savings bank, savings and loan association, mortgage lender or insurance company, pension fund, real estate investment trust, investment bank, mutual fund or similarly recognized reputable source of construction and permanent financing for the Project, or any Phase thereof, chartered under the laws of the United States of America, or any State thereof.

**Force Majeure (also “Event of Force Majeure”)**: Shall mean the following event(s) or condition(s), or any combination thereof, that has/have a material and adverse effect on a Party’s ability to perform its obligations under this Amended Agreement: acts of God; fire; volcano; earthquake; hurricane; blizzard; infectious disease; technological disaster; catastrophe; large scale infestation of any type; tremors; flood; explosion; release of nuclear radiation; release of biotoxic or of biochemical agents; any required environmental remediation that is unknown to Redeveloper as of the Effective Date; severe natural conditions; war; blockade; riots; mob violence or civil disturbance; any act or acts of terrorism or terroristic threat; an inability to procure goods or services or a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market; failure of transportation; strikes; walkouts; actions of labor unions; governmentally imposed moratoriums, court orders, laws, rules, regulations or other orders of governmental or public agencies, bodies and authorities or any other similar cause not within the reasonable control of the Party claiming the extension of time, including legal inability to comply resulting from a change of law (including municipal laws regulating land use and construction), any legal requirements under any applicable environmental laws, as well as all known and unknown rules and regulations of the United States Environmental Protection Agency and the NJDEP, clearances, approvals or permits typical of the development process, any legal proceedings, decisions or decrees that adversely affect the ability of the Party claiming an extension of time to reasonably perform the obligations of and/or benefit from the terms of this Amended Agreement; any severe economic conditions impacting the financial markets in a manner that inhibits the procurement of financing for the Project, or any Phase of the Project, as demonstrated by an independent market study prepared by a qualified financial consultant selected by Redeveloper and subject to the reasonable approval of the Town (provided, however, that a force majeure event due to such severe economic conditions impacting the financial markets shall be deemed to persist for not more than one hundred eighty (180) Days); or any

unforeseen delay in the Redeveloper's receipt of any necessary Governmental Approvals not within the Redeveloper's control; provided, however, that the Redeveloper shall have duly submitted related Governmental Applications in good faith and with all reasonable diligence. Notwithstanding anything to the contrary contained herein, the Town shall not be entitled to seek the benefit of Force Majeure for its own actions or inactions including, without limitation, any act or failure to act by any municipal administrative agency, officer, employee, or consultant thereof, but excluding the Planning Board.

**Geotechnical Due Diligence:** Shall mean any studies, evaluations, testing and other procedures utilized in order to ascertain the load bearing capabilities, geological character or any other physical condition of the Project Premises or any portion(s) thereof.

**Governmental Agency:** Shall mean any federal, State, county or municipal legislative, administrative, executive or governing body, office, agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, advisory or administrative functions of or pertaining to government, including, without limitation, the Town of Morristown, the County of Morris, the State of New Jersey and/or the United States of America.

**Governmental Application:** Shall mean any and all submissions, plans, diagrams supporting documents, reports or other proofs that are required and/or permitted under Applicable Law and transmitted to any Governmental Agency, or any officer or agent thereof, for the purpose of obtaining a Governmental Approval of any aspect(s) of the Project.

**Governmental Approval:** Shall mean any approval, authorization, permit or license issued by any Governmental Agency required in order to implement the Project or any Phase or aspect thereof in accordance with the Redevelopment Plan, this Amended Agreement, and Applicable Law. Any Governmental Approval shall not be deemed to have been obtained (a) until the Appeal Periods relating thereto have expired and no appeal has been taken, or (b) if an appeal is filed challenging any Governmental Approval, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval.

**Governing Body:** Shall mean the municipal council of the Town of Morristown, together with any successor(s) thereto.

**Guaranty:** Shall have the meaning specified in Section 2.21 of this Amended Agreement.

**Hazardous Substances:** Shall mean any pollutant, toxic substance, solid waste, hazardous waste, hazardous material, hazardous substance or contaminant as defined or referred to in any Applicable Laws.

**Impositions:** Shall mean all taxes, assessments (including, without limitation, all assessments for public improvements or benefits), water, sewer or other rents, rates and charges, license fees, permit fees, inspection fees and other authorization fees and charges, in each case, whether general or special, which are levied upon any portion of the Project Premises conveyed to the Redeveloper or on any of the improvements constructed thereon.

**Improvements:** Shall mean all buildings, improvements, appurtenances and structures physically within or upon the Project Premises comprising the Project, including but not limited to drainage improvements, walkways, hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, parking, lighting, landscaping and fire hydrants.

**Initial Offer Price:** Shall mean the initial amount to be offered by the Town to a private third party record owner of each parcel of property identified in an Acquisition Notification issued pursuant to Section 5.02 hereof, which amount shall have been established by the Town's Condemnation Appraisal taking into account any reductions associated with environmental remediation, mitigation or clean-up, and any title defects and shall have been approved by the Redeveloper.

**Institutional Controls:** Shall mean a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of the remedial action over time, when contaminants remain at a site at levels above the applicable remediation standard which would

allow for the unrestricted use of the property. Institutional controls may include, without limitation, structure, land, and natural resource use restrictions, well restriction areas, classification exception areas, deed notices, and declarations of environmental restrictions.

**Liability:** Shall have the meaning specified in Section 14.18 of this Amended Agreement.

**Licensed Site Remediation Professional (or LSRP):** Shall mean a qualified individual who has been licensed pursuant to the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., or any successor statute, and the implementing regulations and guidance.

**Long Term Tax Exemption Law:** Shall mean the “Long Term Tax Exemption Law,” constituting P.L. 1991, c.431, as amended and supplemented, and codified at N.J.S.A. 40A:20-1 et. seq.

**Maximum Offer Price:** shall mean the Initial Offer Price for a particular Private Parcel plus 20% of the Initial Offer Price for such Private Parcel.

**Mortgage:** Shall mean any security interest, evidenced by a written instrument, encumbering the Project Premises, or any portion thereof, that secures the performance of obligations or the payment of debt, including, without limitation any grant of, pledge of, or security interest in, any collateral, or any grant, directly or indirectly, of any deed of trust, mortgage or similar instrument or any other security whatsoever.

**Mortgagee:** Shall mean the holder of any Mortgage and any affiliate(s) of such holder, including entities affiliated with such holder that own or exercise control over real property.

**NJDEP:** Shall mean the State of New Jersey Department of Environmental Protection together with any successor(s) in interest thereto.

**NJDOT:** Shall mean the State of New Jersey Department of Transportation together with any successor(s) in interest thereto.

**Offer Price:** Shall mean the Initial Offer Price or any greater amount offered by the Town to a private third party record owner of each parcel of property identified in an Acquisition Notification issued pursuant to Section 5.02 hereof, which amount shall be subject to Redeveloper's approval, which Redeveloper may withhold in its sole discretion if such Offer Price exceeds the Maximum Offer Price.

**Official Acts:** Shall have the meaning specified in Section 12.01(k) of this Amended Agreement.

**Parking Authority Property:** Shall mean Tax Block 5803, Lots 1 and 44.01, as more particularly described on **Exhibit G** annexed hereto.

**Party/Parties:** Shall mean individually, the Town or the Redeveloper, and collectively, the Town and Redeveloper.

**Permitted Exceptions:** Shall have the meaning specified in Section 11.02 of this Amended Agreement.

**Permitted Transfer:** Shall have the meaning specified in Section 8.03 of this Amended Agreement.

**Person(s):** Shall mean any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, trust, unincorporated association, institution, public or governmental body, or any other entity.

**Phase(s):** Shall mean Phase One, Phase Two, or Phase Three, individually or collectively, as the case may be, of the overall Project, as more particularly described in Section 2.02 hereof and on the Redevelopment Project Schedule attached and annexed hereto as **Exhibit D**.

**Phase One:** Shall mean the portion of the Project within the Phase One Premises, including all Phase One Public Improvements, as more particularly described in Section 2.02(b) hereof and as shown on the Concept Plans.

**Phase One Closing:** Shall mean the consummation of the transactions required for the transfer of the Phase One Premises by the Town, and/or owners of Private Parcels relating thereto, to the Redeveloper, as further described in Section 5.14 hereof. The Phase One Closing shall occur on the Phase One Closing Date.

**Phase One Closing Date:** Shall mean the date that is thirty (30) Days after Redeveloper has obtained all Governmental Approvals to construct Phase One of the Project; subject to any explicit rights granted to either Party herein to adjourn the Phase One Closing Date.

**Phase One Commitments:** Shall have the meaning specified in Section 2.12 of this Amended Agreement.

**Phase One Condemnation Parcels:** Shall mean any Private Parcels within the Phase One Premises for which the Town has instituted a condemnation action pursuant to Article V of this Amended Agreement.

**Phase One DPW Property:** Shall mean that portion of the DPW Property within the Phase One Premises and as further specified in Section 2.09(a).

**Phase One DPW Purchase Price:** Shall have the meaning specified in Section 2.09(b) of this Amended Agreement.

**Phase One DPW Remediation.** Shall mean the portion of the DPW Remediation to be undertaken within the Phase One DPW Property as set forth in the Phase One DPW RAWP, as same may be modified pursuant to Section 2.09(i).

**Phase One DPW Remediation Cost Estimate:** Shall have the meaning specified in Section 2.09(e) of this Amended Agreement.

**Phase One DPW Remediation Funding Amount** Shall mean the greater of (i) \$500,000.00; or (ii) 125% of the amount of the Phase One DPW Remediation Cost Estimate, as determined in accordance with Section 2.09(e).

**Phase One DPW Remediation Funding Escrow Agreement:** Shall have the meaning specified in Section 2.09(f) of this Amended Agreement.

**Phase One Preliminary Approval:** Shall mean final and unappealable preliminary site plan approval by the Planning Board of the Phase One Preliminary Plans, in accordance with Applicable Law.

**Phase One Preliminary Plans:** Shall have the meaning specified in Section 3.01 of this Amended Agreement.

**Phase One Premises:** Shall mean the portion of the Redevelopment Area depicted on Exhibit H, including the lots specified on Exhibit A.

**Phase One Public Improvements.** Shall mean the improvements described on Exhibit I-1.

**Phase One RAWP:** Shall have the meaning specified in Section 2.09(d) of this Amended Agreement.

**Phase One Town Acquisition Parcels:** Shall mean any Private Parcels within the Phase One Premises for which the Town has contracted to purchase through negotiation with the owner of any such parcel pursuant to Article V of this Amended Agreement.

**Phase Three:** Shall mean the portion of the Project within the Phase Three Premises, including all Phase Three Public Improvements, as more particularly described in Section 2.02(c) hereof and as shown on the Concept Plans.

**Phase Three Acquisition Deadline:** Shall mean the one hundred eightieth (180<sup>th</sup>) Day after the Parties enter into the Phase Three Amendment.

**Phase Three Amendment:** shall have the meaning specified in Section 2.07(d) of this Amended Agreement.

**Phase Three Closing Date:** Shall mean the later to occur of (i) thirty (30) Days after Redeveloper has obtained all Governmental Approvals to construct Phase Three of the Project, (ii) thirty (30) Days after the Town has executed all contracts, if any, for the Phase Three Town Acquisition Parcels; or (iii) thirty (30) Days after title to the Phase Three Condemnation Parcels, if any, have vested in the Town; subject to any explicit rights granted to either Party herein to adjourn the Phase Three Closing Date.

**Phase Three Condemnation Parcels:** Shall mean any Private Parcels within the Phase Three Premises for which the Town has instituted a condemnation action pursuant to Article V of this Amended Agreement.

**Phase Three Deposit:** Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**Phase Three Due Diligence Period:** Shall have the meaning specified in Section 2.14(c) of this Amended Agreement.

**Phase Three Notice:** Shall have the meaning specified in Section 2.07(d) of this Amended Agreement.

**Phase Three Option Deadline:** Shall mean the date that is One Hundred Eighty (180) Days after the Phase Two Closing Date.

**Phase Three Preliminary Plans:** Shall have the meaning specified in Section 3.01(a) of this Amended Agreement.

**Phase Three Premises:** Shall mean the portion of the Redevelopment Area depicted on Exhibit H, including the lots specified on Exhibit A.

**Phase Three Public Improvements.** Shall mean the improvements described on Exhibit I-3.

**Phase Three Town Acquisition Parcels:** Shall mean any Private Parcels within the Phase Three Premises for which the Town has contracted to purchase through negotiation with the owner of any such parcel pursuant to Article V of this Amended Agreement.

**Phase Two:** Shall mean the portion of the Project within the Phase Two Premises including all Phase Two Public Improvements, as more particularly described in Section 2.02(b) hereof and as shown on the Concept Plans.

**Phase Two Acquisition Deadline:** Shall mean the one hundred eightieth (180<sup>th</sup>) Day after the Parties enter into the Phase Two Amendment.

**Phase Two Amendment:** Shall have the meaning specified in Section 2.09(b) of this Amended Agreement.

**Phase Two Closing:** Shall mean the consummation of the transactions required for (i) the transfer of the Phase Two Premises, by the Town and/or owners of Private Parcels relating thereto, to the Redeveloper, as further described in Section 5.14 hereof. The Phase Two Closing shall occur on the Phase Two Closing Date.

**Phase Two Closing Date:** Shall mean the later to occur of (i) thirty (30) Days after Redeveloper has obtained all Governmental Approvals to construct Phase Two of the Project, (ii) thirty (30) Days after the Town has executed all contracts, if any, for the Phase Two Town Acquisition Parcels; (iii) thirty (30) Days after the Town has relocated the DPW Facility, or (iv) thirty (30) Days after title to the Phase Two Condemnation Parcels, if any, have vested in the Town; subject to any explicit rights granted to either Party herein to adjourn the Phase Two Closing Date.

**Phase Two Condemnation Parcels:** Shall mean any Private Parcels within the Phase Two Premises for which the Town has instituted a condemnation action pursuant to Article V of this Amended Agreement.

**Phase Two DPW Property:** Shall mean that portion of the DPW Property within the Phase Two Premises and as further specified in Section 2.09(a).

**Phase Two DPW Purchase Price:** Shall have the meaning specified in Section 2.09(b) of this Amended Agreement.

**Phase Two DPW Remediation.** Shall mean the portion of the DPW Remediation to be undertaken within the Phase Two DPW Property as set forth in the Phase Two DPW RAWP, as same may be modified pursuant to Section 2.09(i).

**Phase Two DPW Remediation Cost Estimate:** Shall have the meaning specified in Section 2.09(e) of this Amended Agreement.

**Phase Two DPW Remediation Funding Amount** Shall mean 125% of the amount of the Phase Two DPW Remediation Cost Estimate.

**Phase Two DPW Remediation Funding Escrow Agreement:** Shall have the meaning specified in Section 2.09(f) of this Amended Agreement.

**Phase Two Due Diligence Period:** Shall have the meaning specified in Section 2.14(c) of this Amended Agreement.

**Phase Two Option Deadline:** Shall mean the date that is One Hundred Eighty (180) Days after the Phase One Closing Date.

**Phase Two Preliminary Plans:** Shall have the meaning specified in Section 3.01 of this Amended Agreement.

**Phase Two Premises:** Shall mean the portion of the Redevelopment Area depicted on Exhibit H, including the lots specified on Exhibit A.

**Phase Two Public Improvements.** Shall mean the improvements described on Exhibit I-2.

**Phase Two RAWP:** Shall have the meaning specified in Section 2.09(d) of this Amended Agreement.

**Phase Two Town Acquisition Parcels:** Shall mean any Private Parcels within the Phase Two Premises for which the Town has contracted to purchase through negotiation with the owner of any such parcel pursuant to Article V of this Amended Agreement.

**Planning Board:** (also referred to as the **Town Planning Board**) shall mean the Morristown Planning Board together with any successor(s) in interest thereto exercising similar functions in accordance with Applicable Law.

**Preliminary Plans:** Shall have the meaning specified in Section 3.01(a) of this Amended Agreement.

**Private Parcel:** Shall mean any parcel of property situated within the Redevelopment Area, the title of which is held by a private person or entity other than the Parties hereto.

**Project:** Shall mean the Project Premises and acquisition thereof, and the Improvements and Public Improvements, and construction and installation thereof in accordance with the approved Construction Plans. The Project is more particularly described in Section 2.01 hereof.

**Project Premises:** Shall mean, collectively, the Phase One Premises, the Phase Two Premises and the Phase Three Premises.

**Prospect Street Easement:** Shall mean an easement over the Prospect Street Easement Parcel for temporary construction access and staging, and to construct, operate and maintain, as necessary, any grading, drainage and other ancillary improvements required in connection with the extension and realignment of Prospect Street pursuant to the terms of this Amended Agreement and the Redevelopment Plan.

**Prospect Street Easement Parcel:** Shall mean that portion of Block 5803, Lot 8, if any, located outside the Prospect Street right of way as extended and realigned pursuant to the terms of this Amended Agreement and the Redevelopment Plan, but within which grading, drainage and other ancillary improvements are required to be constructed, and temporary construction access and staging is needed, in connection with the extension and realignment of Prospect Street

pursuant to the terms of this Amended Agreement and the Redevelopment Plan, as approximately depicted on Exhibit J.

**Prospect Street Fee Parcel**: Shall mean that portion of Block 5803, Lot 8, if any, that will be located within the Prospect Street right of way as extended and realigned pursuant to the terms of this Amended Agreement and the Redevelopment Plan, as approximately depicted on Exhibit J.

**Prospect Street Parcel Owner**: Shall have the meaning specified in Section 3.09(c) of this Amended Agreement.

**Prudential**: Shall mean Prudential Insurance Company of America, Inc., a New Jersey Corporation.

**Public Improvements**: Shall mean, collectively, the Phase One Public Improvements, the Phase Two Public Improvements and the Phase Three Public Improvements.

**Public Improvements Financing**: Shall have the meaning specified in Section 3.10(a) of this Amended Agreement.

**Public Improvements Land**: Shall have the meaning specified in Section 3.10(a) of this Amended Agreement.

**Redeveloper**: Shall mean **Morristown Development, LLC**, a limited liability company formed and operated pursuant to the laws of the State of Delaware, and authorized to conduct business in the State, having corporate offices located at 135 Route 202/206, 3rd Floor, Bedminster, County of Somerset and State of New Jersey 07921, together any Transferee(s) of its rights permitted in accordance with the provisions of this Amended Agreement.

**Redeveloper Event of Default**: Shall have the meaning specified in Section 6.01 of this Amended Agreement.

**Redeveloper's LSRP:** Shall have the meaning specified in Section 2.09(d) of this Amended Agreement.

**Redevelopment Area:** Shall mean the Speedwell Avenue Redevelopment Area, which is depicted on the map annexed hereto as **Exhibit B** and is comprised of the lots specified in **Exhibit A** annexed hereto.

**Redevelopment Law:** Shall mean the "Local Redevelopment and Housing Law," constituting P.L. 1992, c. 92, as amended and supplemented, and codified at N.J.S.A. 40A:12A-1, et seq.

**Redevelopment Plan:** Shall mean the Speedwell Avenue Redevelopment Plan, as further defined in the Recitals of this Amended Agreement, as adopted by the Town.

**Redevelopment Project Schedule:** Shall mean the respective timetables for each Phase of the Project, which sets forth the respective tasks and completion dates of various Phase-related activities, a copy of which is attached and annexed hereto as **Exhibit D** as more particularly described in Section 2.03 hereof.

**Rejected Parcel:** Shall have the meaning specified in Section 5.04 of this Amended Agreement.

**Remedial Action Work Plan (or RAWP):** Shall mean a plan approved by the NJDEP and/or an LSRP pursuant to Applicable Law for action to be taken at a contaminated site as may be required to ensure that any discharged contaminant is remediated in compliance with Applicable Law, including, without limitation, removal, treatment measures, containment or other Engineering Controls or Institutional Controls

**Refusal Notice:** Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**Response Action Outcome (or RAO)**: Shall mean a written determination by an LSRP that, based on an evaluation of the historical use of all or any portion of the Project Premises, as the case may be, and any other investigations or actions the LSRP deems necessary, there are no contaminants present at the subject portion of the Project Premises, or at any other site to which a discharge originating at the subject portion of the Project Premises has migrated, or that any contaminants present at the subject portion of the Project Premises or that have migrated from the subject portion of the Project Premises have been remediated in accordance with Applicable Laws.

**RFP**: Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**Right of First Refusal**: Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**ROFR Exercise Notice**: Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**ROFR Notice Period**: Shall have the meaning specified in Section 2.07(b) of this Amended Agreement.

**Speedwell Private Properties**: Shall have the meaning specified in Section 2.07(c) of this Amended Agreement.

**State**: Shall have the meaning specified in the preliminary statement of this Amended Agreement.

**Study Area**: Shall have the meaning specified in the preliminary statement of this Amended Agreement.

**Survey**: Shall mean the standard process by which a qualified land surveyor licensed to perform such services within the State of New Jersey prepares location measurements of a parcel or parcels of property in order to ascertain the size of same and its location and relationship to

adjoining parcels and to locate all structures, improvements, easements, and restrictions on the properties; and shall also refer to the plan or map of any such Survey.

**Title Insurer:** Shall have the meaning specified in Section 2.08(c) of this Amended Agreement.

**Title Notification:** Shall have the meaning specified in Section 2.12(b) of this Amended Agreement.

**Town:** Shall have the meaning specified in the preamble of this Amended Agreement.

**Town Event of Default:** Shall have the meaning specified in Section 6.02 of this Amended Agreement.

**Town Financed Public Improvements:** Shall have the meaning specified in Section 3.10(a) of this Amended Agreement.

**Town's LSRP:** Shall have the meaning specified in Section 2.09(c).

**Town's Redevelopment Costs:** Shall have the meaning specified in Section 2.17 of this Amended Agreement.

**Transfer:** Shall mean any transaction, other than a Permitted Transfer, by which a Transferee obtains an interest in the Project Premises, or any portion thereof and/or any or all of the Improvements, or in this Amended Agreement by means or methods which include, but are not limited to, conveyance, transfer, lease, encumbrance, acquisition or assignment through sale, merger, consolidation, reorganization, foreclosure or otherwise, including the appointment of a trustee in bankruptcy or assignee for the benefit of creditors.

**Transferee:** Shall mean any third party to whom an interest in the Project Premises, the Improvements or rights in or under this Amended Agreement is duly and validly conveyed,

transferred, leased, encumbered, acquired or assigned, by sale, merger, consolidation, reorganization, foreclosure or otherwise, including through designation of a trustee in bankruptcy or assignee for the benefit of creditors, as further described in Article VIII.

**Uncompleted Portion:** Shall have the meaning specified in Section 6.04 of this Amended Agreement.

## ARTICLE II

### **REDEVELOPER'S RESPONSIBILITIES**

**2.01 The Project Description.** (a) Subject to, and in accordance with, the terms of this Amended Agreement, the Redeveloper shall undertake and Complete the construction of the Project, as depicted in the Concept Plans, which the Redeveloper hereby represents have been prepared in accordance with the Redevelopment Plan, and agreed to by the Town, a copy of which are attached hereto as **Exhibit E**. The Redeveloper has proposed a mixed use development containing up to a maximum aggregate of Six Hundred Fifty (650) residential units and between Thirty-Five Thousand and Forty Thousand (35,000-40,000 sq. ft.) square feet of retail/commercial space, together with such amenities, common areas and ancillary uses required or permitted under the Redevelopment Plan and ordinarily associated with a high quality mixed use development. The Parties acknowledge and agree that the Project shall be constructed in Phases and the construction of each such Phase shall proceed in accordance with the Redevelopment Plan, the terms of this Amended Agreement, and the specific Redevelopment Project Schedule for each Phase of the Project attached and annexed hereto as **Exhibit D**.

(b) Redeveloper shall proceed in good faith, with reasonable expedition, diligence and continuity in obtaining all necessary Governmental Approvals from the required Governmental Agencies. In the event that the Redeveloper is unable to obtain all necessary Governmental Approvals from the required Governmental Agencies in accordance with the requirements of the Project Schedule, for any Phase of the Project, or if Redeveloper reasonably determines that the Governmental Approvals for any Phase of the Project cannot be obtained, or cannot be obtained in accordance with the requirements of the Project Schedule, then Redeveloper shall have the right, but not the obligation to (i) submit to the Town an alternative

concept plan for the redevelopment of the relevant Phase(s) of the Project or (ii) terminate this Amended Agreement as to such Phase and/or any other Phase Redeveloper considers to be affected thereby; *provided, however*, that Redeveloper shall not have the right to terminate this Amended Agreement pursuant to this Section 2.01(b) unless and until the Redeveloper has exhausted at least one level of appeal in the event of a denial. Notwithstanding anything to the contrary, if the Phase One Closing has occurred, Redeveloper shall have no right to terminate this Amended Agreement with respect to Phase One pursuant to this Section 2.01(b), and if the Phase Two Closing has occurred, Redeveloper shall have no right to terminate this Amended Agreement with respect to Phase Two pursuant to this Section 2.01(b). In the event the Redeveloper elects to submit to the Town an alternative concept plan for the redevelopment of the Project or any Phase thereof, the Town shall reasonably consider the alternative concept plan, so long as said plan is in reasonable compliance with the purpose and intent of the Redevelopment Plan. If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 2.01, then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase or Phases pursuant to which this Amended Agreement has been terminated. Furthermore, the DPW Deposit shall be returned to Redeveloper if this Amended Agreement is terminated pursuant to the terms of this Section 2.01(b) before Redeveloper obtains all Governmental Approvals for Phase One regardless of whether some or all of the DPW Deposit has already been released from escrow.

(d) The Project also consists of the construction of certain other improvements, all of which shall be undertaken by the Redeveloper at its sole cost and expense, except as set forth in Section 3.10 hereof. The Town and the Redeveloper shall actively cooperate to secure any necessary Governmental Approvals relating to the Improvements and Public Improvements.

**2.02 Phasing.** The Parties acknowledge and agree that the Project shall be developed and constructed in Phases, in accordance with the Redevelopment Plan. Each Phase will be independent of the other Phases of the Project and need not be constructed sequentially, although the Parties acknowledge and agree that Phase One shall be undertaken and Completed first, in accordance with the terms and conditions of this Amended Agreement. Upon the Completion of each Phase of the Project, or portion thereof as provided for in Section 4.10 hereof, the

Redeveloper will request in writing a Certificate of Completion which shall be issued subject to the Town's finding that the subject Phase of the Project has been Completed in conformity with the Final Site Plans and Construction Plans for such Phase.

The Parties also acknowledge and agree that the purpose of the Redevelopment Plan and the Project as proposed is to develop the Redevelopment Area and the Project Premises into a vibrant, mixed-use neighborhood. The objective is to use smart growth planning principles and the regulation of building design and form to create an attractive and sustainable neighborhood. Therefore, the completion of the Project is the intent and goal of the Parties notwithstanding the terms and conditions herein.

Each Phase of the Project is described as follows:

(a) Phase One: Phase One will be constructed upon the Phase One Premises subject to, and in accordance with, the terms of the Redevelopment Plan. Twenty six (26) of the apartment units in Phase One shall be Affordable Units (of which half shall be designated for low income housing and half shall be designated for moderate income housing as such terms are defined in the Fair Housing Act, N.J.S.A 52:27D-301, et. seq.) and the Redeveloper shall have no further affordable housing obligation with respect to Phase One. In addition, subject to Section 3.10 of this Amended Agreement, and in accordance with the Redevelopment Plan, as part of Phase One, the Redeveloper shall undertake the construction of the Phase One Public Improvements.

(b) Phase Two. Phase Two of the Project will be constructed upon the Phase Two Premises subject to, and in accordance with, the terms of the Redevelopment Plan, including, without limitation, any requirements relating to Affordable Units. In addition, subject to Section 3.10 of this Amended Agreement, and in accordance with the Redevelopment Plan, as part of Phase Two, the Redeveloper shall undertake the construction of the Phase Two Public Improvements.

(c) Phase Three. Phase Three of the Project will be constructed upon the Phase Three Premises subject to, and in accordance with, the terms of the Redevelopment Plan, including,

without limitation, any requirements relating to Affordable Units. In addition, subject to Section 3.10 of this Amended Agreement, and in accordance with the Redevelopment Plan, as part of Phase Three, the Redeveloper shall undertake the construction of the Phase Three Public Improvements.

**2.03 Phasing; Acceleration; Delays.** In accordance with, and subject to, the terms of this Amended Agreement including, without limitation Section 14.01 of this Amended Agreement, the Redeveloper shall undertake development of each Phase of the Project in order to comply with the dates for commencement and Completion of the various Phases of the Project as set forth in the Redevelopment Project Schedule attached and annexed hereto as **Exhibit D** and described in Section 2.05. The Redeveloper may accelerate the development of any Phase of the Project, regardless of the amount or percentage of work Completed on the prior Phase(s), by obtaining the prior written approval of the Town, which shall not be unreasonably withheld, conditioned or delayed; *provided, however,* that in no event shall the Redeveloper delay for a period of time in excess of time periods otherwise provided hereunder or abandon any Phase, which in either case, unless an Event of Force Majeure event has occurred, shall constitute a Redeveloper Event of Default in accordance with Section 6.01 hereof. Notwithstanding the foregoing or anything contained in this Amended Agreement to the contrary, including, without limitation, the Redevelopment Project Schedule, the Redeveloper may construct multiple Phases simultaneously, but shall not be obligated to do so; *provided, however,* that the Redeveloper shall have obtained the prior written approval of the Town, which shall not be unreasonably withheld, conditioned or delayed. In the event the Redeveloper Commences Construction of more than one (1) Phase simultaneously, the date by which the Redeveloper shall be required to substantially Complete each applicable Phase of the Project shall be no later than Three (3) years after the date of Commencement of Construction of the particular Phase; *provided, however,* that in no event shall Phase One be Completed later than thirty (30) months after the date of Commencement of Construction of Phase One, subject to the provisions of Section 14.01.

**2.04 Planning, Design and Marketing of Project.** In accordance with, and subject to, the terms of this Amended Agreement, including, without limitation Section 14.01 of this Amended Agreement, the Redeveloper shall undertake, at its sole cost and expense, except as set forth in Section 3.10 hereof, to plan, design, develop, market, and construct each particular Phase

of the Project. The Redeveloper shall develop and construct the Project in accordance with the Final Site Plans (as may be amended from time to time with the written approval of the Planning Board, and subject to approval of the Town as set forth herein (as well as any other Governmental Agency having jurisdiction), in accordance with Applicable Law) and corresponding Final Site Plan Approvals, and each Phase shall not be deemed Complete until approved as Complete by the Town in accordance with Section 4.10 hereof. Except as expressly set forth herein, the Town shall not be responsible for any costs associated with any Improvements necessary for the development and construction of the Project. Except as specifically set forth herein, the costs of developing the Project Premises and of constructing all Improvements thereon, including, but not limited to, all required Public Improvements, shall be borne entirely by the Redeveloper. In addition, Redeveloper shall, at its sole cost and expense, be responsible for administering the affordability controls and requirements of the Affordable Units in accordance with Applicable Laws. Redeveloper shall have the right to satisfy this obligation by contracting with a qualified affordable housing administrative agent or professional in accordance with Applicable Laws. Redeveloper shall not be obligated to pay for any costs associated with the administration of any affordable housing units in the Town of Morristown other than the Affordable Units in the Project. Furthermore, Redeveloper shall not be obligated to pay the cost of any municipal housing liaison or any cost incurred by the Town in connection with its monitoring of Redeveloper's administration of the Affordable Units.

**2.05 Redevelopment Project Schedules.** The Project described in Section 2.01 hereof will be developed and constructed in Three (3) independent Phases. The Parties acknowledge and agree that proceeding with each Phase of the Project as expeditiously as possible is essential. In furtherance thereof, the Parties have agreed upon the Redevelopment Project Schedule, attached and annexed hereto as **Exhibit D**. The Redevelopment Project Schedule sets forth the anticipated dates of commencement and completion for the various tasks involved in each Phase of the Project.

**2.06 Amendments to Redevelopment Project Schedule.** (a) Nothing herein shall preclude the Redeveloper from Completing any Phase prior to the dates set forth on the Redevelopment Project Schedule, attached and annexed hereto as **Exhibit D**.

(b) Upon the written request of the Redeveloper, the Town shall reasonably consider modifications of the dates set forth in the Redevelopment Project Schedule. The Town agrees to consider and render a decision with respect to any such modification, within a period of Sixty (60) Days following receipt of a written request by the Redeveloper. The Town may deny approval of such modification proposed by the Redeveloper in its reasonable discretion.

**2.07 Redeveloper Designation.** (a) Subject to the provisions of Section 2.07(b) and Section 2.07(c) below relating to Phase Three, the Redeveloper shall have the exclusive right to carry out each Phase of the Project as long as this Amended Agreement has not been terminated by the Town due to a Redeveloper Event of Default with respect to such Phase. Subject to Section 2.07(b) and Section 2.07(c) below, for the term of this Amended Agreement, the Town shall not designate any person or entity, including owners of any of the Project Premises, other than the Redeveloper (which the Redeveloper has been so designated), as redeveloper of any Phase of the Project, nor enter into any form of understanding or agreement pursuant to any Applicable Law(s) with such persons or entities, unless this Amended Agreement is terminated, with respect to such Phase, in accordance with the terms hereof. Nothing contained herein shall be construed to preclude the Town from designating any person or entity, other than the Redeveloper to serve as redeveloper and/or enter into a redevelopment agreement in the event that this Amended Agreement is terminated in accordance with the terms hereof.

(b) (i) Subject to Section 2.07(c) hereof, notwithstanding anything herein to the contrary, the Town shall have the right to issue requests for qualifications and proposals (“RFP”) to redevelop the Phase Three Premises. The Town shall provide written notice to the Redeveloper Thirty (30) Days prior to the Town’s issuance of an RFP. If prior to the issuance of the RFP, the Redeveloper provides the Phase Three Notice pursuant to Section 2.07(d) that Redeveloper elects to develop and construct Phase Three in accordance with the Redevelopment Plan, then the Town shall not have the right to issue the RFP and this Section 2.07(b) shall be null and void and of no further force and effect.

(ii) If the Redeveloper has not provided a Phase Three Notice and the Town issues an RFP and, in response to an RFP, the Town receives a bona fide written offer or letter of intent for an alternate project for Phase Three (an “Alternate Phase Three Project”) from any person

or entity (an "Alternate Redeveloper"), which the Town desires to accept, the Town shall provide written notice of such fact to the Redeveloper and provide Redeveloper with a true and complete copy of such bona fide written offer or letter of intent (the "Refusal Notice") within ten (10) days following the Town's receipt of such bona fide written offer or letter of intent. Within Fourteen (14) Days after its receipt of the Refusal Notice, Redeveloper shall provide written notice (the "ROFR Exercise Notice") to the Town whether Redeveloper desires to undertake and Complete the Alternate Phase Three Project on the terms and conditions set forth in the Refusal Notice (such notice period being referred to herein as the "ROFR Notice Period" and the Redeveloper's right of first refusal to undertake and Complete the Alternate Phase Three Project being referred to herein as the "Right of First Refusal"). If the Redeveloper determines to undertake and Complete the Alternative Phase Three Project, the Redeveloper shall send the sum of Fifty Thousand (\$50,000.00) Dollars (the "Phase Three Deposit") to the Town together with the ROFR Exercise Notice, to be applied in accordance with the terms of this Section 2.07(b).

(iii) In exercising the Right of First Refusal, the Redeveloper shall agree to undertake and Complete the Alternate Phase Three Project selected by the Town on the same terms and conditions as set forth in the Refusal Notice and the Parties shall proceed diligently and in good faith to enter into an amendment to this Amended Agreement and/or a new redevelopment agreement governing such Alternate Phase Three Project. The Phase Three Deposit shall be applied to the costs of the Phase Three Project, whether to Redeveloper's costs and/or the Town's Redevelopment Costs, as mutually agreed to by the Parties.

(iv) If the Parties cannot reach mutual agreement on an amendment to this Amended Agreement and/or a new redevelopment agreement governing the Alternate Phase Three Project within Sixty (60) Days after the Redeveloper has provided the ROFR Exercise Notice to the Town, then Redeveloper shall have the right to rescind its acceptance of the Right of First Refusal and shall provide prompt written notice of such rescission. Upon receipt of such written notice of rescission, the Town shall be free to enter into a separate redevelopment agreement with any Alternate Redeveloper for the Alternate Phase Three Project on the terms and conditions set forth in the Refusal Notice and the Redeveloper shall forfeit the Phase Three Deposit entirely.

(v) In the event that the Redeveloper determines not to undertake and Complete the Alternate Phase Three Project selected by the Town, the Redeveloper shall provide written notice thereof to the Town within the ROFR Notice Period. Upon receipt of such written notice, the Town shall be free to enter into a separate redevelopment agreement with an Alternate Redeveloper for the Alternate Phase Three Project on the terms and conditions set forth in the Refusal Notice. If, pursuant to this Section 2.07(b) the Town enters into a separate redevelopment agreement with an Alternate Redeveloper for the Alternate Phase Three Project on the terms and conditions set forth in the Refusal Notice, then Redeveloper shall release and relinquish all of its rights and obligations relating to Phase Three hereunder and the Parties shall enter into an amendment to this Amended Agreement providing for same.

(vi) Notwithstanding anything to the contrary contained in this Section 2.07(b), if the Town fails to enter into a separate redevelopment agreement with an Alternate Redeveloper for the Alternate Phase Three Project on the terms and conditions set forth in the Refusal Notice and thereafter the Town desires to enter into a redevelopment agreement with an Alternate Redeveloper for an Alternate Phase Three Project and the material economic provisions of such redevelopment agreement are materially different from the material economic provisions in the Refusal Notice previously given to Redeveloper, then the Town shall be obligated to provide Redeveloper with another Refusal Notice and the Redeveloper shall have the opportunity to accept the terms and conditions set forth in such other Refusal Notice within Thirty (30) Days after its receipt of the Refusal Notice.

(vii) Notwithstanding anything to the contrary contained herein, the terms of this Section 2.07(b) shall be void and no further force and effect as of the Phase Two Closing, unless, prior to such date, the Town has entered into a redevelopment agreement for an Alternate Phase Three Project in accordance with the terms of this Section 2.07(b).

(c) The Parties acknowledge and agree that certain Private Parcels located along Speedwell Avenue, designated as *Block 5803, Lots 3, 4, 5, and 6* (the “Speedwell Private Properties”), may be redeveloped by or on behalf of the owners of such Speedwell Private

Properties, subject to this Section 2.07(c). In the event that the owners of such Speedwell Private Properties (i) propose acceptable project(s) which is/are in accordance with the Redevelopment Plan (as may be amended) and Applicable Laws, and that are consistent with and have no material adverse impact on the adjacent portions of the Project, (ii) demonstrate appropriate financial and experiential capabilities to undertake and Complete such project(s) to the Town's satisfaction, in its sole discretion, and (iii) enter into one or more separate redevelopment agreement(s) with the Town setting forth the terms and conditions governing the undertaking and completion of such project(s) (which shall provide for the sharing of costs of the Phase Three Public Improvements in a manner reasonably satisfactory to Redeveloper), the Parties hereto shall enter into an amendment to this Amended Agreement providing for the release and relinquishment of the Redeveloper's rights and obligations hereunder relating to the Speedwell Private Properties.

(d) Subject to the terms of Sections 2.07(b) and (c), not later than sixty (60) days after the Phase Two Closing, Redeveloper shall provide written notice to the Town whether Redeveloper elects to develop and construct Phase Three (the "Phase Three Notice"). If Redeveloper elects to develop and construct Phase Three, Redeveloper and the Town shall enter into an amendment to this Amended Agreement and/or a new redevelopment agreement memorializing such terms as the Parties may agree to in connection with Redeveloper's election to construct Phase Three (e.g., PILOT, financing of Phase Three Public Improvements, etc.) (the "Phase Three Amendment"); and thereafter the Redeveloper shall proceed with the development and construction of Phase Three in accordance with this Amended Agreement as amended by the Phase Three Amendment; *provided, however*, that if the Parties do not enter into the Phase Three Amendment prior to the Phase Three Option Deadline, then either Party shall have the right to Terminate this Amended Agreement with respect to Phase Three. If either Party terminates this Amended Agreement with respect to Phase Three pursuant to this Section 2.07(d), then this Amended Agreement shall terminate and shall be void and of no further force and effect with respect to Phase Three and the Parties hereto shall have no further liability hereunder, but only with respect to Phase Three; and the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to Phase Three.

**2.08 Redeveloper's Acquisition of the Private Parcels.** (a) Phase One. The Redeveloper hereby represents and warrants that it has entered into valid, binding and duly authorized purchase and sale contracts, without any seller's contingencies, for all the Private Parcels within the Phase One Premises. The Redeveloper further represents that the copies of such purchase and sale agreements that have been previously provided to the Town are true, accurate, and complete copies of same and, as of the Effective Date, have not been amended or modified and remain in full force and effect. The Redeveloper hereby covenants that it shall not materially amend such purchase and sale contracts for the Private Parcels within the Phase One Premises without first providing written notice to the Town containing sufficient information regarding such proposed amendment and obtaining written approval from the Town, which approval shall not be unreasonably withheld, delayed or conditioned. The Redeveloper hereby further covenants to take commercially reasonable actions to enforce its rights and remedies under the purchase and sale agreements for the Private Parcels. If necessary to enforce its rights, Redeveloper's obligation pursuant to the preceding sentence shall be deemed satisfied by filing and diligently pursuing actions in the trial level of the New Jersey Superior Court seeking specific performance by the sellers of the Private Parcels in order to allow the Redeveloper to perform due diligence investigations and to close title on the acquisition of the applicable Private Parcels in order to comply with the Project Schedule. The filing of any such actions shall toll the timeframes set forth in the Project Schedule. Notwithstanding anything to the contrary contained herein, Redeveloper shall have no obligation to close on the Phase One DPW Property until such time as the Redeveloper is able to close title on each of the Private Parcels within the Phase One Premises. If Redeveloper is unable to close title on any of the Private Parcels within the Phase One Premises after pursuing an action in the trial level of the New Jersey Superior Court seeking specific performance, then Redeveloper shall have the right to terminate this Amended Agreement with respect to Phase One.

(b) Phase Two; Phase Three. (i) As it relates to each Private Parcel within the Phase Two Premises and the Phase Three Premises, and subject to the terms of this Amended Agreement including Sections 2.14 and 14.01 hereof, the Redeveloper has until the Phase Two Acquisition Deadline and the Phase Three Acquisition Deadline, respectively, to either have acquired fee simple title to; entered into respective purchase agreements for; or submitted to the Town an Acquisition Notification pursuant to Section 2.10 hereof. The Redeveloper shall use

commercially reasonable efforts to acquire all Private Parcels within the Phase Two Premises and the Phase Three Premises.

(ii) Upon the exercise by the Redeveloper of the respective options for Phase Two and Phase Three, the Redeveloper shall be obligated to provide to the Town's redevelopment counsel true, accurate and complete copies of any and all purchase and sale agreements relating to Phase Two or Phase Three, as applicable, which purchase and sale agreements shall contain terms and conditions consistent with the Redeveloper's obligations and timeframes in this Amended Agreement. All copies of purchase and sale agreements provided by Redeveloper pursuant to this Agreement shall be held by the Town's redevelopment counsel in confidence, and shall not be shared with anyone, including without limitation, any officer, employee or consultant of the Town of Morristown. Such purchase and sale agreements shall not be considered "Government Records" as that term is defined in the Open Public Records Act, N.J.S.A. 47:1A-1 et. seq., and the purchase and sale agreements shall not be distributed to any person or entity in response to a request pursuant to the Open Public Records Act, or otherwise, except in response to an order of a court of competent jurisdiction. Furthermore, the purchase and sale agreements shall not be photocopied or scanned into electronic format and must be returned to Redeveloper within seven (7) days after delivery.

(iii) The Redeveloper hereby covenants that, after exercise by the Redeveloper of the respective options for Phase Two and Phase Three, it shall not materially amend such purchase and sale contracts for the Private Parcels within the Phase Two Premises or the Phase Three Premises, as applicable, without first providing written notice to the Town containing sufficient information regarding such proposed amendment and obtaining written approval from the Town, which approval shall not be unreasonably withheld, delayed or conditioned.

(iv) The Redeveloper hereby covenants that it shall be obligated to take commercially reasonable actions to enforce its rights and remedies under the purchase and sale agreements for the Private Parcels. If necessary to enforce its rights, Redeveloper's obligation pursuant to the preceding sentence shall be deemed satisfied by filing and diligently pursuing actions at the trial level of the New Jersey Superior Court seeking specific performance by the sellers of the Private Parcels in order to allow the Redeveloper to perform due diligence

investigations and to close title on the acquisition of the applicable Private Parcels in order to comply with the Project Schedule. The filing of any such action shall toll the timeframes set forth in the Project Schedule, while such action is pending through any applicable appeal periods. Notwithstanding anything to the contrary contained herein, Redeveloper shall have no obligation to close on the Phase Two DPW Property until such time as the Redeveloper is able to close title on each of the Private Parcels within the Phase Two Premises. If Redeveloper is unable to close title on any of the Private Parcels within the Phase Two Premises after pursuing an action at the trial level of the New Jersey Superior Court seeking specific performance, then Redeveloper shall have the right to terminate this Amended Agreement with respect to Phase Two.

(c) Generally. As it relates to Phase One, Phase Two, and Phase Three, the Redeveloper shall, in accordance with Section 5.01 of this Amended Agreement, use commercially reasonable efforts and proceed diligently to acquire good and marketable title insurable at regular rates without special premium by a title insurance company authorized to do business in New Jersey, hereinafter referred to as the “Title Insurer”, subject only to the Permitted Exceptions set forth in Section 11.02 hereof. The Parties to this Amended Agreement acknowledge and agree that the Redeveloper’s obligation to close title to any of the parcels of property comprising the Project Premises is contingent upon Redeveloper’s receipt of all necessary Governmental Approvals for development of the Phase of which such parcel is a part and the terms of each purchase agreement between Redeveloper and the owners of the Private Parcels. Upon the Effective Date and every Sixty (60) Days thereafter until an Acquisition Notification is sent to the Town, if applicable, the Redeveloper shall provide the Town with a report on the status of its efforts to amicably acquire each of the Private Parcels contained within the Project Premises. Such reports shall include copies of offer letters, contracts, agreements and other related correspondence, but not any proprietary information as reasonably determined by Redeveloper, unless otherwise agreed to by the Parties.

**2.09 Redeveloper’s Acquisition of the DPW Property.** (a) The Parties acknowledge that the Project Premises includes the DPW Property, which is currently owned by the Town, and upon which the municipal Department of Public Works and First Aid Squad maintain working facilities (the “DPW Facility”). As shown on the Concept Plans, a portion of the DPW

Property shall be utilized for construction of Phase One (the "Phase One DPW Property") and a portion of the DPW Property shall be utilized for Phase Two (the "Phase Two DPW Property"). The Redeveloper shall, therefore, be required to obtain subdivision approval to create the Phase One DPW Property and the Phase Two DPW Property (the "DPW Subdivision"). The DPW Subdivision shall ensure that the Town maintains access to the Phase Two DPW Property prior to the Town's conveyance of the Phase Two DPW Property to Redeveloper. The Town shall convey the DPW Property, as subdivided, to the Redeveloper pursuant to this Section 2.09 and Section 5.10 of this Amended Agreement.

(b) The gross purchase price solely for the Phase One DPW Property is Three Million Five Hundred Thousand (\$3,500,000.00) Dollars (the "Phase One DPW Purchase Price"). Provided no Redeveloper Event of Default has occurred hereunder and subject to the provisions hereof, Redeveloper shall have the right to purchase the Phase Two DPW Property on the Phase Two Closing Date for a price determined in accordance with the following procedures (the "Phase Two DPW Purchase Price"). The Town shall obtain, and deliver to Redeveloper, an appraisal for the Phase Two DPW Property within Thirty (30) Days after the Phase One Closing Date. After Redeveloper receives the appraisal for the Phase Two DPW Property, the Parties shall negotiate in good faith with respect to the purchase price for the Phase Two DPW Property, taking into consideration all relevant and reasonable factors. In the event that the Parties cannot reach a mutual agreement on the Phase Two DPW Purchase Price within Sixty Days (60) Days after the Phase One Closing, the Redeveloper shall have the right to reject the Town's appraiser's determination of the Phase Two DPW Purchase Price and terminate this Amended Agreement with respect to Phase Two by giving written notice to the Town within thirty (30) Days after Redeveloper receives the Town's appraisal of the Phase Two Property. Unless the Redeveloper rejects the Town's appraiser's determination of the Phase Two DPW Purchase Price and terminates the Amended Agreement pursuant to the foregoing terms of this Section 2.09(b), Redeveloper and the Town shall enter into an amendment to this Amended Agreement and/or a new redevelopment agreement memorializing the Phase Two DPW Purchase Price and such other terms as the Parties may agree to in connection with the determination of the Phase Two DPW Purchase Price (the "Phase Two Amendment"); and thereafter the Redeveloper shall proceed with the development and construction of Phase Two in accordance with this Amended Agreement as amended by the Phase Two Amendment; *provided, however*, that if the Parties do

not enter into the Phase Two Amendment prior to the Phase Two Option Deadline, then either Party shall have the right to terminate this Amended Agreement with respect to Phase Two. If either Party terminates this Amended Agreement with respect to Phase Two pursuant to this Section 2.09(b), then this Amended Agreement shall terminate and shall be void and of no further force and effect with respect to Phase Two and the Parties hereto shall have no further liability hereunder, but only with respect to Phase Two; and the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to Phase Two; and the Redeveloper shall return any unused portion of the Phase Two DPW Remediation Funding Amount. The Town shall be responsible for the fees and disbursements of the appraiser for the Phase Two DPW Property.

(c) Attached as **Exhibit K** to this Amended Agreement is a proposal, prepared by TERMS Environmental Services, Inc. and agreed to by the Parties for site investigation work to determine the existing environmental condition of the DPW Property and the extent of any required environmental remediation (the “DPW Environmental Investigation Work”). Within forty-five (45) Days after the Effective Date, the Town shall cause the DPW Environmental Investigation Work to be performed under the supervision of Ronald Dooney, Jr. a TERMS Environmental Services, Inc. LSRP or another LSRP selected by the Town and subject to Redeveloper’s approval (the “Town’s LSRP”), which approval shall not be unreasonably withheld, conditioned or delayed. The Town and the Town’s LSRP shall promptly provide the results of the DPW Environmental Investigation Work to Redeveloper and to Redeveloper’s LSRP.

(d) Within Thirty (30) Days after receiving the results of the DPW Environmental Investigation Work, provided further investigation is not necessary, the Town’s LSRP, in coordination and consultation with Redeveloper’s LSRP, shall prepare Remedial Action Work Plans for both the Phase One DPW Property (the “Phase One RAWP”) and the Phase Two DPW Property (the “Phase Two RAWP” and together with the Phase One RAWP, the “DPW RAWPs”). The DPW RAWPs shall detail a plan for the environmental remediation of the DPW Property in accordance with Applicable Law and the terms of this Amended Agreement (the “DPW Remediation”). Redeveloper shall perform and complete the DPW Remediation in

accordance with the DPW RAWPs (as same may be amended pursuant to Section 2.09(i) and subject to the terms and conditions relating to the Phase Two DPW Remediation pursuant to Section 2.09(h)) utilizing an LSRP selected by Redeveloper (“Redeveloper’s LSRP”) such that Redeveloper is able to obtain separate Response Action Outcomes for each of the Phase One DPW Property and the Phase Two DPW Property. At Redeveloper’s sole discretion, the DPW RAWPs may allow for the unrestricted, residential use of the DPW Property. The Redeveloper shall obtain a pollution legal liability insurance policy providing coverage for, among other things, liability relating to natural resource damages. The Redeveloper shall cause the pollution legal liability policy to name the Town as an additional insured and provide a liability limit of not less than \$10,000,000.00 per occurrence and \$10,000,000.00 in the aggregate, with a deductible of not less than \$250,000.00. The Redeveloper shall indemnify and hold and save the Town harmless from and against any and all loss, cost, damage, injury or expense (including reasonable attorneys fees) arising out of or in any way related to any natural resource damages claim made with respect to the Phase One Premises after the Phase One Closing and with respect to the Phase Two Premises after the Phase Two Closing. The foregoing indemnification shall survive any closing pursuant to this Amended Agreement and any termination of this Amended Agreement.

(e) Along with the DPW RAWPs, the Town’s LSRP, in coordination and consultation with Redeveloper’s LSRP, shall prepare an estimate of the cost of the Phase One DPW Remediation (the “Phase One DPW Remediation Cost Estimate”) and the Phase Two DPW Remediation (the “Phase Two DPW Remediation Cost Estimate”); and together with the Phase One DPW Remediation Cost Estimate, the “DPW Remediation Cost Estimates”) (each of which shall include, but not be limited to, an estimate of: the premium for a pollution legal liability policy pursuant to Section 2.09(d) hereof; exposure to natural resource damages liability, soft costs for engineering; legal and other professional services; increases to construction costs as a result of the remediation; and the operation, inspection, maintenance, reporting, monitoring, permitting, financial assurance/remediation funding source and any other costs and expenses related to any Engineering Controls and/or Institutional Controls which may be utilized in connection with the DPW Remediation in Redeveloper’s sole discretion). The DPW Remediation Cost Estimates shall be subject to the approval of the Redeveloper, which approval

shall not be unreasonably withheld, conditioned or delayed. If the Town's LSRP and the Redeveloper's LSRP are unable to agree upon one or both of the DPW Remediation Cost Estimates within the thirty (30) Day period for the preparation of the DPW RAWPs and the DPW Remediation Cost Estimates, then, within ten (10) Days after the expiration of said thirty (30) Day period, the Town's LSRP and the Redeveloper's LSRP shall select a third environmental engineer to prepare a Phase One DPW Remediation Cost Estimate and/or a Phase Two DPW Remediation Cost Estimate, as the case may be, within thirty (30) days after his or her appointment. The Town's LSRP and the Redeveloper's LSRP shall provide the third party environmental engineer with their proposed DPW Remediation Cost Estimates, and the DPW Remediation Cost Estimate shall be the average of the two (2) closest estimates. The Town and the Redeveloper agree to be bound by such estimate. Each Party shall be responsible for the fees and disbursements of its environmental engineer, consultant, LSRP and attorneys in connection with the DPW Remediation Cost Estimates, and the Parties shall share equally the fees and disbursements of the third (3rd) environmental engineer. In no event shall the fees and disbursements to be paid by the Town pursuant to the preceding sentence be deemed to be part of the Town's Redevelopment Costs paid by Redeveloper pursuant to Section 2.17 of this Amended Agreement. Notwithstanding anything to the contrary contained herein, the Redeveloper, in its sole discretion shall have the right to decide whether the DPW RAWPs and the DPW Remediation shall include Engineering Controls and/or Institutional Controls, and, therefore, the Redeveloper, in its sole discretion shall have the right to decide whether the DPW Remediation Cost Estimates will be based on the use of Engineering Controls and/or Institutional Controls as part of the DPW Remediation.

(f) At the Phase One Closing, Redeveloper shall deduct from the Phase One DPW Purchase Price an amount equal to the Phase One DPW Remediation Funding Amount and deposit such amount with Escrow Agent to be held in escrow in accordance with the terms of the escrow agreement attached hereto as Exhibit L-1 (the "Phase One DPW Remediation Funding Escrow Agreement"). At the Phase One Closing, Redeveloper shall deduct from the Phase One DPW Purchase Price an amount equal to the Phase Two DPW Remediation Funding Amount and deposit such amount with Escrow Agent to be held in escrow in accordance with the terms of the escrow agreement attached hereto as Exhibit L-2 (the "Phase Two DPW Remediation

Funding Escrow Agreement”). Notwithstanding anything to the contrary contained in this Amended Agreement if the DPW Remediation Funding Amount exceeds the Phase One DPW Purchase Price, then the Town and the Redeveloper shall each have the right to terminate this Amended Agreement upon notice to the other Party given within thirty (30) days after the determination of the Environmental Cost Estimates. If this Amended Agreement is terminated pursuant to the terms of this Section 2.09(f), then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder. Furthermore, if this Amended Agreement is terminated pursuant to the terms of this Section 2.09(f), then the DPW Deposit shall be returned to Redeveloper regardless of whether some or all of the DPW Deposit has already been released from escrow.

(g) After the Phase One Closing, the Redeveloper shall conduct and complete all of the Phase One DPW Remediation, diligently and in good faith in accordance with the Phase One DPW RAWP, as may be modified by the Redeveloper and the Redeveloper’s LSRP in accordance with the terms of Section 2.09(i). Redeveloper shall have the right to draw upon the Phase One DPW Remediation Funding Amount to pay the costs of the Phase One DPW Remediation (including without limitation, the cost of any natural resource damages claim, the cost of pollution legal liability insurance; all costs incurred by Redeveloper to comply with NJDEP or LSRP requirements with respect to the DPW Remediation during or after any audit period with respect to an RAO; and all costs of the operation, inspection, maintenance, reporting, monitoring, permitting, financial assurance/remediation funding source and any other costs and expenses related to any Engineering Controls and/or Institutional Controls which may be utilized in connection with the DPW Remediation in Redeveloper’s sole discretion). The Redeveloper shall pay any and all costs of the Phase One DPW Remediation in excess of the Phase One DPW Remediation Funding Amount. In no event shall the Town’s obligation to fund the Phase One DPW Remediation exceed the Phase One DPW Remediation Funding Amount.

(h) (i) After the Phase One Closing, Redeveloper shall proceed diligently and in good faith to conduct and complete the Phase Two DPW Remediation for and on behalf of the Town. Until the Phase Two Closing, the Town acknowledges that it is the responsible party under Applicable Law for the Phase Two DPW Remediation and the Town agrees to sign all

certifications and documents prepared and submitted by Redeveloper's LSRP to NJDEP as the "person responsible for conducting the remediation" (as defined by NJDEP at N.J.A.C. 7:26C-1.3 or any successor regulation) relating to the Phase Two DPW Remediation. After the Phase Two Closing, the Redeveloper acknowledges that, pursuant to Applicable Law and the terms and conditions of this Agreement, Redeveloper shall become a responsible party for the Phase Two DPW Remediation and, as a result of Redeveloper's status as a new owner of the Phase Two DPW Property after the Phase Two Closing, the Redeveloper agrees to sign all certifications and documents submitted by the LSRP to NJDEP as the "person responsible for conducting the remediation" (as defined by NJDEP at N.J.A.C. 7:26C-1.3 or its successor regulation) relating to the Phase Two DPW Remediation. The Town shall indemnify and hold and save the Redeveloper harmless from and against any and all loss, cost, damage, injury or expense arising out of or in any way relating to any claim by NJDEP, or any other Governmental Agency or third party that, prior to the Phase Two Closing, Redeveloper is a "person responsible for conducting the remediation" at the Phase Two DPW Property pursuant to Applicable Law. This indemnification shall survive any termination of this Amended Agreement.

(ii) Redeveloper shall have the right to draw upon the Phase Two DPW Remediation Funding Amount to pay the costs of the Phase Two DPW Remediation in accordance with the terms of the Phase Two DPW Remediation Funding Escrow Agreement (including without limitation, the cost of any natural resource damages claim, the cost of pollution legal liability insurance; all costs incurred by Redeveloper to comply with NJDEP or LSRP requirements with respect to the DPW Remediation during or after any audit period with respect to an RAO; and all costs of the operation, inspection, maintenance, reporting, monitoring, permitting, financial assurance/remediation funding source and any other costs and expenses related to any Engineering Controls and/or Institutional Controls which may be utilized in connection with the DPW Remediation in Redeveloper's sole discretion).

(iii) Notwithstanding the foregoing, prior to Phase Two Closing, Redeveloper shall not be obligated to undertake any portion of the Phase Two DPW Remediation with respect to any portion of the Phase Two DPW Property that Redeveloper is unable to reasonably access and perform remediation work because of the existence of the Ambulance Squad building or the use of the Phase Two DPW Property by the Town (or any other occupant of the Phase Two DPW

Property). Furthermore, prior to Phase Two Closing, Redeveloper shall have no obligation to implement any Engineering and/or Institutional Controls with respect to the Phase Two DPW Property. After the Phase Two Closing, Redeveloper shall proceed diligently and in good faith to conduct and complete the Phase Two DPW Remediation and shall continue to have the right to draw upon any remaining Phase Two DPW Remediation Funding Amount to pay the costs of the Phase Two DPW Remediation in accordance with the terms of the Phase Two DPW Remediation Funding Escrow Agreement. If this Amended Agreement is terminated with respect to Phase Two, Redeveloper's obligation to conduct and complete the Phase Two DPW Remediation shall cease and terminate and any remaining Phase Two DPW Remediation Funding Amount shall be returned to the Town. In no event shall Redeveloper be obligated to perform any Phase Two DPW Remediation, or pay any costs with respect thereto, to the extent that the cost of such work exceeds the Phase Two DPW Remediation Funding Amount.

(i) After the Phase One Closing, the Redeveloper, in its sole discretion, shall have the right to amend the Phase One RAWP in accordance with Applicable Law. After the Phase One Closing, the Redeveloper shall have the right to amend the Phase Two RAWP in accordance with Applicable Law, subject to the Town's approval, which shall not be unreasonably withheld conditioned or delayed; provided, however, that after the Phase Two Closing, the Redeveloper shall have the right to amend the Phase Two RAWP in accordance with Applicable Law in its sole discretion. For example and not by way of limitation, Redeveloper shall have the right to include the environmental remediation of any parcels within the Phase One Premises or Phase Two Premises in the Phase One RAWP or the Phase Two RAWP, as the case may be, so that the Redeveloper will be able to receive single, site wide RAOs for the entirety of the Phase One Premises and for the entirety of the Phase Two Premises.

(j) The Parties, as applicable, shall advise each other, not less than Five (5) Days in advance, of any hearing, meeting, conference, conference call or site visit/inspection with any approving authority or any governmental official or representative (including the LSRP with oversight over the DPW Remediation) with respect to the DPW Remediation. Each Party shall have the right, but not the obligation, to have representatives attend any such hearing, meeting, conference, conference call or site visit/inspection. Each Party, as applicable, shall keep the other reasonably apprised of the status of the DPW RAWPs and the DPW Remediation, and shall

promptly provide the other Party with copies of all correspondence, plans, reports and other documents and items submitted to or received from NJDEP or any Governmental Agency in connection with the DPW Remediation, as applicable (including the LSRP with oversight over the DPW Remediation).

(k) The Town agrees to fully cooperate with the Redeveloper in the implementation of the DPW Remediation, including, but not limited to, allowing access to the DPW Property prior to the Phase One Closing Date and the Phase Two Closing Date (subject to the terms of Section 2.09(l) hereof), making available any of its records and employees; executing any permit applications, permits and other documents relating to the DPW Remediation; cooperating and assisting in any public notification efforts related to the DPW Remediation; and supporting the Redeveloper's efforts to obtain funding in the form of grants from a federal, state or local funding program for the DPW Remediation.

(l) Redeveloper shall indemnify and hold and save the Town harmless from and against any and all loss, cost, damage, injury or expense arising out of or in any way related to the acts or omissions of Redeveloper, its agents, employees and consultants, relating to any entry onto the DPW Property in accordance with Section 2.09(k) of this Amended Agreement, provided that Redeveloper shall not be liable for the discovery of any preexisting condition. Prior to entering the DPW Property, Redeveloper shall furnish to the Town evidence that Redeveloper has procured, or has caused to be procured, comprehensive general liability insurance from an insurer authorized to do business in the State of New Jersey, insuring the Town against claims for bodily injury, death or damage to property in combined single limit amounts of not less than \$3,000,000.00, naming the Town as an additional insured. The Redeveloper's obligation to indemnify and hold and save the Town harmless pursuant to this Section 2.09(l) shall survive any expiration or earlier termination of this Amended Agreement, subject to Applicable Law.

**2.10 Property Acquisition by Town.** (a) The Redeveloper hereby represents that it has entered into valid, binding and duly authorized purchase and sale contracts for all the Private Parcels within the Phase One Premises. With respect to the Private Parcels within the Phase Two Premises and/or the Phase Three Premises, in the event or to the extent that prior to the

Phase Two Acquisition Deadline and Phase Three Acquisition Deadline, respectively, and subject to its rights set forth in Section 2.14 hereof (and provided this Amended Agreement has not been terminated with respect to Phase Two or Phase Three, as the case may be, pursuant to the terms of Section 2.09(b) and Sections 2.07(b) through (d) respectively), the Redeveloper has not alternatively acquired the fee simple interest in or entered into purchase agreements for each of the Private Parcels within the respective Phase, then the Redeveloper shall submit an Acquisition Notification to the Town requesting that the Town acquire those specific Private Parcel(s) that the Redeveloper was unsuccessful in acquiring or contracting to acquire. The Redeveloper's Acquisition Notification shall request that the Town acquire the subject Private Parcel(s) through negotiation and contract as required pursuant to section 6 of the Eminent Domain Law. If the Town notifies the Redeveloper, in accordance with Section 5.03(a) hereof, that the Town has not acquired, or entered into a contract for, a Private Parcel for less than the Maximum Offer Price, after satisfying the requirements of section 6 of the Eminent Domain Law, the Redeveloper shall have the right to either (i) submit another Acquisition Notification requesting that the Town acquire the subject Private Parcel(s) by condemnation pursuant to the Town's power of eminent domain in accordance with Applicable Law, including, without limitation, the Eminent Domain Law, or (ii) designate the subject parcel as a "Rejected Parcel" which shall be governed in accordance with Section 5.04 of this Amended Agreement. If the Redeveloper fails to deliver another Acquisition Notification in accordance with clause (i) of the preceding sentence within thirty (30) Days after the Town notifies Redeveloper of the Town's failure to acquire or enter into an agreement for the acquisition of the subject parcels for less than the Maximum Offer Price, then Redeveloper shall be deemed to have designated the subject parcel as a Rejected Parcel. Upon the receipt of an Acquisition Notification, the Town may initiate and diligently pursue the acquisition of the Private Parcels in accordance with Applicable Law and the procedures set forth in Article V of this Amended Agreement. Notwithstanding anything to the contrary, the Town shall in no way be obligated to exercise its powers of eminent domain, except with respect to Public Improvements Land.

(b) Notwithstanding anything to the contrary contained herein, if Redeveloper does not close with the owner of any Private Parcel that Redeveloper has contracted with to purchase such Private Parcel, then, notwithstanding the expiration of any time limitation for the delivery of an Acquisition Notification by Redeveloper pursuant to this Amended Agreement,

Redeveloper shall have the right to deliver an Acquisition Notification requesting that the Town acquire the subject Private Parcel in accordance with the procedures set forth in Section 2.10(a) and Article 5 of this Amended Agreement.

**2.11 Acquisition Costs.** The Redeveloper agrees to pay for all reasonable out of pocket costs and expenses (excluding general and administrative overhead) incurred by the Town in implementing the Project, including those costs associated with the Town's acquisition of each parcel of property situated within the Project Premises and in satisfying its obligations under this Amended Agreement.

Such costs and expenses incurred by the Town for the acquisition of any of the Private Parcels identified in an Acquisition Notification (except for the Prospect Street Fee Parcel, the Prospect Street Easement Parcel and the Prospect Street Easement) shall be collectively referred to as the "Acquisition Costs". The Parties hereby agree that the phrase Acquisition Costs shall include, to the extent reasonably incurred by the Town, the following costs and expenses:

(a) The Offer Price for each parcel(s) of property for which the Redeveloper has issued an Acquisition Notification pursuant to Section 5.03(b) of this Amended Agreement;

(b) All reasonable out of pocket costs of correcting or eliminating any objections to title, whether or not dischargeable through condemnation;

(c) All reasonable legal fees, costs of Survey(s), engineering costs, title search and premium fees, Condemnation Appraisal fees (including fees of real property appraisers arising from their participation in pre-condemnation or pre-trial consultations with the Town's condemnation attorney or in the provision of expert testimony should that be necessary during any condemnation proceedings), other professional fees, witness fees, court costs and other expenses directly related to the acquisition of any of the Private Parcels;

(d) Recording fees and real estate taxes accruing during the acquisition, if any, including all real estate taxes due to the Town after acquisition of each Private Parcel for which the Redeveloper has issued an Acquisition Notification and which the Town has acquired on

behalf of the Redeveloper, after the acquisition of the subject Private Parcel by the Town and prior to the conveyance of title to the Redeveloper; and

(e) Reasonable out of pocket expenses required to be paid by those Applicable Law(s) relating to the relocation, either temporarily or permanently, of any residential and business tenants or occupants occupying those Private Parcels to be acquired by the Town pursuant to its exercise of its eminent domain authority.

**2.12 Title Searches and Insurance.** (a) The Redeveloper hereby represents that it has previously obtained complete title searches and reports on title with respect to the Private Parcels within the Phase One Premises (the “Phase One Commitments”) and the Redeveloper is satisfied that the Phase One Commitments indicate that, as of the date of each of the Phase One Commitments, title to such Private Parcels within the Phase One Premises is good and marketable, insurable at regular rates without special premium by the Title Insurer, subject only to the Permitted Exceptions as defined in Section 11.02 hereof.

(b) The Redeveloper shall obtain updated Phase One Commitments and complete title searches and reports on title with respect to the DPW Property, the Parking Authority Property and the Private Parcels within the Phase Two Premises and the Phase Three Premises in sufficient time to satisfy itself that title to the parcels of property contained within the Project Premises is good and marketable, insurable at regular rates without special premium by the Title Insurer, subject only to the Permitted Exceptions as defined in Section 11.02 hereof. If the examination of title by the Redeveloper reveals objections and/or defects not constituting Permitted Exceptions, the Redeveloper shall give notice in writing to the Town within Thirty (30) Days after its receipt of such examination of title. Such written notification shall hereinafter be referred to as the “Title Notification” and said Title Notification shall specify such objections and/or defects. Upon receipt of the Title Notification, the Town may, but shall not be obligated to, exercise its powers of eminent domain pursuant to the Redevelopment Law or other Applicable Law(s) to cure any identified title defects. In the event that the Town is unable to remove any such objections to title or is unable to convey title to any or all of the subject parcels of property not otherwise acquired by the Redeveloper, the Redeveloper may (a) accept title to such parcel(s) of property or (b) notify the Town of its intention to refuse to accept conveyance

of said parcel(s) of property and on that basis either (i) reconfigure the Project and/or the Project Premises, accordingly, or (ii) terminate this Amended Agreement solely with respect to the Phase affected by the title defect. If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 2.12, then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase that has been terminated; the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase; and the Redeveloper shall return any unused portion of the DPW Remediation Funding Amount, if applicable, with respect to the terminated Phase. Furthermore, the DPW Deposit shall be returned to Redeveloper if this Amended Agreement is terminated pursuant to the terms of this Section 2.12 before the later to occur of (i) the date that Redeveloper obtains Phase One Preliminary Approval, and (ii) completion of the DPW RAWPs and the determination of the DPW Remediation Cost Estimates in accordance with the terms of Section 2.09.

**2.13 Survey.** The Phase One DPW Property, the Phase Two DPW Property, and each parcel of property acquired by the Town pursuant to an Acquisition Notification or Title Notification, if any, will be conveyed to the Redeveloper by a metes and bounds description derived from property boundary and topographic Surveys showing property lines of the subject parcel(s) of property, existing grades, easements and utilities in and of the properties to be conveyed and in and of the streets surrounding same. The Survey(s) and the legal description(s) prepared therefrom will be certified by the surveyor to: (1) the Town, (2) the Redeveloper, (3) each Party's respective counsel of record and (4) the Title Insurer. One (1) reproducible and Six (6) copies of the Survey(s) will be delivered to each Party and individual identified herein within Sixty (60) Days of the performance of the Survey(s).

**2.14 Environmental Due Diligence/Geotechnical Due Diligence Studies.** The Town and the Redeveloper acknowledge and agree that given the historical uses of each parcel of property contained within the Project Premises that it is likely that some level of negative environmental impact or contamination will be identified by an Environmental Due Diligence study. Further, the Parties acknowledge and agree that in the event of a finding of such negative environmental impact or environmental contamination that some level of environmental

remediation, mitigation or clean up may be necessary in order to render the subject parcel(s) of property developable. The Town and the Redeveloper understand and agree that the Town shall be under no obligation to perform any environmental remediation, mitigation or clean up of any of the Private Parcels it acquires on behalf of the Redeveloper, it being understood that the subject Private Parcels which are to be conveyed to the Redeveloper by the Town, shall be conveyed in "AS IS" condition.

(a) The Town agrees that with respect to each parcel of property contained within the Project Premises, the Redeveloper reserves the right to conduct the Environmental Due Diligence studies necessary in order to determine the conditions of the soils, subsurface conditions and the presence of environmental contaminants or other hazardous materials. The Redeveloper shall perform the Environmental Due Diligence studies for all of the parcels of property contained within the Project Premises in accordance with the Project Schedule in order to determine as early as possible in the Project whether there are material environmental conditions that would be an impediment to the development and/or construction of the Project or any Phase thereof. It shall be the sole responsibility of the Redeveloper to undertake and pay for the costs of any and all Environmental Due Diligence studies undertaken by or on behalf of Redeveloper. In furtherance thereof, the Redeveloper shall use commercially reasonable efforts, diligently and in good faith to obtain access to each parcel of property to perform such studies as the Redeveloper determines to be necessary. If the Redeveloper is unable to obtain such access to any or all of the parcels of property contained within the Project Premises, upon which it elects to perform such Environmental Due Diligence studies, the Redeveloper will notify the Town in writing and to the extent of its rights under the Applicable Law, the Town agrees to use reasonable measures to furnish the Redeveloper, its agents or designees, with such access, provided the Redeveloper furnishes the Town with satisfactory evidence of sufficient liability insurance as required by Section 4.08 hereof, where such insurance provides coverage to the Redeveloper and the Town against claims for bodily injury, death and property damage arising from or attributable to such access and entry.

(b) The Redeveloper also reserves the right to conduct any and all Geotechnical Due Diligence studies. It shall be the sole responsibility of the Redeveloper to undertake and pay for the costs of the Geotechnical Due Diligence studies, and if found to be necessary, the costs

associated with the correction of any condition(s) found to exist thereupon, which may be adverse to the construction of the Project or any aspect thereof. At the Redeveloper's election, the Geotechnical Due Diligence studies may be performed at one time for all of the parcels of property contained within the Project Premises or such studies may be performed in coordination with the development and construction of each Phase of the Project. The Redeveloper shall use commercially reasonable efforts, diligently and in good faith, to obtain access to each parcel of property upon which it elects to perform the Geotechnical Due Diligence studies in order to perform same. If the Redeveloper is unable to obtain access to those parcel(s) of property or to any of them, the Redeveloper will notify the Town in writing. Pursuant to the extent of its rights under the Applicable Laws, the Town agrees to use reasonable measures to furnish the Redeveloper, its agents or designees with such access, provided the Redeveloper furnishes to the Town satisfactory evidence of sufficient liability insurance as required in Section 4.08 hereof, where such insurance provides coverage to the Redeveloper and the Town against such claims for bodily injury, death and property damage arising from or attributable to such access and entry.

(c) The Redeveloper shall attempt to complete both its Environmental Due Diligence and Geotechnical Due Diligence studies of the Phase Two Premises within One Hundred Eighty (180) Days after execution of the Phase Two Amendment or such longer period as the Redeveloper and the Town may mutually agree to (the "Phase Two Due Diligence Period"). The Redeveloper shall attempt to complete both its Environmental Due Diligence and Geotechnical Due Diligence studies of the Phase Three Premises within One Hundred Eighty (180) Days after execution of the Phase Three Amendment or such longer period as the Redeveloper and the Town may mutually agree to (the "Phase Three Due Diligence Period"). Notwithstanding the foregoing, if the Redeveloper is unable to obtain actual physical access to any parcel of property within the Phase Two Premises or the Phase Three Premises, then, upon notice to the Town pursuant to Sections 2.14(a) and (b) hereof, the Phase Two Due Diligence Period or the Phase Three Due Diligence Period, as the case may be, shall be extended for a period of time equal to the number of days that Redeveloper is unable to access such parcel. Except with respect to Phase One, the Redeveloper shall have the right to terminate this Amended Agreement, solely with respect to a particular Phase, within the Phase Two Due Diligence Period or the Phase Three Due Diligence Period, as the case may be, on the basis of the identification of material

environmental or material geotechnical impediments to the development of the Project Premises with respect to such Phase, as determined by Redeveloper in its sole discretion. The Redeveloper may also terminate this Amended Agreement, solely with respect to a particular Phase, if the Redeveloper determines, in its sole discretion, that the Environmental Due Diligence studies relating to such Phase evidence contamination that the Redeveloper determines will render the subject Phase economically or practically undevelopable, infeasible or unmarketable.

Alternatively, the Redeveloper shall have the right to omit any parcel(s) of property from the Project Premises on the basis of the results of the Environmental Due Diligence or Geotechnical Due Diligence studies and thereby reconfigure the relevant Phase(s) thereof. In the event that the Redeveloper elects to omit any parcel(s) of property from the Project Premises, it shall provide written notification to the Town with the results of the studies and a description of why it is electing to omit the parcel of property. Upon agreement and approval by the Town, which approval shall not be unreasonably withheld, delayed or conditioned, the Redeveloper shall no longer be required to acquire the subject parcel(s) of property.

The Redeveloper has the sole right and discretion to determine the economic and practical impacts of the material environmental or material geotechnical condition of each parcel of property within the Project Premises on the Project's developability and marketability. However, any such determination that the results of the Environmental Due Diligence or Geotechnical Due Diligence studies render the subject parcel(s) of property economically or practically undevelopable or unmarketable or cause the Redeveloper to reconfigure the Project or any Phase(s) thereof must be made no later than the expiration of the Phase Two Due Diligence Period or Phase Three Due Diligence Period, as the case may be, otherwise the Redeveloper cannot terminate the Amended Agreement or reconfigure the Project as provided for herein.

If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 2.14(c), then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase that has been terminated; the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase; and the Redeveloper shall return any unused portion of the DPW Remediation Funding Amount, if applicable, with respect to such Phase.

Notwithstanding anything to the contrary, the Redeveloper's right to terminate this Amended Agreement pursuant to this Section 2.14(c) shall not apply to Phase One.

(d) If an interruption in the Redeveloper's access to any parcel(s) of property contained within the Phase Two Premises or the Phase Three Premises, or any portion(s) thereof, jeopardizes Redeveloper's ability to make a reasoned determination concerning its right to terminate this Amended Agreement or its rights to reconfigure the Project Premises, the Redeveloper shall receive reasonable extensions of the time on a day to day basis to complete either the Environmental Due Diligence or the Geotechnical Due Diligence studies, or both.

(e) Subject to the Redeveloper's rights to terminate this Amended Agreement and its rights to omit any parcel(s) of property from the Project Premises, including, without limitation, on the basis of the results of the Environmental Due Diligence or the Geotechnical Due Diligence studies, the Redeveloper will, at its own cost and expense, reserving any and all rights it may have against third parties, undertake, perform and complete all environmental investigation, remediation, and other activities for the cleanup or containment of the environmental contaminant or Hazardous Substances at, in or under the Private Parcels, as necessary for fulfillment of its obligations under this Amended Agreement and pursuant to and in accordance with Applicable Law and all relevant Governmental Approvals (or a Response Action Outcome issued by an LSRP). Subject to the applicable Governmental Approvals (or a Response Action Outcome issued by an LSRP) and Applicable Law, the Redeveloper has the sole right and discretion to determine the methods and levels of environmental remediation, mitigation or clean up to be used. The Redeveloper shall also, at its own cost and expense, remedy or otherwise address any geological, geotechnical, geophysical or other unfavorable conditions in a manner selected that will insure the successful Completion of the Project or any particular aspect thereof. Except as expressly provided herein, the Town shall have no obligation with respect to the performance of any Environmental Due Diligence or Geotechnical Due Diligence studies of any parcel(s) of property within the Project Premises and the Town shall have no obligation to perform the necessary environmental remediation, mitigation or clean up of the correction of any geotechnical conditions on the Project Premises. The Town shall support the Redeveloper's efforts to obtain funding in the form of grants from a federal, state or local

funding program for any remediation pursuant to this Section. Except as expressly provided in this Agreement, the Town shall not guarantee, warrant, bond, or otherwise incur any liability with respect to the Redeveloper's funding of any remediation.

(f) The Redeveloper shall undertake any necessary wetlands delineation, permitting and mitigation of the Project Premises in order to construct the Project and bear all costs associated with same; however, the Redeveloper reserves any and all rights it may have against third Parties relative to the costs of same.

**2.15 Façade Materials.** The Redeveloper shall comply with the Redevelopment Plan requirements for façade materials. The Redeveloper shall be prohibited from using EIFS "Exterior Insulation and Finish System" ("EIFS") systems and materials, also known as "synthetic stucco", on the exterior façades of any of the Improvements of the Project.

**2.16 Covenant to Build.** In accordance with, and subject to, the terms of this Amended Agreement, the Redeveloper covenants and agrees to perform the multi-Phased construction of the Project upon the relevant portions of the Project Premises together with any ancillary uses as indicated in and on the Governmental Approvals, the Final Site Plans and the Construction Plans. The Redeveloper shall construct the Project in accordance with the Redevelopment Plan and Applicable Law. All Improvements to be situated upon the Project Premises (i.e.; sidewalks, utilities and site lighting, off street parking, roadways, pilings, foundations, footings, open space, walkways, landscaping, etc.) and other construction identified as the Public Improvements, shall be installed by the Redeveloper at its sole cost and expense as the various stages of construction of each Phase of the Project require, subject to the terms of Section 3.10 of this Amended Agreement.

**2.17 Payment of Town's Professional and Acquisition Costs.** Commencing upon the Effective Date, the Redeveloper agrees to pay the Town's actual, reasonable out of pocket professional costs, including, without limitation, all reasonable legal, planning and engineering fees, related to the Project (the "Town's Redevelopment Costs"). This obligation shall continue until termination of this Amended Agreement, a Town Event of Default, or such time as the final Certificate of Completion is issued by the Town for the last Phase of the Project, at which time the Redeveloper shall no longer have the obligation to pay for the Town's Redevelopment Costs

incurred subsequent to the date of such termination, Town Event of Default, or issuance of such final Certificate of Completion, as applicable. Notwithstanding anything to the contrary contained herein, Redeveloper shall not be obligated to pay for any of the following, which shall not be included in the Town's Redevelopment Costs:

- (a) Any costs incurred by the Town in connection with the Town's issuance of an RFP pursuant to Section 2.07(b);
- (b) Any costs incurred by the Town in connection with the development of an Alternate Phase Three Project or the Town's negotiations with an Alternate Phase Three Developer or the Speedwell Private Properties;
- (c) Any costs incurred by the Town in connection with the redevelopment of Phase Two and Phase Three after this Amended Agreement has been terminated with respect to such Phases;
- (d) Any appraisal fees required to be paid by the Town pursuant to Section 2.09(b);
- (e) Any fees and disbursements required to be paid by the Town in connection with (i) the preparation of the proposal for the DPW Environmental Investigation Work pursuant to Section 2.09(c), the DPW RAWPs pursuant to Section 2.09(d) or the DPW Remediation Cost Estimates pursuant to Section 2.09(e), or (ii) the undertaking of the DPW Environmental Investigation Work, or any other environmental investigation undertaken by the Town on the DPW Property, provided, however, that the Redeveloper shall pay the Town for that portion of the DPW Environmental Investigation Work in the amount of Thirteen Thousand Seven Hundred (\$13,700.00) Dollars;

- (f) Any costs associated with the traffic studies that will be conducted pursuant to Section 2.3 of the Redevelopment Plan as part of a detailed engineering study associated with the implementation of the Redevelopment Plan as well as the mobility element of the Master Plan to be completed in 2012;
- (g) Any costs in connection with the acquisition of the Prospect Street Fee Parcel, the Prospect Street Easement Parcel and/or the Prospect Street Easement; and
- (h) Any costs associated with any litigation brought against the Town by third parties regarding the sufficiency and adequacy of affordable housing to be constructed.

Notwithstanding anything to the contrary contained in Section 2.17(f) above, in accordance with Section 4.5 of the Redevelopment Plan, the Redeveloper shall, at its sole cost and expense, submit a traffic report in connection with the site plan application for approval of the Phase One Preliminary Plans, provided that the report shall evaluate the traffic impacts of full build out of the Redevelopment Area pursuant to the Redevelopment Plan. In accordance with the Redevelopment Plan, site plan approval of the Phase One Preliminary Plans shall not be conditioned on final resolution of district mobility infrastructure.

The Redeveloper and the Town entered into an Escrow Agreement, dated April 30, 2007 (hereinafter referred to as the “Administrative and Professional Costs Escrow Agreement”), to pay for the Town’s Redevelopment Costs for the period from the date of designation of the Redeveloper, with any extensions, to the execution of this Amended Agreement. The terms and conditions of the Administrative and Professional Costs Escrow Agreement are incorporated herein and a copy of the Escrow Agreement is attached hereto as **Exhibit M**. Upon the Effective Date, any balance of funds held in escrow pursuant to the terms of the Administrative and Professional Costs Escrow Agreement shall remain to pay the Town for Acquisition Costs and the Town’s Redevelopment Costs incurred after the Effective Date. The Redeveloper shall replenish the escrow fund as required pursuant to the Administrative and Professional Costs

Escrow Agreement. The escrow fund shall continue to be administered in accordance with the terms and conditions of the Administrative and Professional Costs Escrow Agreement.

Commencing upon the Effective Date, the Town shall regularly provide the Redeveloper with monthly statements setting forth the actual, out-of-pocket costs incurred by the Town during the prior month (and on a cumulative basis).

**2.18 Installation of Communications Technology.** The Redeveloper shall use commercially reasonable efforts during construction of the Project to install the latest available communications technology to serve all residential units to be constructed as part of the Project.

**2.19 HVAC Units.** The Redeveloper shall use commercially reasonable efforts to ensure that the HVAC units installed in the Project will limit noise, be so located as to limit visibility and will provide increased efficiencies. Compliance with this requirement shall be subject to the conditions set forth in the Governmental Approval of the Planning Board and/or the appropriate Town consultant.

**2.20 Fiscal Impact Analysis.** The Redeveloper shall provide an updated Fiscal Impact Analysis for Phase One of the Project upon the date of the execution of this Agreement which evaluates the economic and fiscal effects anticipated to result from the construction and occupancy of Phase One of the Project. The Redeveloper shall provide a Fiscal Impact Analysis for Phase Two of the Project as contemplated by this Amended Agreement and the Redevelopment Plan, which evaluates the economic and fiscal effects anticipated to result from the construction and occupancy of Phase Two of the Project prior to the expiration of the Phase Two Option Deadline. The Redeveloper shall provide a Fiscal Impact Analysis of Phase Three of the Project as contemplated by this Amended Agreement and the Redevelopment Plan, which evaluates the economic and fiscal effects anticipated to result from the construction and occupancy of Phase Three of the Project prior to the expiration of the Phase Three Option Deadline.

**2.21 Guaranty.** At each closing MCRT East Assurance VIII LLC shall execute a completion guaranty in favor of the Town, with respect to the subject Phase, in the form annexed hereto as **Exhibit N**, which shall be subordinate to any Mortgage and any guaranty in favor of a

Mortgagee required as a condition of the making of any loan by such Mortgagee (the “Guaranty”). Notwithstanding the foregoing, any Mortgagee shall have the right to require modifications to the terms of the Guaranty so that the Guaranty conforms to such Mortgagee’s commercially reasonable form of completion guaranty.

### ARTICLE III

#### GOVERNMENTAL APPROVAL PROCESS

**3.01 Approval of Site Plan and Subdivision Plan.** (a) Within Sixty (60) Days following the Effective Date of this Amended Agreement, the Redeveloper shall submit to the Town Administrator for his or her review in consultation with the Town’s professionals a preliminary site plan and subdivision plan for Phase One of the Project (the “Phase One Preliminary Plans”), which shall be prepared by a licensed architect, surveyor and/or engineer of the State of New Jersey. Within One Hundred Twenty (120) Days following the expiration of the Phase Two Due Diligence Period, and subject to the Redeveloper’s rights to terminate this Amended Agreement and its right to omit any parcel(s) of property within the Project Premises in accordance with the terms of this Amended Agreement including, without limitation, Section 2.14 of this Amended Agreement, the satisfactory completion of its title searches pursuant to Section 2.12 hereof, the Redeveloper shall submit to the Town Administrator for his or her review, in consultation with the Town’s professionals, a site plan and, if necessary, a subdivision plan for Phase Two of the Project (the “Phase Two Preliminary Plans”), which shall be prepared by a licensed architect, surveyor and/or engineer of the State of New Jersey. Within One Hundred Twenty (120) Days following the expiration of the Phase Three Due Diligence Period, and subject to the Redeveloper’s rights to terminate this Amended Agreement and its right to omit any parcel(s) of property within the Project Premises in accordance with the terms of this Amended Agreement including, without limitation, Section 2.14 of this Amended Agreement, the satisfactory completion of its title searches pursuant to Section 2.12 hereof, and the provisions of Section 2.07(b) and (c) hereof, the Redeveloper shall submit to the Town Administrator for his or her review in consultation with the Town’s professionals, a site plan and, if necessary, a subdivision plan for Phase Three of the Project (the “Phase Three Preliminary Plans”); and together with the Phase One Preliminary Plans and the Phase Two

Preliminary Plans, the “Preliminary Plans”), which shall be prepared by a licensed architect, surveyor and/or engineer of the State of New Jersey. The Preliminary Plans shall be prepared in accordance with Applicable Laws and shall be consistent with the Redevelopment Plan.

(b) The Town Administrator, in consultation with the Town’s professionals, shall have a period of Forty-Five (45) Days after his or her receipt of Preliminary Plans to approve same for general consistency with the Redevelopment Plan and this Amended Agreement, or alternatively to furnish to the Redeveloper a written notice detailing any changes or modifications thereto, and the reasons therefor, required in order to render the same generally consistent with the Redevelopment Plan and this Amended Agreement. If modifications are required by the Town Administrator, in consultation with the Town’s professionals, to render the Preliminary Plans generally consistent with the Redevelopment Plan and this Amended Agreement, provided such modifications do not unreasonably increase the cost of the Project or would not negatively impact the development, construction, marketing or maintenance of the Project or any aspect thereof, the Redeveloper shall incorporate such changes and modifications and furnish said revisions to the Town Administrator for approval within Forty-Five (45) Days after receipt of written notice thereof. Alternatively, the Redeveloper shall request a meeting as soon as practicable with the Town Administrator and the Town’s professionals in order to further discuss the requested revisions. The Town shall reasonably support any and all Governmental Applications submitted to any Governmental Agency by the Redeveloper, provided that the Governmental Applications are generally consistent with the Redevelopment Plan.

**3.02 Filing of Site Plan and Subdivision Application.** Within Forty-Five (45) Days after the date the Town Administrator, after consultation with the Town’s professionals, notifies the Redeveloper of its approval of any of the Preliminary Plans, as applicable, the Redeveloper shall prepare and submit to the Planning Board an application required to obtain approval of such Preliminary Plans. The submission of the above-referenced application shall be made in accordance with all Applicable Laws.

**3.03 Other Governmental Approvals, Construction Plan Review and Commencement of Construction.**

(a) After the Planning Board grants approval of the Phase One Preliminary Plans, the Redeveloper shall proceed diligently to obtain all other Governmental Approvals required for Phase One of the Project from any Governmental Agency having jurisdiction over such Phase thereof, including but not limited to NJDEP and NJDOT approvals and Final Site Plan Approval for Phase One.

(b) After the Planning Board grants approval of the Phase Two Preliminary Plans, the Redeveloper shall proceed diligently to obtain all other Governmental Approvals required for Phase Two of the Project from any Governmental Agency having jurisdiction over such Phase thereof, including but not limited to NJDEP and NJDOT approvals and Final Site Plan Approval for Phase Two.

(c) After the Planning Board grants approval of the Phase Three Preliminary Plans, the Redeveloper shall proceed diligently to obtain all other Governmental Approvals required for Phase Three of the Project from any Governmental Agency having jurisdiction over such Phase thereof, including but not limited to NJDEP and NJDOT approvals and Final Site Plan Approval for Phase Three.

(d) Nothing contained in this Amended Agreement shall be construed to prohibit Redeveloper from (i) pursuing preliminary and final site plan approval for any Phase or Phases simultaneously or (ii) pursuing any Governmental Approvals prior to Phase One Preliminary Approval. Attached hereto as **Exhibit O** is a list of anticipated Governmental Approvals required in order to construct the Project. The Town and Redeveloper acknowledge and agree that (i) this list may not be entirely accurate, (ii) there may be Governmental Approvals not listed on **Exhibit O** that Redeveloper may need to obtain in order to construct the Project, and (iii) there may be Governmental Approvals listed on **Exhibit O** that Redeveloper does not need to obtain in order to construct the Project.

(e) Upon receipt of all Governmental Approvals, except for building permits, for each respective Phase, the Redeveloper will prepare Construction Plans for such Phase to be constructed, as well as materials and an application for approval of the Construction Plans. The respective timing for the Redeveloper's submission of Governmental Applications and obtaining Governmental Approvals shall be in accordance with the dates set forth in the Redevelopment Project Schedules in **Exhibit D**.

(f) To expedite the Commencement of Construction of each Phase of the Project, the Town will use good faith efforts to have the Town Engineering Division and Building and Construction Department review the Redeveloper's Construction Plans for compliance with the Applicable Laws within Thirty (30) Days of its submittal of same. The Redeveloper may not Commence Construction of the Project until such time as the Redeveloper has satisfied all pre-construction requirements prescribed by the Applicable Laws.

(g) The Project Premises or any portion(s) thereof may require environmental remediation, mitigation or clean up for as yet undefined and undetermined environmental contamination. The Parties agree that any environmental remediation, mitigation or clean up process may be time consuming and may involve many of the same steps the Redeveloper must take for site preparation and the construction of building foundations. To proceed with all of these related activities in as economical and efficient manner as possible, the Governing Body and the Town will use good faith efforts to have the Town's staff and consultants authorize any local Governmental Approvals required by the Redeveloper, subject to Applicable Laws, under which the above-referenced environmental remediation, mitigation or clean up activities can proceed. These local Governmental Approvals may be issued and the work hereunder may begin and proceed before the Redeveloper acquires fee title to all of the parcels of property contained within the Project Premises, provided the record owners of same consent. Notwithstanding anything to the contrary contained, herein, under no circumstances shall Redeveloper be obligated to undertake any environmental remediation, mitigation or clean up activities on any parcel within the Project Premises prior to Redeveloper's acquisition of such parcel.

**3.04 Inability to Obtain Governmental Approval(s) for Site Plan and Subdivision Plan and Final Site Plan.**

(a) If, within One Hundred Twenty (120) Days from the date upon which the Governmental Application(s) referenced in Section 3.02 hereof are deemed to be complete by the Planning Board, the Redeveloper has not received approval from the Planning Board of the Preliminary Plans, to which the Governing Body have affirmatively consented or is otherwise deemed to have consented, then, provided, the Redeveloper has not consented to an extension of time for the Planning Board to act, the Redeveloper shall be obligated to pursue the first level of appeal, at its sole cost and expense, challenging the Planning Board's decision or failure to act. The filing of such an appeal shall toll the Project Schedule. In the event such appeal is denied, at the Redeveloper's election and upon written notice to the Governing Body, this Amended Agreement may be terminated solely with respect to the Phase of the Project for which the Redeveloper has not received such Governmental Approval from the Planning Board. If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 3.04(a), then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase that has been terminated; and the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase; and the Redeveloper shall return any unused portion of the DPW Remediation Funding Amount, if applicable, with respect to such Phase. Redeveloper's rights pursuant to this Section 3.04(a) shall not be deemed to limit any other rights of Redeveloper in this Amended Agreement. Furthermore, if this Amended Agreement is terminated pursuant to the terms of this Section 3.04(a) prior to the date that Redeveloper obtains Phase One Preliminary Approval, then the DPW Deposit shall be returned to Redeveloper.

(b) It is hereby agreed to by the Parties that any failure to obtain approval(s) for the Preliminary Plans within the time required by Section 3.04(a) hereof which (i) is caused by the occurrence of an Event of Force Majeure, (ii) is caused by the Planning Board, (iii) involves the Redeveloper's or other appeals from any denial or approval of or conditions to any approvals by the Planning Board or other Governmental Agency with jurisdiction over the Project Premises (other than the Town), or (iv) involves the mutual adjournment of or extension of the hearing

period of the application by both the Redeveloper and the Planning Board or other Governmental Agency, or (v) is required due to actions, decisions or other requirements of any other Governmental Agency maintaining jurisdiction over the Project Premises, will not be deemed to be an Event of Default. With respect to clauses (ii), (iv) and (v) above, the Redeveloper's time constraints for obtaining approvals for the Preliminary Plans, as set forth in Section 3.04(a) hereof shall be extended on a day-to-day basis during the period of the delay, but only if the application then under consideration is generally consistent with the requirements of the Redevelopment Plan and with the Applicable Law(s). With respect to subsection (i) above, the Redeveloper's time constraints for acquiring approvals for the Preliminary Plans as set forth in Section 3.04 (a) hereof shall be extended during the period of delay. With respect to subsection (iii) above, the Redeveloper's time constraint for acquiring the aforementioned approvals as set forth in Section 3.04(a) hereof shall be extended until such time as a final and unappealable judgment is entered by a court of competent jurisdiction. This provision shall not be deemed to limit the rights of either Party pursuant to Section 14.01 hereof.

**3.05 Final Site Plan Approval.** The Redeveloper is required to obtain Final Site Plan Approval of each Phase prior to the Commencement of Construction of such Phase.

**3.06 Reporting; Conditions of Approval.** (a) As it relates to a specific Phase of the Project, the Redeveloper shall, during the processing of any Governmental Applications to obtain the Governmental Approvals, submit to the Mayor or a representative designated by the Mayor, a written report every sixty (60) Days setting forth, at a minimum, (i) a list of Governmental Approvals required for construction of the relevant Improvements, (ii) the current status of the submittal, review and/or issuance of the Governmental Approvals for those Improvements, and (iii) an estimate of the date on which each of such Governmental Approval is expected to be received (which shall be prior to the date on which the Redeveloper expects to Commence Construction for those Improvements, to the extent that such Governmental Approval(s) is/are required to be obtained prior to, or as a condition precedent, to the Commencement of Construction). The Redeveloper shall also provide such supporting documentation in the Redeveloper's possession as the Redeveloper reasonably believes will be necessary or beneficial to the Town for the Town's review of such notice. The list of Governmental Approvals shall be

updated by the Redeveloper as part of the progress reports required to be provided pursuant to Section 4.06 hereof.

(b) (i) If, during the processing of any Governmental Applications, the granting of any Governmental Approvals with respect to a particular Phase(s) is/are or may be conditioned upon any acts or forbearances on the part of the Redeveloper (including, without limitation, any requirement to pay exactions or assessments, or to construct any improvements, such as traffic improvements) other than as set forth in this Amended Agreement and in the Redevelopment Plan with respect to such Phase, then the Redeveloper shall have the right, in its sole discretion, to terminate this Amended Agreement, with respect to the relevant Phase, upon written notice to the Town given within thirty (30) Days after Redeveloper becomes aware of such condition, which notice shall specify the condition(s) that led the Redeveloper to terminate and setting forth what condition(s) the Town may oblige itself to perform which would change the Redeveloper's determination. The Town shall then have the right, in the Town's sole discretion, upon the delivery of written notice to the Redeveloper given within sixty (60) Days after the Town received Redeveloper's termination notice, to satisfy such conditions on behalf of the Redeveloper, upon which the Redeveloper's termination of this Amended Agreement shall be rescinded.

(ii) Notwithstanding the terms of Section 3.06(b(i)), Redeveloper shall not have the right to terminate this Amended Agreement with respect to any condition that, in the good faith opinion of Redeveloper based on advice from counsel, is ultra vires unless and until Redeveloper has pursued to judgment the first level of appeal of such condition, at its sole cost and expense. The filing of such an appeal shall toll the Project Schedule.

(iii) It is specifically acknowledged and agreed by the Parties that the Redeveloper shall not be obligated to replace the culvert running under the Project Premises. If any Governmental Agency conditions any Governmental Approval on the replacement of the culvert, then the Redeveloper shall have the right to terminate this Amended Agreement, with respect to the relevant Phase, in accordance with the terms of this Section 3.06(b).

(iv) If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 3.06(b), then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase or Phases pursuant to which this Amended Agreement has been terminated; and the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase; and the Redeveloper shall return any unused portion of the DPW Remediation Funding Amount, if applicable, with respect to such Phase. Furthermore, the DPW Deposit shall be returned to Redeveloper if this Amended Agreement is terminated pursuant to the terms of this Section 3.06(b) before Redeveloper obtains all Governmental Approvals for Phase One (regardless of whether some or all of the DPW Deposit has already been released from escrow), or if the Phase One Preliminary Approval contains the condition pursuant to which Redeveloper terminates this Amended Agreement pursuant to this Section 3.06(b).

**3.07 Reciprocal Easements.** All site plan maps prepared in accordance with this Amended Agreement shall contain or reference appropriately located reciprocal easements pursuant to which the owners of any of the other parcels of land within the Redevelopment Area or abutting the Redevelopment Area: (i) shall have, during the term of this Amended Agreement, for use by themselves, its Transferees, invitees and guests, easements for access on, over, under and across the sidewalks and walkways within the Redevelopment Area for use by pedestrian traffic; and (ii) shall have the right of flow and passage through common utility facilities. As appropriate, declarations of reciprocal (or cross) easements, in form and content prepared by the Redeveloper, and subject to the approval of the Town and its professionals, which approval shall not unreasonably be withheld, conditioned or delayed, shall be executed and recorded for the purposes of implementing the provisions of this Section 3.07.

**3.08 Project Improvements.** In accordance with and subject to the terms of this Amended Agreement, the Redeveloper shall install and maintain, at its own expense, the Improvements. Attached and annexed hereto as **Exhibit E** is a copy of the Redeveloper's Concept Plans identifying the Improvements to be constructed upon the Project Premises. In the construction of the Improvements, the Redeveloper agrees to comply with the Applicable Laws. The Redeveloper shall install all utilities for the Project underground and relocate the above

ground utilities within the Project Premises underground as part of the Project, which the Redeveloper shall do at its own expense and in accordance with Applicable Law. The Town agrees to actively cooperate with the Redeveloper in securing the necessary Governmental Approvals to do such work.

**3.09 Public Improvements.** (a) The Parties acknowledge and agree that, as a result of the scope of the Project, the Project Premises will likely require repairs, upgrades and/or the installation of certain utilities and municipal improvements, including, but not limited to streets, roads, sidewalks, sanitary sewers, storm sewers and water lines, so as to accomplish the goals and objectives of the Redevelopment Plan and to assure the success of the Project. Except as set forth in Section 3.10 of this Amended Agreement, the Redeveloper agrees to pay for and construct all Public Improvements, or, alternatively, to cooperate with the utility providers that construct the Public Improvements (as identified in the schedules of Public Improvements which are attached and annexed hereto as **Exhibits I-1, I-2 and I-3**). The Redeveloper shall make all payments for Public Improvements and connection fees in a timely fashion. The Redeveloper shall not be responsible for the cost of any Public Improvements undertaken by the Town prior to the Commencement of Construction of Phase One of the Project.

(b) As a component of Phase One of the Project, the Redeveloper shall undertake and Complete the Phase One Public Improvements. As a component of Phase Two of the Project, the Redeveloper shall undertake and Complete the Phase Two Public Improvements. As a component of Phase Three of the Project, the Redeveloper shall undertake and Complete the Phase Three Public Improvements. To that end, the Town shall acquire all Public Improvements Land necessary in order to perform any road widening/realignment, provided the Redeveloper has not acquired same as part of its acquisition of the Private Parcels. Any costs of such property acquisition shall be borne by the Redeveloper in accordance with the provisions of Article II and V herein, subject to Section 3.10 hereof. The Town shall acquire the necessary Public Improvements Land in accordance with the provisions of Article V herein.

(c) Notwithstanding anything to the contrary contained in this Amended Agreement, including, without limitation Section 3.09(b), the Redeveloper shall, at its sole cost and expense, use commercially reasonable efforts through good faith negotiations to execute an agreement

with the owner of the Prospect Street Fee Parcel and the Prospect Street Easement Parcel (the “Prospect Street Parcel Owner”) to acquire fee title to the Prospect Street Fee Parcel and to obtain the Prospect Street Easement, as may be necessary for the construction of Prospect Street in accordance with this Amended Agreement and the Redevelopment Plan. If Redeveloper acquires the Prospect Street Fee Parcel or enters into the Prospect Street Easement, at Phase One Closing, Redeveloper shall receive a credit against the Phase One DPW Purchase Price in an amount equal to the price that Redeveloper paid for the Prospect Street Fee Parcel and the Prospect Street Easement. The Parties acknowledge and agree that it is not the desire, intention or contemplation of the Parties or the Redevelopment Plan to affect or interfere with the residential structure located adjacent to the Prospect Street Fee Parcel and/or the Prospect Street Easement.

If Redeveloper is unable to acquire the Prospect Street Fee Parcel and the Prospect Street Easement through good faith negotiations with the Prospect Street Parcel Owner, then Redeveloper shall have the right to issue an Acquisition Notification to the Town with respect to the Prospect Street Fee Parcel and the Prospect Street Easement. Promptly after receipt of the Acquisition Notification with respect to the Prospect Street Fee Parcel and the Prospect Street Easement, the Town shall, at the Town’s sole cost and expense, in accordance with Applicable Law, proceed diligently and in good faith to acquire the Prospect Street Fee Parcel and the Prospect Street Easement through good faith negotiations and or the Town’s power of eminent domain.

Phase One Closing shall not occur prior to the date that the Redeveloper or the Town has acquired the Prospect Street Fee Parcel and the Prospect Street Easement. The Town’s failure to comply with the Town’s obligations set forth in this Section 3.09(c) shall be deemed a Town Event of Default and Redeveloper shall have all remedies available at law and in equity against the Town including, specific performance.

(d) The Redeveloper and the Town acknowledge and agree that the Public Improvements that will be constructed as a component of each of the Three (3) Phases of the Project are those set forth in the schedules of Public Improvements, copies of which are attached and annexed hereto as **Exhibits I-1, I-2 and I-3**. The Town agrees to cooperate with the Redeveloper in securing the necessary Governmental Approvals to do such work. Redeveloper

shall have no obligation to construct, or pay for all or any portion of, any public improvements in Phase One other than the Phase One Public Improvements; provided, however, that the Town may, at the Town's sole cost and expense, require the Redeveloper to construct additional public improvements included in the Redevelopment Plan as part of Phase One of the Project (the "Additional Phase One Public Improvements"); and provided to that any scheduling delays resulting from the construction of the Additional Phase One Public Improvements shall toll the timeframes set forth in the Project Schedule. The Town shall have the right to finance the cost of the Additional Phase One Public Improvements in accordance with Section 3.10 of this Amended Agreement. Redeveloper shall have no obligation to construct, or pay for all or any portion of, any public improvements in Phase Two other than the Phase Two Public Improvements. Redeveloper shall have no obligation to construct, or pay for all or any portion of, any public improvements in Phase Three other than the Phase Three Public Improvements.

If subsequent development activities utilize and benefit from any of the Public Improvements paid for and constructed by the Redeveloper, the Town shall require the benefiting property owner or developer to pay its pro-rata share of the cost of any off-tract improvements in accordance with Applicable Laws. Any such pro-rata share shall be payable to the Redeveloper to reimburse it for costs it incurred in the construction of such improvements. Notwithstanding anything to the contrary contained in this Amended Agreement, including, without limitation, this Section 3.09, Redeveloper's obligations to construct the Public Improvements are subject to the terms of Section 3.10 of this Amended Agreement.

**3.10 Public Improvements Financing.** (a) The Town shall finance, through financing mechanisms that it shall determine in its sole discretion (the "Public Improvements Financing"), the design and construction of those Public Improvements set forth on **Exhibit P**, attached hereto and made a part of this Amended Agreement, and such Additional Phase One Public Improvements as determined by the Town in its reasonable discretion (the "Town Financed Public Improvements"), to be constructed by the Redeveloper as part of the Project, including any acquisition of lands necessary in connection with the construction and installation of such Public Improvements and Additional Phase One Public Improvements ("Public Improvements Land"); *provided, however*, that in no event shall any portion of the DPW Property be considered a Public Improvement Land. Such financing may be through the exercise

of the Town's powers and authority pursuant to the Redevelopment Area Bond Financing Law, constituting P.L. 2001, c. 310, as amended and supplemented, and codified at N.J.S.A. 40A:12A-64, et. seq., or such other statutorily permitted finance programs. The Town anticipates providing the Public Improvements Financing in three (3) tranches, one (1) tranche for each Phase of the Project. The Town shall make the first tranche of the Public Improvements Financing, for the Phase One Public Improvements, and the Additional Phase One Public Improvements, if any, available to Redeveloper on the Phase One Closing Date, in the amount of One Million Seven Hundred Fourteen Thousand One Hundred Seventy Five (\$1,714,175.00) Dollars, or such higher amount as the Town determines is necessary to finance the Additional Phase One Public Improvements, which such higher amount shall be subject to Redeveloper's approval, which shall not be unreasonably, withheld, conditioned or delayed. The tranches for Phase Two and Phase Three shall be in amounts to be agreed to by the Parties prior to the Phase Two Option Deadline and the Phase Three Option Deadline, respectively. Each tranche shall be provided by the Town to the Redeveloper in accordance with Section 3.10(c) hereof. Notwithstanding anything to the contrary contained herein, pursuant to Sections 2.16 and 3.09, and subject to this Section 3.10, Redeveloper shall pay the cost of the Public Improvements in excess of the Public Improvements Financing, but shall have no obligation to pay the cost of any Additional Phase One Public Improvements in excess of the Public Improvements Financing. It shall be a Town Event of Default if the Town does not make the first tranche of the Public Improvements Financing available to Redeveloper on the Phase One Closing Date in accordance with this Section 3.10(a) and the Redeveloper shall have all remedies available at law and in equity and shall have no obligation to close on Phase One in the case of a Town Event of Default.

(b) For two (2) years after the Town makes the first tranche of the Public Improvements Financing available to Redeveloper for construction of the Town Financed Public Improvements for Phase One, the Redeveloper agrees to pay any interest costs incurred by the Town for the Public Improvements Financing in an amount not to exceed One Hundred Thousand (\$100,000.00) Dollars. On the Phase One Closing Date the Redeveloper shall deposit an amount equal to such interest (for two (2) years) with Escrow Agent to be held in escrow in accordance with the escrow agreement attached hereto as **Exhibit Q**; *provided, however*, that the Town has delivered to the Redeveloper detailed documentation, reasonably satisfactory to

Redeveloper, evidencing the indebtedness incurred by the Town in order to fund construction of the Public Improvements, demonstrating how the interest on the Public Improvements Financing is calculated and specifying the dates upon which the Town's payments of such interest are due and payable.

(c) The Town shall make the proceeds of the Public Improvements Financing available to Redeveloper as follows. On each Closing Date, the Town shall pay to the Redeveloper from the Public Improvements Financing, an amount equal to the cost of the Public Improvements Land acquired by the Redeveloper on such Closing Date, provided Redeveloper delivers to the Town a copy of the deed or easement and closing statement with respect to the relevant portion of Public Improvements Land. Furthermore, on each Closing Date, the Town shall pay to the Redeveloper from such Public Improvements Financing an amount equal to all soft costs incurred by Redeveloper prior to such Closing Date, with respect to Town Financed Public Improvements for the subject Phase. The remaining proceeds of the Public Improvements Financing shall be placed into escrow or trust with an escrow agent or bond trustee reasonably acceptable to Redeveloper and pursuant to an escrow agreement, indenture or similar document governing the disbursement of the Public Improvements Financing, which document shall be subject to Redeveloper's reasonable approval, which shall not be unreasonably withheld, conditioned or delayed, and shall provide that installments of the Public Improvements Financing shall be disbursed to Redeveloper within not more than fifteen (15) Days after the Redeveloper delivers satisfactory documentation (such as invoices from the Redeveloper, or any of Redeveloper's consultants, contractors or subcontractors), demonstrating any completed work, or portion thereof, in connection with the construction of the Town Financed Public Improvements, including, without limitation, road improvements and paving, concrete sidewalks and curbing, relocation of existing electrical utilities, sanitary sewer and storm sewer, public landscaping, traffic signal improvements, retaining walls and supports, and soft costs (e.g., engineering, planning, design and legal fees) associated with the design, construction and inspection of such Town Financed Public Improvements.

**3.11 Project Modifications.** The Redeveloper hereby acknowledges and agrees that the development and construction of the Project shall be in accordance with the Redevelopment

Plan and Applicable Laws. The Redeveloper may not modify, alter or amend the approved Final Site Plans except in accordance with Applicable Laws.

**3.12 Dedication of Streets.** The Preliminary Plans and the Final Site Plans must show the dedication and conveyance of any public rights of way and the Public Improvements that are to be dedicated to the Town or other Governmental Agency(ies). If applicable, the Redeveloper shall dedicate and convey to the Town or other Governmental Agency such rights of way and such Public Improvements, and this Amended Agreement shall serve as the Town's consent to such dedications and conveyances, unless otherwise required by Applicable Law. The Parties specifically acknowledge and agree that, with respect to Phase One, Prospect Street shall be dedicated to the Town.

The Town shall also vacate any existing streets or public rights of way or easements, if applicable, to accommodate the Improvements that are approved and may be required by the Redeveloper to construct the Project in accordance with Applicable Law. Any such vacation shall be undertaken in conformance with Applicable Law. After each Closing Date, the Town shall effectuate any vacation pursuant to this Section 3.12 with respect to the subject Phase, within Sixty Days (60) Days after Redeveloper's written request.

**3.13 Certificate of No Default.** The Redeveloper shall deliver to the Town on each anniversary of the Effective Date, a certificate signed by its authorized representative to the effect that (a) the Redeveloper is not aware of any condition, event or act which constitutes an Event of Default, and (b) the Redeveloper is not aware of any condition, event or act exists which, with notice or lapse of time, or both, would constitute an Event of Default; or (c) if any such condition, event or act exists, specifying same.

**3.14 Storm Culvert.** As noted in Section 3.06(b)(iii) above, the Redeveloper is not responsible to replace the existing storm culvert running under the Project Premises. A perpetual easement, in form reasonably satisfactory to the Town and the Redeveloper, shall be provided by the Redeveloper to the Town of sufficient size and width to allow the Town constant and unfettered access to the storm culvert and culvert structures for maintenance and repair purposes.

Multiple points of access to the storm culvert shall be provided in reasonable locations by the Redeveloper to the Town, including without limitation manhole access where the culvert intersects Prospect Street.

The Redeveloper shall be responsible for the costs of pre-construction and post-construction inspections of the storm culvert.

The Redeveloper shall be responsible for the costs to repair any damages to the culvert caused by the Redeveloper or its agents, employees, contractors, subcontractors or representatives during the course of construction of the Project.

Redeveloper shall submit, as part of its site plan package, among other required documentation, cross-sections and profiles of all building foundations as they relate to the existing culvert structure(s).

#### ARTICLE IV

#### **GENERAL DEVELOPMENT REQUIREMENTS AND CONSTRUCTION OF THE PROJECT**

**4.01 Scope of Undertaking; Standards of Construction.** (a) The services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, construction and operation of the Project and each of the Phases thereof, including, without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project and each Phase thereof, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals and Applicable Law (all of the foregoing undertakings and the work product thereof being referred to collectively in this Amended Agreement as the “Work”), the administration, operation and management, or contracting for the administration, operation and management of the Project and all Phases thereof and all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper, except as otherwise specifically provided for in this Amended Agreement.

(b) Without limitation, all Work on the Project shall be performed in a good and workmanlike manner, with such materials as are required by the Redevelopment Plan and Governmental Approvals and as are appropriate for a Project of the character and quality of similarly situated projects in the County of Morris and State of New Jersey. All construction work shall be performed in accordance with the Applicable Laws.

**4.02 Payment of Project Costs.** Subject to Redeveloper's contractual rights (including, without limitation, approval of work, retainage, etc.), the Redeveloper shall pay (or cause to be paid) when due, all costs and expenses, including, without limitation, all contractors' requisitions and the cost of materials and equipment incurred in connection with Work on the Project and all fees and expenses of any consultants and professionals and like providers acting for (or on behalf of) the Redeveloper.

**4.03 Liens.** The Redeveloper shall indemnify and hold the Town harmless from all liens, or claims or rights (including reasonable legal and other costs) to enforce liens, against the Project Premises, or the Improvements constructed thereupon by or on behalf of the Redeveloper or labor or materials furnished to the Redeveloper. Without limitation, in all events, not less than Ten (10) Days prior to the date upon which the Town or the Redeveloper might be divested of any interest in the Project Premises as a result of any such lien, the Redeveloper shall cause any such lien to be lifted and removed, by bonding or other action satisfactory to the Title Insurer and shall provide the Town with a current endorsement of the applicable title insurance policy(ies) reflecting that title is free and clear of such lien(s). The Redeveloper's obligation to indemnify and hold the Town harmless pursuant to this Section 4.03 shall survive any expiration or earlier termination of this Amended Agreement, subject to Applicable Law.

**4.04 Construction of Project.** Subject to and in accordance with the terms of this Amended Agreement, including, without limitation, the occurrence of an Event of Force Majeure and the acquisition of all parcels of property situated within the Project Premises, the Redeveloper shall Commence Construction of Phase One of the Project in accordance with the Redevelopment Project Schedule a copy of which is attached and annexed hereto as **Exhibit D.** Subject to and in accordance with the terms of this Amended Agreement, including, without limitation, the occurrence of an Event of Force Majeure, the construction of each subsequent

Phase of the Project shall commence in accordance with the respective target time references set forth in that portion of the relevant Redevelopment Project Schedule relating to the subject Phase of the Project.

**4.05 Completion of Construction.** Subject to and in accordance with the terms of this Amended Agreement, including, without limitation, Section 14.01 hereof, construction of all Improvements necessary for the Completion of each Phase of the Project shall be in accordance with the Redevelopment Project Schedule attached hereto as **Exhibit D.** Subject to and in accordance with the terms of this Amended Agreement, including, without limitation, Section 2.07(b), Section 2.07(c), and Section 14.01 hereof, the Redeveloper shall Complete all three (3) Phases of the Project within Seven (7) years of the Effective Date of this Amended Agreement.

**4.06 Report on Progress.** The Redeveloper shall make, in such detail as may be reasonably required by the Town, a quarterly report in writing concerning the actual progress of the Redeveloper with respect to the Project. The Work and construction activities of the Redeveloper on the Project Premises shall be subject to inspection by the Town, upon a reasonable, advance written notice given to the Redeveloper in accordance with Section 13.01 hereof.

**4.07 Suspension of Construction.** If the Redeveloper shall abandon or substantially suspend construction activities on the Project for a period in excess of Sixty (60) Days for reasons other than the occurrence of an Event of Force Majeure or mutual agreement between the Parties, and the suspension or abandonment is not cured, remedied or explained in writing within Thirty (30) Days after written demand by the Town to do so, or such longer period if incapable of cure within the Thirty (30) Day time period, provided that the Redeveloper has commenced and is diligently prosecuting such cure, then the Redeveloper shall be deemed to have committed a Redeveloper Event of Default and the Town may exercise those remedies provided to it in Section 6.04 hereof.

**4.08 Insurance.** As it relates to each Phase of the Project, at all times during the construction of the subject Phase thereof, the Redeveloper shall maintain or cause to be maintained at its own cost and expense, with responsible insurers, the following kinds and the following amounts of insurance with such variations as shall reasonably be required to conform to customary insurance practice:

(a) Builder's Risk Insurance for the benefit of the Redeveloper during the term of construction which will protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, and vandalism and malicious mischief. The limits of liability will be equal to One Hundred (100%) percent of the insurable value of the Project, including items of labor and materials connected therewith, whether in or adjacent to the structure insured, and materials in place or to be used as part of the permanent construction.

(b) Comprehensive General Liability Insurance (including coverage for any construction on or about each parcel of property contained within the Project Premises) against claims for bodily injury, death or property damage occurring on, in or about the Project Premises and the adjoining streets, sidewalks and passageways, in amounts not less than Three Million (\$3,000,000.00) Dollars for each claim with respect to any bodily injury or death, with respect to any one occurrence and Three Million (\$3,000,000.00) Dollars with respect to all claims for property damage relating to any One (1) occurrence;

(c) Worker's Compensation Insurance coverage in the amount of the full statutory liability of the Redeveloper;

(d) Flood Insurance if all or any portion of any Phase Improvements is located in a flood zone.

(e) Such other insurance, in such amounts and against such risks, as is customarily maintained by the Redeveloper with respect to other similar properties owned or leased by it, including automobile insurance and environmental liability.

Prior to the Town granting access to any portion(s) of the Project Premises, the Redeveloper shall submit to the Town proof of all applicable insurance(s). Thereafter, upon each anniversary date of this Amended Agreement, the Redeveloper shall submit the aforementioned proofs of insurance. The policies of liability insurance required to be maintained by the Redeveloper and for which the Redeveloper shall be a named insured, pursuant to this Section 4.08, shall name as additional insureds (except for Worker's Compensation or Automobile Coverage, if applicable, insurance), the Town, as its respective interest may appear.

**4.09 Indemnification and Defense.**

(a) The Redeveloper agrees to indemnify and hold the Town harmless against, and the Redeveloper shall pay for, any and all liability, loss, costs (including reasonable attorney fees and related costs), damage, claims, judgments or expenses, of any and all kinds or nature and however arising, imposed by law, which the Town 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, resulting from the Redeveloper's activities in constructing the Project or the Redeveloper's actual breach of contracts entered into by the Redeveloper which directly relate to the construction of the Project (except for non-payment of costs for the Public Improvements as a result of delays in disbursement of the Public Improvements Financing), or resulting solely from the Redeveloper's ownership of portions of the Project Premises, or resulting from the acquisition, construction or installation of the Project. Further, said indemnification shall include but not be limited to any and all claims by workmen, employees and agents of the Redeveloper and unrelated third parties, which claims result from the construction of the Project, the maintenance and functioning of the Improvements, or any other activities of the Redeveloper within the Project Premises during the construction of the Project. Notwithstanding the foregoing, the Redeveloper shall have no obligation to indemnify and hold the Town harmless from and against any liability, loss, cost, damage, claims, judgments or expenses, of any kind or nature arising from the negligent, intentional or willful acts of the Town, its commissioners, officers, agents, servants or employees, or the Town's breach of this Amended Agreement. Neither the Town, nor its commissioners, officers, agents, servants or employees shall be liable in any event for any action performed under this Amended Agreement, except for any liability, loss, cost, damage, claims, judgments or expenses, of any kind or nature

arising from the negligent, intentional or willful acts of the Town, its commissioners, officers, agents, servants or employees, or the Town's breach of this Amended Agreement.

(b) The Redeveloper, at its own cost and expense, shall defend any and all such claims, suits and actions (including reasonable attorney fees and related costs), as described in and for which indemnification is required by this Section 4.09, which may be brought or asserted against the Town, its commissioners, officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in this Amended Agreement from its obligation to defend the Redeveloper, the Town and any other insured identified in such policy of insurance in connection with claims, suits or actions covered by such policy. Any cost for reasonable attorneys' fees in situations where it is necessary for the Town to engage its own attorneys, reasonable experts' testimony costs and all reasonable costs to defend the Town or any of its commissioners, officers, agents, servants, or employees shall be reimbursed to it by the Redeveloper in connection with such indemnification claim. The Town shall give the Redeveloper notice of any such claim for which indemnification under this Amended Agreement is sought (together with copies of any documents received) within Fifteen (15) Days of the Town's receipt of same.

(c) The Redeveloper's obligation pursuant to this Section 4.09 shall survive any expiration or earlier termination of this Amended Agreement, subject to Applicable Law.

**4.10 Certificates of Occupancy and Certificate of Completion.** The Town shall, within thirty (30) days after the Completion of any Phase, building or Improvement (or if any portion of the Project is subject to the New Jersey Condominium Act, any Unit), and receipt of a written request from the Redeveloper, issue a certificate certifying such Completion in the form annexed hereto as **Exhibit R** ("**Certificate of Completion**"). The Town shall issue the Certificate of Completion, provided there is not then an existing Redeveloper Event of Default; and provided, however, that if the Town reasonably determines that the Redeveloper is not entitled to a Certificate of Completion, the Town shall, within Thirty (30) Days of receipt of Redeveloper's request (which shall include a Redeveloper's Certificate in the form attached as Exhibit 1 to the form of Certificate of Completion annexed hereto as **Exhibit R**), provide

Redeveloper with a written statement, specifying in reasonable detail the reasons the Town refused or failed to furnish a Certificate of Completion, and describing the measures or acts reasonably necessary, in the opinion of the Town, that the Redeveloper must take or perform in order to obtain such Certificate of Completion. Upon Redeveloper's Completion of the actions deemed reasonably necessary by the Town, the Town shall forthwith issue the Certificate of Completion. Upon receipt of each of the Certificates of Completion, the Redeveloper may record it in the Morris County Clerk's Office.

The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Amended Agreement and in the Redevelopment Plan with respect to Redeveloper's obligation to develop and construct the Phase, building, Improvement or unit to which the Certificate relates. In particular, with respect to the subject Phase of the Project, upon the issuance of the corresponding Certificate of Completion, the obligations, Covenants and Restrictions set forth in Section 7.02 hereof shall cease and terminate, except for those Covenants and Restrictions set forth in Section 7.02(b) and Section 7.02(c) hereof which shall survive in accordance with the terms of Section 7.03 hereof. Upon issuance of the Certificate of Completion, the conditions determined to exist at the time the Project Premises was determined to be an area in need of redevelopment shall be deemed to no longer exist and the land and Improvements within the Project Premises corresponding to the Phase, building, Improvement or unit shall no longer be subject to eminent domain by the Town under the Redevelopment Law as a result of that determination.

To enable the Redeveloper to lease and/or convey good and marketable title to each residential unit developed and constructed as a part of the Project and to lease each unit of retail/commercial space prior to the issuance of the relevant Certificate of Occupancy, the Town may issue a temporary Certificate of Occupancy for the subject residential unit or unit of retail/commercial space, subject to Applicable Laws. The issuance of such temporary Certificate of Occupancy shall not relieve the Redeveloper of its obligations to otherwise Complete the Project as provided for hereunder.

## ARTICLE V

### TOWN RESPONSIBILITIES

**5.01 Acquisition of Project Premises.** The Redeveloper hereby represents that it has entered into valid, binding and duly authorized purchase and sale contracts for all the Private Parcels within the Phase One Premises. The Redeveloper shall use commercially reasonable efforts, at its sole cost and expense, to acquire and/or enter into purchase agreements for the acquisition of each parcel of property contained within the Phase Two Project Premises prior to the Phase Two Acquisition Date and the Phase Three Project Premises prior to the Phase Three Acquisition Date. The Redeveloper shall notify the Town within Thirty (30) Days after execution of any purchase contract(s) it enters into to acquire each of the Private Parcels contained within the Phase Two Project Premises and the Phase Three Project Premises. Upon the acquisition of the subject Private Parcel(s), the Redeveloper shall pay all real estate taxes and other Impositions lawfully due on any such parcel of property from the date that the Redeveloper acquires its ownership interest in same. The Parties acknowledge and agree, that, pursuant to the Financial Agreements, after each respective closing and until payments in lieu of taxes commence, real estate taxes with respect to the parcels within the Project Premises for the subject Phase shall be based on land value only because all improvements will be demolished upon acquisition.

**5.02 Acquisition Notification.** In accordance with Section 2.10 hereof, the Redeveloper shall submit an Acquisition Notification to the Town stating its inability to amicably acquire the specified Private Parcels with respect to such Phase. The Acquisition Notification shall set forth the Redeveloper's request that the Town commence the acquisition of the parcels of property identified therein in accordance with Section 2.10 hereof. The Redeveloper shall also provide the Town copies of any title work, Surveys and the estimate of costs for any environmental remediation, mitigation or clean-up necessary to develop the subject parcel(s) of property. The Redeveloper may provide the Town with copies of any property appraisals performed on the identified parcel(s) of property directly by or on behalf of the Redeveloper.

### **5.03 Acquisition/ Condemnation Procedures.**

(a) In the event the Town determines to exercise its powers of eminent domain, upon receipt of an Acquisition Notification and provided that there is no existing uncured Redeveloper Event of Default, the Town may, but shall not be obligated to, proceed diligently and in good faith to acquire the subject parcels through negotiation and contract as required pursuant to Section 6 of the Eminent Domain Law and pursuant to any other Applicable Laws (provided, however, that with respect to any Acquisition Notification for Public Improvements Land, the Town shall be obligated to proceed diligently and in good faith to acquire the subject parcels through negotiation and contract as required pursuant to Section 6 of the Eminent Domain Law and pursuant to any other Applicable Laws). The Town shall notify the Redeveloper within ninety (90) days after the Redeveloper's delivery of an Acquisition Notification whether the Town has acquired, or entered into an agreement for the acquisition of, the subject parcels in accordance with the preceding sentence for less than the Maximum Offer Price. If the Town notifies the Redeveloper of the Town's failure to acquire or enter into an agreement for the acquisition of the subject parcels for less than the Maximum Offer Price, then, as set forth in Section 2.10, Redeveloper shall have the right to either (i) submit another Acquisition Notification requesting that the Town acquire the subject Private Parcel(s) by condemnation pursuant to the Town's power of eminent domain in accordance with Applicable Law, including, without limitation, the Eminent Domain Law, or (ii) designate the subject parcel as a "Rejected Parcel" which shall be governed in accordance with Section 5.04 of this Amended Agreement. If the Redeveloper fails to deliver another Acquisition Notification in accordance with clause (i) of the preceding sentence within thirty (30) Days after the Town notifies Redeveloper of the Town's failure to acquire or enter into an agreement for the acquisition of the subject parcels for less than the Maximum Offer Price, then Redeveloper shall be deemed to have designated the subject parcel as a Rejected Parcel. Notwithstanding anything to the contrary, the Town shall in no way be obligated to exercise its powers of eminent domain, except with respect to Public Improvements Land.

(b) In the event the Town determines, in its sole discretion (except with respect to Public Improvements Land with respect to which the Town shall be obligated to exercise its powers of eminent domain in accordance with the terms of this Amended Agreement), to

exercise its powers of eminent domain, then promptly after receiving an initial Acquisition Notification, the Town shall obtain a real property appraisal for each parcel of property identified in such Acquisition Notification (the "Condemnation Appraisal"). Each Condemnation Appraisal shall be subject to Redeveloper's approval, which approval shall not be unreasonably withheld, conditioned or delayed. In accordance with the Applicable Laws, the Town shall be responsible for the commencement of bona fide good faith negotiations to acquire the subject parcel(s) of property from the owners of record. The Town agrees, to the extent allowable by the Applicable Law, that it shall seek a modification, credit or adjustment to any monetary offer extended by the Town to the owners of record of the subject parcel of property provided that such modification, credit or adjustment to be sought by the Town shall be based upon an Environmental Cost Estimate described in Section 5.03(c). The Town's efforts to obtain such modification, credit or adjustment shall be in accordance with the Applicable Laws, and shall be obtained with the participation of and/or in consultation with the Redeveloper. The Town's initial offer to the owner of a Private Parcel shall be for the Initial Offer Price. Prior to the Town making any subsequent good faith offer to acquire the subject parcel(s) of property from the owners of record, the Town shall obtain the approval of the Redeveloper of the Offer Price, which approval shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, that Redeveloper may withhold such approval in its sole discretion if the Offer Price exceeds the Maximum Offer Price. In addition, prior to the Town agreeing to a settlement on the purchase of any subject parcel(s) of property from the owners of record as a result of the good faith offer and any subsequent negotiations, it shall obtain the approval of the Redeveloper of such settlement, which approval shall not be unreasonably withheld, conditioned, or delayed; *provided, however*, that Redeveloper may withhold such approval in its sole discretion if the settlement price exceeds the Maximum Offer Price. Notwithstanding anything to the contrary contained herein, once the Town commences an eminent domain action, the Town shall proceed diligently and in good faith to pursue such action in accordance with the terms of this Amended Agreement and shall not have any right to abandon or cease pursuit of such action.

(c) Subject to Redeveloper's rights pursuant to Section 2.14 hereof, if, as part of the Environmental Due Diligence studies, a preliminary site assessment discloses areas of concern on any Private Parcel within the Phase Two Premises or the Phase Three Premises, the Redeveloper shall conduct additional site investigations and determine a reasonable estimate of

the costs and expenses associated with the reasonably necessary environmental remediation, mitigation or clean up (hereinafter referred to as the “Environmental Cost Estimate”). The Redeveloper shall submit the Environmental Cost Estimate to the Town as soon as may be practicable. The Town shall exercise its discretion not to commence any eminent domain action until the Redeveloper has submitted the Environmental Cost Estimate and the relevant pleadings shall include appropriate environmental allegations and reservations of rights with respect to the recovery of the amount set forth in the Environmental Cost Estimate. Upon motion by the condemnee to withdraw the fair market value placed in escrow with the court, the Town shall object to the withdrawal of an amount equal to the Environmental Cost Estimate and will seek an order allowing the court to hold such amount in escrow as potential cost recovery damages. The Town shall initiate any other legal actions required to recover the amount set forth in the Environmental Cost Estimate.

(d) The Town shall not file and record any declaration(s) of taking without the prior written consent of the Redeveloper. In the event the Town determines, in its sole discretion, to exercise its powers of eminent domain, the Town shall provide written notice to Redeveloper at least thirty (30) days prior to the date that the Town desires to file a declaration of taking. Upon the recording of any declaration of taking, the Redeveloper shall pay the Offer Price to the Town for deposit with the clerk of the court pursuant to the requirements of the Eminent Domain Law; *provided, however*, that Redeveloper’s failure to approve of the filing of a declaration of taking or failure to pay the Offer Price upon the Town’s filing of a declaration of taking shall not be a Redeveloper Event of Default and shall instead be governed by Section 5.04 hereof. Notwithstanding anything to the contrary herein, and subject to all of Redeveloper’s rights hereunder, Redeveloper shall not be obligated to pay any Offer Price to the Town until ten (10) Days after Redeveloper receives written notice from the Town that the Town is required by the Eminent Domain Law and/or court order, to deposit such Offer Price in escrow with the court or pay such amount to the condemnee in any eminent domain action pursuant to this Amended Agreement.

(e) With respect to any eminent domain proceedings instituted by the Town, if any, the Redeveloper agrees that the Town shall be entitled to appoint outside legal counsel to act as special counsel to conduct said eminent domain proceedings, the reasonable costs of which shall

be deemed to be Acquisition Costs as this term is defined in Section 2.11 hereof. In addition, the Town shall have the right to hire real property appraisers, surveyors and such other professionals as may reasonably be required in connection with such eminent domain proceedings, the reasonable costs of which shall be deemed to be Acquisition Costs as this term is defined in Section 2.11 hereof. Prior to the retention of any such professional consultant, the Town shall consult with the Redeveloper and provide a schedule of the estimated costs and expenses for the consultation services contemplated. The Town agrees that it will cause any attorney retained by it to prosecute any eminent domain action in consultation with the Redeveloper and its professionals and to frequently provide the Redeveloper with status update reports on all negotiations and any eminent domain proceedings. The Redeveloper, the Town and the Town's special counsel shall discuss all strategies such attorney proposes, including settlement limits and strategies. The Town shall make available to its real property appraisers the results of the Redeveloper's Environmental Due Diligence studies and Environmental Cost Estimates in order that the results thereof may be taken into account in their Condemnation Appraisals to the extent permitted by the Applicable Law.

(f) Unless otherwise provided by this Amended Agreement, each parcel of property contained within the Project Premises that is acquired by the Town on behalf of the Redeveloper shall be conveyed to the Redeveloper. Title to each such parcel of property shall be good and marketable and insurable at regular rates and without special premium by a reputable Title Insurer doing business in New Jersey, subject only to the Permitted Exceptions as set forth in Section 11.02 hereof.

(g) Each contract that the Town enters into for the purchase of a Town Acquisition Parcel in accordance with this Article V shall (i) be contingent upon Redeveloper obtaining all Governmental Approvals for the Phase of the Project in which such Town Acquisition Parcel is located, and (ii) provide for closing of title on the Closing Date for such Phase.

(h) At Redeveloper's request, the Town may join in one action the condemnation of all Private Parcels within a particular Phase (or if such request is with respect to more than ten (10) Private Parcels the Town shall request leave of the court for such joinder).

**5.04 Redeveloper's Failure to Tender Offer Price.** If the Redeveloper (i) fails to pay to the Town the Offer Price with respect to any parcel of property contained within the Project Premises for which an Acquisition Notification has been issued within ten (10) Days after Redeveloper receives written notice from the Town stating that the Town is required by the Eminent Domain Law and/or court order, to deposit the Offer Price in escrow with the court or pay the Offer Price to the condemnee, or (ii) refuses or rejects the determination by the Town regarding the Offer Price for any parcel of property contained within the Project Premises, or (iii) fails to submit an Acquisition Notification to the Town requesting the Town acquire a Private Parcel pursuant to the Town's eminent domain authority within thirty (30) Days after the Town notifies Redeveloper of the Town's failure to acquire or enter into an agreement for the acquisition of the subject parcels, or (iv) disapproves or is deemed to have disapproved of the filing of a declaration of taking, or (v) delivers written notice to the Town that Redeveloper desires to abandon condemnation proceedings in accordance with N.J.S.A 20:3-35 with respect to any parcel (any parcel that is the subject of clauses (i) through (v) above shall hereinafter be referred to as a "Rejected Parcel"), then, in such event(s), the Town's obligation to convey fee simple title to such Rejected Parcel shall be considered as having been foregone and forfeited by the Redeveloper and shall be deemed to have lapsed automatically and be of no further force and effect under this Amended Agreement and no longer binding upon the Town as to such Rejected Parcel and no other parcel within the Project Premises. Furthermore, in such event(s), Redeveloper shall thereafter have the right, in its sole discretion, to (i) omit the Rejected Parcel from the Project Premises and reconfigure the Project so as to account for the Rejected Parcel, or (ii) terminate this Amended Agreement in its entirety with respect to the subject Phase or Phases of the Project containing the Rejected Parcel. If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 5.04, then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase or Phases pursuant to which this Amended Agreement has been terminated; and the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase; and the Redeveloper shall return any unused portion of the DPW Remediation Funding Amount, if applicable, with respect to such Phase. Notwithstanding anything to the contrary contained herein, Redeveloper shall only have the right to reject a

Private Parcel pursuant to this Section 5.04 if the owner of the subject Private Parcel has failed to enter into an agreement to sell the subject Private Parcel to the Town or the Redeveloper for an amount less than or equal to the Maximum Offer Price.

**5.05 Inability of the Town to Acquire Parcel(s) of Property.** The Redeveloper acknowledges that in the event that the Town determines not to exercise its powers of eminent domain (except with respect to Public Improvements Land) or that a court of competent jurisdiction enters a final, non-appealable order or judgment that the Town cannot acquire by the exercise of its eminent domain authority any or all of the parcel(s) of property for which the Redeveloper has issued an Acquisition Notification, due to objections by the record owner, or otherwise, the Redeveloper's remedies are (i) to omit the subject parcel(s) of property from the Project Premises and reconfigure the Project; or (ii) to terminate this Amended Agreement as to the subject parcel(s) of property, or relevant Phase, which determination shall be made at the sole discretion of the Redeveloper. The Parties acknowledge and agree that in the event that the Redeveloper elects to omit the subject parcel(s) of property and reconfigure a specific Phase(s) of the Project, any time periods set forth in this Amended Agreement or in the relevant Redevelopment Project Schedule shall be extended for a reasonable period in order to allow the Redeveloper to revise the Preliminary Plans, Final Site Plans and/or apply or re-apply for any and all Governmental Approvals relevant thereto. Furthermore, any judgment by a court of competent jurisdiction shall apply only to the particular Phase which contains those parcel(s) of property in question. A negative holding or judgment shall not apply to all Phases or to the Project without a fair hearing before that Court as to the Project or any Phase(s) thereof. If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 5.05, then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase that has been terminated; the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase; and the Redeveloper shall return any unused portion of the DPW Remediation Funding Amount, if applicable, with respect to such Phase. Furthermore, if this Agreement is terminated pursuant to the terms of this Section 5.05, then the DPW Deposit shall be returned to Redeveloper.

**5.06 Town Conveyance of Identified Private Parcels.** Subject to the condition that all Acquisition Costs which have been incurred to date for the subject parcel(s) of property acquired by the Town on behalf of the Redeveloper, have been paid by the Redeveloper, the Town shall convey, or cause to be conveyed, to the Redeveloper, by Deed of Bargain and Sale with Covenant Against Grantor's Acts (hereinafter referred to as a "Deed"), title to each such parcel. The Parties acknowledge and agree that there are no Phase One Town Acquisition Parcels or Phase One Condemnation Parcels (other than Public Improvements Land, which may need to be acquired in accordance with the terms hereof). The Town shall convey, or cause to be conveyed, the Phase Two Town Acquisition Parcels and the Phase Two Condemnation Parcels on the Phase Two Closing Date. The Town shall convey, or cause to be conveyed, the Phase Three Town Acquisition Parcels and the Phase Three Condemnation Parcels on the Phase Three Closing Date. The condition of said title so conveyed shall be in accordance with the requirements of this Amended Agreement. The Town and the Redeveloper acknowledge and agree that none of the provisions of this Amended Agreement are intended to or shall be merged by reason of any Deed(s) transferring title to same from the Town, or any owner of a Private Parcel, to the Redeveloper or any Transferee(s) and any such Deed(s) shall not be deemed to affect or impair the Covenants and Restrictions set forth elsewhere in this Amended Agreement.

Notwithstanding anything to the contrary contained in this Amended Agreement, Redeveloper shall have the right to enter into a purchase and sale contract to convey, and to actually convey, good and marketable title to the residential units, units of retail/commercial space and other Improvements developed and constructed as part of the Project and to prepare creation documents and apply for approval of a condominium regime, and, subject to such approval, prepare and record a condominium Master Deed that is free and clear from the obligations, Covenants and Restrictions contained in this Amended Agreement or the Redevelopment Plan, at any time before a Certificate of Completion is issued with respect to the relevant Phase of the Project.

**5.07 Access to Project Premises; Town Inspections.** Prior to the conveyance to the Redeveloper of any parcel of property contained within the Project Premises that the Town acquires on behalf of the Redeveloper, the Town shall permit representatives of the Redeveloper

to have access to any and all portions thereof at all reasonable times for the purpose of obtaining data and making various tests concerning the Project Premises necessary to carry out the provisions of this Amended Agreement, subject to the Redeveloper's provision of insurance coverage for such entry access and investigations acceptable to the Town. After the conveyance to Redeveloper of those parcels of property acquired by the Town on behalf of the Redeveloper, the Redeveloper shall permit the representatives of the Town access to same at all reasonable times which any of them deems reasonably necessary for the purposes of assuring or ascertaining compliance with the terms of this Amended Agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements and the Project. No compensation shall be payable nor shall any charge be made in any form by any Party for the access provided for in this Section 5.07.

**5.08 Cooperation.** The Town shall cooperate fully in the preparation and prosecution of any and all Governmental Applications and the Redeveloper's receipt of all necessary Governmental Approvals required for the Project or any aspect or Phase thereof including but not limited to the execution of any and all necessary Governmental Applications in accordance with Applicable Law. The Town further agrees to actively support any Governmental Application filed by the Redeveloper with the Planning Board for Governmental Approval of the Preliminary Plans or Final Site Plans and with all such other Governmental Applications prepared for the purpose of submitting same to the relevant Government Agency(ies), provided that same conform to the Applicable Laws, the Redevelopment Plan and this Amended Agreement, and, if applicable, provided that the Town has already approved Preliminary Plans and Final Site Plans, as the case may be, in writing pursuant to the terms of this Amended Agreement. Furthermore each Party agrees to promptly execute and deliver such documents as the other may reasonably request to carry out the purposes of this Amended Agreement. Without limiting the generality of the foregoing, the Town shall, (i) request that the Planning Board and all other agencies of the Town having jurisdiction over any of the Governmental Approvals expedite the processing of all applications for Governmental Approvals, including the scheduling of special meetings, (ii) schedule, convene and conclude all required public hearings in an expeditious manner consistent with Applicable Laws, and (iii) cause all planners, engineers and other consultants engaged by the Town or any of its agencies to review and comment on all submittals by Redeveloper in an expeditious manner.

**5.09 Tax Abatements.** (a) The Town acknowledges and agrees that the Redeveloper may form one or more Affiliates that are duly qualified urban renewal entities pursuant to Applicable Law (a “URE”), which UREs may submit a Governmental Application under the Long Term Tax Exemption Law for approval of One (1) or more agreements for tax exemptions and payments in lieu of taxes, (individually or collectively, as the case may be, the “Financial Agreement”). The Redeveloper and the Town recognize that each Financial Agreement will benefit the URE, the Town, and the potential residents and tenants of the subject Phases of the Project. If proposed by a URE, the Town agrees to reasonably consider such request in good faith on terms acceptable to the Town, and any Financial Agreement shall be subject to the receipt of all Governmental Approvals required by the Applicable Laws. The Financial Agreement for Phase One shall provide that the annual service charges payable to the Town pursuant thereto shall be for a term of Thirty (30) years and calculated based upon Ten and One-Tenths (10.1%) percent of actual annual gross revenues. The terms and conditions governing the Financial Agreement for Phase Two and Phase Three of the Project shall be negotiated in good faith by the Parties prior to the Phase Two Option Deadline and the Phase Three Option Deadline, respectively, and shall contain terms mutually acceptable to the Parties and the URE.

(b) The Redeveloper shall have the right to terminate this Amended Agreement with respect to any Phase, if, within One Hundred Twenty (120) Days after Redeveloper submits an application for one or more Financial Agreements to the Mayor of the Town in accordance with the Long Term Tax Exemption Law, (i) the Governing Body has not approved such application(s) pursuant to a duly adopted resolution, and (ii) the Town and the Redeveloper have not entered into one or more Financial Agreements as specified in the approved application(s), in form reasonably satisfactory to the Redeveloper and the Town, which Financial Agreements shall have been approved by ordinance duly adopted by the Governing Body; *providing, however,* that the Redeveloper shall have compiled and submitted such application in good faith and with all diligence. If this Amended Agreement is terminated pursuant to the terms of this Section 5.09 with respect to any Phase of the Project then, except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to

the Phase that has been terminated. Furthermore, the DPW Deposit shall be returned to Redeveloper if this Amended Agreement is terminated pursuant to the terms of this Section 5.09(b) with respect to Phase One regardless of whether some or all of the DPW Deposit has already been released from escrow.

**5.10 Conveyance of Parking Authority Property and the DPW Property.**

(a) The Town and the Redeveloper acknowledge and understand that the Parking Authority Property and the DPW Property are currently owned by the Town and/or its political subdivisions. The Parking Authority Property is currently owned by the Morristown Parking Authority and the Town will use commercially reasonable efforts to work with the Redeveloper in order for Redeveloper to acquire fee simple title to this parcel of property. However, the Redeveloper shall be responsible for any payments to the Morristown Parking Authority required for the purchase of this property.

(b) Subject to and in accordance with the provisions set forth in Section 2.09 hereof, the Town shall convey title to the Phase One DPW Property to the Redeveloper for the total gross sum of Three Million Five Hundred Thousand (\$3,500,000.00) Dollars, as agreed to by the Parties. The Phase Two DPW Purchase Price shall be determined in accordance with Section 2.09.

(c) The Town shall convey title of the Phase One DPW Property to the Redeveloper by Deed on the Phase One Closing Date and the Town shall convey title of the Phase Two DPW Property by Deed to the Redeveloper on the Phase Two Closing Date. The Town shall relocate the DPW Facility (except for the Ambulance Squad) and shall completely vacate the Phase One DPW Property (including, without limitation, storage of materials) prior to the Phase One Closing Date. The Town shall relocate the Ambulance Squad and shall completely vacate the Phase Two DPW Property (including, without limitation, storage of materials) prior to the Phase Two Closing Date.

(d) The Parties acknowledge that within five (5) days after execution of the Original Agreement, the Redeveloper made a good faith deposit into an interest-bearing account on the acquisition of the DPW Property in the amount of Five Hundred Thousand (\$500,000.00) Dollars (the “DPW Deposit”). The Parties acknowledge and agree that (i) on or about August 2, 2010, pursuant to that certain letter agreement executed by both Parties, the Parties mutually agreed, among other things, to withdraw from the DPW Deposit an amount equal to Fifty Thousand (\$50,000.00) Dollars, and (ii) on or about February 1, 2011, the Redeveloper deposited into the DPW Deposit an amount equal to Forty One Thousand One Hundred Nineteen and 46/100 (\$41,119.46) Dollars, leaving a deficiency in the principal amount of the DPW Deposit in the amount of Eight Thousand Eight Hundred Eighty and 54/100 (\$8,880.54) Dollars (the “DPW Deposit Deficiency”). Within five (5) Days of the Effective Date of this Amended Agreement, the Redeveloper shall deposit the DPW Deposit Deficiency into the DPW Deposit to replenish the principal amount to the full Five Hundred (\$500,000.00) Dollars. The DPW Deposit shall be held by Escrow Agent in accordance with the terms of Section 5.11 of this Amended Agreement. Upon the Redeveloper’s receipt of Phase One Preliminary Approval from the Planning Board, the DPW Deposit shall become non-refundable, except in case of a Town Event of Default, Redeveloper’s failure to obtain Governmental Approvals for Phase One, or as otherwise expressly set forth in this Amended Agreement.

(e) The Redeveloper shall pay One (1) year of interest (the “DPW Interest Payment”) on a principal amount of not more than Two Million (\$2,000,000.00) Dollars of financing that the Town may undertake to fund the construction of a new DPW Facility (the “DPW Financing”), which must be relocated by the Town in order for the Phase One DPW Property to be conveyed to the Redeveloper for Phase One of the Project. The DPW Interest Payment shall not exceed One Hundred Thousand (\$100,000.00) Dollars. Within thirty (30) Days after receiving written notice from the Town that the Town has closed on the DPW Financing, the Redeveloper shall deposit the DPW Interest Payment with Escrow Agent to be held in escrow in accordance with the Escrow Agreement attached hereto as **Exhibit S** (“DPW Interest Payment Escrow Agreement”); *provided, however*, that the Town has delivered to the Redeveloper detailed documentation, reasonably satisfactory to Redeveloper, evidencing the DPW Financing, demonstrating how the DPW Interest Payment is calculated and specifying the dates upon which

the Town's payments of DPW Interest are due and payable. Notwithstanding anything to the contrary contained herein, Redeveloper shall not be obligated to make any DPW Interest Payments unless and until (i) Redeveloper has obtained all Governmental Approvals for Phase One of the Project and (ii) the Town has conveyed to Redeveloper title to the Phase One DPW Property.

**5.11 Escrow Terms: (a) The DPW Deposit shall be held in escrow by Escrow Agent in an interest bearing account until disbursed as herein provided.** Any interest accrued on the DPW Deposit shall be paid to whichever Party is entitled to the DPW Deposit in accordance with the provisions of this Amended Agreement. The DPW Deposit and any interest earned on the DPW Deposit shall be credited against the Phase One DPW Purchase Price. The DPW Deposit shall be held and disbursed by Escrow Agent in the following manner:

(i) \$250,000.00 to the Town upon the later to occur of (a) Redeveloper obtaining Phase One Preliminary Approval, and (b) completion of the DPW RAWPs and the determination of the DPW Remediation Cost Estimates in accordance with the terms of Section 2.09; and the remainder of the DPW Deposit to the Town upon the later to occur of (c) Redeveloper obtaining all Government Approvals for Phase One, and (d) the Town relocating the DPW Facility; or

(ii) to the Town upon receipt of written demand therefor, stating that a Redeveloper Event of Default has occurred under this Amended Agreement and the facts and circumstances underlying such default or that the Town is otherwise entitled to the DPW Deposit under the provisions of this Amended Agreement; *provided, however,* that Escrow Agent shall not honor said demand until at least ten (10) days after it has sent a copy of such demand to Redeveloper, nor thereafter if Escrow Agent shall have received written notice of objection from Redeveloper in accordance with the provisions of clause (b) of this Section 5.11; or

(iii) to Redeveloper upon receipt of written demand therefor, stating that either (a) this Amended Agreement has been terminated pursuant to a provision hereof which states that Redeveloper is entitled to the DPW Deposit upon termination, and certifying the basis for such termination, or (b) a Town Event of Default has occurred under this Amended Agreement and the facts and circumstances underlying such default or that Redeveloper is otherwise entitled to the DPW Deposit under the provisions of this Amended Agreement; *provided, however*, that Escrow Agent shall not honor such demand until at least ten (10) days after it has sent a copy of such demand to the Town, nor thereafter if Escrow Agent shall have received written notice of objection from The Town in accordance with the provisions of clause (b) of this Section 5.11.

(b) Upon receipt of written demand for the DPW Deposit by Redeveloper or the Town pursuant to clause (ii) or (iii) of Section 5.11(a), Escrow Agent shall promptly send a copy thereof to the other Party. The other Party shall have the right to object to the delivery of the DPW Deposit by sending written notice of such objection to Escrow Agent within the greater of five (5) days or three (3) business days after Escrow Agent delivers a copy of the written demand to the objecting Party but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the DPW Deposit. Upon receipt of such notice, Escrow Agent shall promptly send a copy thereof to the Party who made the written demand.

(c) In the event of any dispute between the Parties regarding the DPW Deposit, Escrow Agent, at its option, may disregard all instructions received and either (i) hold the DPW Deposit until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both the Town and Redeveloper, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the DPW Deposit into a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations hereunder from and after the date of such deposit).

(d) In the event Escrow Agent shall be uncertain as to its duties or rights hereunder or shall receive conflicting instructions, claims or demands from the Parties hereto, or instructions which conflict with any of the provisions of this Amended Agreement, Escrow Agent shall be entitled (but not obligated) to refrain from taking any action other than to keep safely the DPW Deposit until Escrow Agent shall be instructed otherwise in writing signed by both the Town and Redeveloper, or by final judgment of a court of competent jurisdiction.

(e) Escrow Agent may rely upon, and shall be protected in acting or refraining from acting upon, any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper Party or Parties, provided that any modification of this Amended Agreement shall be signed by Escrow Agent, Redeveloper and the Town.

(f) The Town and Redeveloper shall jointly and severally hold Escrow Agent harmless against any loss, damage, liability or expense (including reasonable attorney fees) incurred by Escrow Agent not caused by its willful misconduct or negligence, arising out of or in connection with its entering into this Amended Agreement and the carrying out of its duties hereunder, including the reasonable costs and expenses of defending itself against any claim of liability or participating in any legal proceeding. Escrow Agent may consult with counsel of its choice, and shall have full and complete authorization and protection for any action taken or suffered by it hereunder in good faith and in accordance with the opinion of such counsel.

(g) Escrow Agent may resign at will and be discharged from its duties or obligations hereunder by giving notice in writing of such resignation specifying a date when such resignation shall take effect; *provided, however*, that (i) prior to such resignation a substitute escrow agent is approved in writing by the Town and Redeveloper, which approval shall not be unreasonably withheld or delayed, or (ii) Escrow Agent shall deposit the DPW Deposit with a court of competent jurisdiction. After such resignation, Escrow Agent shall have no further duties or liability hereunder.

(h) Redeveloper and the Town, together, shall have the right to terminate the appointment of Escrow Agent hereunder by giving to it notice of such termination, specifying the date upon which such termination shall take effect and designating a replacement Escrow Agent, who shall sign a counterpart of this Amended Agreement. Upon demand of such successor Escrow Agent, the DPW Deposit shall be turned over and delivered to such successor Escrow Agent, who shall thereupon be bound by all of the provisions hereof.

(i) Escrow Agent's agreements and obligations hereunder shall terminate and Escrow Agent shall be discharged from further duties and obligations hereunder upon final payment of the DPW Deposit in accordance with the terms of this Amended Agreement.

(j) Notwithstanding that Escrow Agent is acting as an escrow agent for the DPW Deposit, and, further, notwithstanding any subsequent dispute which arises between the Parties related to this Amended Agreement, the DPW Deposit or otherwise, Redeveloper agrees that Escrow Agent may continue to represent the Town as legal counsel in connection with this Amended Agreement and the transactions contemplated hereby and/or with respect to any dispute or litigation arising out of this Amended Agreement.

**5.12 Governmental Approval Fees.** The Redeveloper shall pay all Town permit and other non-Town fees for Governmental Approvals, which include, but are not limited to, any application fees for Governmental Approvals payable by the Town to all required Governmental Agencies in connection with the Project, or fees for Governmental Applications for which the Town is required to reimburse other Governmental Agencies in connection with the Governmental Approvals required for the Project. Notwithstanding anything to the contrary in this Section 5.12, Redeveloper shall not be obligated to pay the Town for any fees incurred in connection with Governmental Applications related to the DPW Remediation or the DPW Remediation Funding Amount.

**5.13 Sewer Capacity.** The Town shall allocate and make available to the Project, sufficient sanitary sewer capacity to service the Project, subject to Redeveloper's payment of connection fees for such capacity in accordance with Applicable Laws.

**5.14 Closing.** (a) Each Closing shall occur at the offices of the Town or at such other place as the Parties shall agree. Upon each Closing, possession of the portion of the Project Premises being conveyed shall be delivered to Redeveloper, and Redeveloper shall thence have the right to enjoy the rents, issues and profits therefrom, subject to the terms and conditions hereof, including without limitation the Covenants and Restrictions and the Declaration.

(b) On each Closing Date, the Town shall deliver to Redeveloper the following:

(i) duly executed Deeds, subject only to the Permitted Exceptions, for the Phase One DPW Property, the Phase Two DPW Property, any Town Acquisition Parcels, or any Condemnation Parcels, as applicable, being conveyed to Redeveloper in proper statutory form for recordation;

(ii) duly executed Affidavits of Title for the applicable portion of the Project Premises being conveyed to Redeveloper in form reasonably acceptable to Redeveloper and Title Insurer;

(iii) such other documents and instruments as Redeveloper or its Title Insurer may reasonably request in order to perfect title in Redeveloper or otherwise to carry out the purposes of this Amended Agreement, including resolutions and ordinances certified or otherwise identified in accordance with Applicable Law;

(iv) a certificate executed by the Mayor of the Town stating that the representations and warranties of Town set forth in Section 12.02 are true, accurate and complete on and as of the Closing Date and are not misleading in any material respect on and as of such date;

(v) a duly executed DPW Interest Payment Escrow Agreement, in the form attached hereto as Exhibit S, as may be applicable;

(vi) a duly executed Phase One DPW Remediation Funding Escrow Agreement (at Phase One Closing only);

(vii) a duly executed Phase Two DPW Remediation Funding Escrow Agreement (at Phase One Closing only);

(viii) a duly executed escrow agreement, indenture or other document governing the disbursement of the Public Improvements Financing required pursuant to Section 3.10(c); and

(ix) a duly executed statement showing all closing adjustments (the "Closing Statement").

(c) Redeveloper shall pay the balance of the Phase One DPW Purchase Price on the Phase One Closing Date, net of any closing adjustments (including, without limitation, deposits on account of the Phase One DPW Remediation Funding Amount and the Phase Two DPW Remediation Funding Amount). On the Phase Two Closing Date, Redeveloper shall pay to the Town the Phase Two DPW Purchase Price, subject to any closing adjustments. On each Closing Date, Redeveloper shall deliver to the Town the following, as applicable:

(i) resolution executed by an authorized representative of the Redeveloper authorizing the Closing, and ratifying and confirming the execution and delivery of this Amended Agreement and the consummation of the transactions contemplated hereby;

(ii) a certificate executed by an authorized representative of the Redeveloper stating that the representations and warranties of Redeveloper set forth in Section 12.01 are true, accurate and complete on and as of the Closing Date and are not misleading in any material respect on and as of such date;

- (iii) a duly executed DPW Interest Payment Escrow Agreement, in the form attached hereto as Exhibit S, as may be applicable;
- (iv) the Declaration with respect to the applicable Phase;
- (v) a duly executed Phase One DPW Remediation Funding Escrow Agreement (at Phase One Closing only);
- (vi) a duly executed Phase Two DPW Remediation Funding Escrow Agreement (at Phase One Closing only); and
- (vii) a duly executed Closing Statement.

## ARTICLE VI

### DEFAULT

**6.01 Redeveloper Events of Default.** So long as no Town Event of Default has occurred and remains outstanding, and subject to the occurrence of an Event of Force Majeure pursuant to Section 14.01 hereof, as it relates to each Phase of the Project, prior to Completion of the subject Phase of the Project as evidenced by the issuance of the Certificate of Completion for same, each of the following actions shall constitute an event of default by the Redeveloper, limited to the subject Phase of the Project (a "Redeveloper Event of Default"). A Redeveloper Event of Default relating to a specific Phase of the Project shall not constitute a Redeveloper Event of Default for the Project, or any other Phase thereof, and as such shall not impact or have any effect upon any other Phase of the Project. Any remedy(ies) sought by the Town shall apply, effect and relate solely and exclusively to the Phase for which the Redeveloper Event of Default has occurred. Notwithstanding anything to the contrary, in the event that a Redeveloper Event of Default has occurred with respect to Phase One subsequent to the Phase One Closing but prior to the exercise of the Phase Two Option, then the Redeveloper Event of Default shall be deemed to have also occurred with respect to Phase Two and Phase Three and the Town shall be entitled to exercise its rights and remedies hereunder relating to all Phases.

(a) If Redeveloper materially defaults in or violates its obligations set forth in this Amended Agreement and any such default or violation, shall not be cured, ended or remedied within Sixty (60) Days after the Town's written notice to Redeveloper thereof, unless such default or violation cannot be cured by the payment of money and cannot with due diligence be wholly cured within such Sixty (60) Days in which case Redeveloper shall have such longer period as shall be necessary to cure such default, so long as Redeveloper prosecutes such cure to completion with due diligence and advises the Town of the actions which Redeveloper is taking and the progress being made.

(b) The Redeveloper fails to make payment of any portion of the Acquisition Costs or any other sum payable to the Town, as the same shall become due and payable, and such failure to pay shall have continued for a period of Thirty (30) Days after the Redeveloper's receipt of written notice from the Town specifying its failure to make such payment.

(c) The Redeveloper shall fail to perform or otherwise violate its obligations with respect to the construction of the Project or any Phase thereof in a material respect or shall abandon or substantially suspend construction work for a period in excess of Sixty (60) Days and any such failure, abandonment, or suspension shall not be cured, ended, or remedied within Thirty (30) Days after the Redeveloper's receipt of written notice from the Town specifying such failure, abandonment or suspension or such longer period if incapable of being cured within such Thirty (30) Days, provided that the Redeveloper is diligently taking action to effect such cure.

(d) Redeveloper Transfers the Project Premises or its rights and/or obligations under this Amended Agreement or any portion(s) thereof except for those Permitted Transfers identified in Article VIII hereof and any such default or violation, shall not be cured, ended or remedied within Sixty (60) Days after the Town's written notice to Redeveloper thereof.

(e) The Redeveloper is dissolved, or files a voluntary petition in bankruptcy or for reorganization or for an arrangement pursuant to the Bankruptcy Code or any similar law, federal or state, now or hereafter in effect, or makes a general assignment for the benefit of creditors, or

admits in writing its inability to pay its debts as they become due, or suspends payment of its obligations, or takes any action in furtherance of the foregoing; or the Redeveloper consents to the appointment of a receiver, or an answer proposing the adjudication of the Redeveloper as a bankrupt or its reorganization pursuant to the Bankruptcy Code or any other similar laws, now or hereafter in effect, is filed in and approved by a court of competent jurisdiction and the order approving the same shall not be vacated or set aside or stayed within Thirty (30) Days from entry thereof, or the Redeveloper consents to the filing of such petition or answer.

(f) The Redeveloper materially breaches any of its representations, warranties or covenants in this Amended Agreement (except for the representation set forth in Section 12.01(j)) and any such material breach shall not be cured, ended or remedied within Sixty (60) Days after the Town's written notice to Redeveloper thereof.

(g) The Redeveloper defaults, beyond any notice and cure period, under any loan agreement or financing or funding agreement relating to the Project, this Amended Agreement, and/or construction of the Improvements, as more particularly described in Articles 10 and 12 hereof.

(h) The failure of Redeveloper to maintain Prudential as an Equity Investor, subject to the terms of Section 12.01(m) hereof and any such failure, shall not be cured, ended or remedied within Sixty (60) Days after the Town's written notice to Redeveloper thereof.

(i) The failure of Redeveloper to promptly provide copies of loan, financing and/or funding documents and any notices received thereunder and any such failure, shall not be cured, ended or remedied within Sixty (60) Days after the Town's written notice to Redeveloper thereof.

(j) The failure of Redeveloper to maintain the minimum amount of contributed capital as equity, as more particularly described in Section 12.01(m) hereof and any such failure shall not be cured, ended or remedied within Sixty (60) Days after the Town's written notice to Redeveloper thereof.

**6.02 Town Events of Default.** So long as no Redeveloper Event of Default has occurred and remains outstanding, and subject to the occurrence of an Event of Force Majeure

pursuant to Section 14.01 hereof, each of the following actions shall constitute an event of default by the Town (and each shall hereinafter be referred to as a “Town Event of Default”):

(a) If the Town materially defaults in or violates its obligations set forth in this Amended Agreement and any such default or violation, shall not be cured, ended or remedied within Sixty (60) Days after the Redeveloper’s written notice to the Town thereof, unless such default or violation cannot with due diligence be wholly cured within such Sixty (60) Days in which case the Town shall have such longer period as shall be necessary to cure such default, so long as the Town prosecutes such cure to completion with due diligence and advises Redeveloper of the actions which the Town is taking and the progress being made.

(b) If the Town amends or causes the amendment of the Redevelopment Plan, without the prior written consent of the Redeveloper, which consent shall not be unreasonably withheld, conditioned or delayed;

(c) If the Town amends or causes the amendment of any other law, rule, regulation, statute, resolution, order and/or ordinance such that the Project or any aspect or Phase thereof ceases to be a permitted use, or where such amendment negatively impacts the construction, marketing, management, maintenance or operation of same.

(d) The Town fails to convey title to those parcels of property acquired by it on behalf of the Redeveloper on the Closing Dates.

(e) The Town materially breaches any of its representations, warranties or covenants in this Amended Agreement.

**6.03 Redeveloper Remedies.** If Redeveloper fulfills its obligations hereunder and there is no Redeveloper Event of Default that has occurred and remains outstanding, but there is a Town Event of Default, or the Town materially breaches any representation or warranty contained herein, then Redeveloper may, at its option, (a) terminate this Amended Agreement with respect to the particular Phase affected (and if such Town Event of Default is with respect

to Phase One, and prior to the Phase One Closing Date, Redeveloper shall be entitled to the return of the entire DPW Deposit regardless of whether some or all of the DPW Deposit has already been released from escrow), (b) specifically enforce this Amended Agreement, (c) avail itself of any other rights and remedies available to Redeveloper at law or in equity as a result of such breach or such Town Event of Default, or (d) avail itself of any combination of the foregoing. If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 6.03, then except as expressly set forth herein to the contrary, (e) this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase that has been terminated; (f) the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase; (g) any unused portion of the DPW Remediation Funding Amount, if applicable, with respect to such Phase, shall be returned to the Town and (h) any unused portion of the Public Improvements Financing, if applicable, with respect to such Phase, shall be returned to the Town.

**6.04 Town's Remedies.** (a) If the Town fulfills its obligations hereunder and there is no Town Event of Default that has occurred and remains outstanding, but the Redeveloper shall fail to timely cure any Redeveloper Event of Default set forth in Section 6.01 hereof prior to the Town's issuance of a Certificate of Completion for the subject Phase of the Project, the Town shall have the right, upon Thirty (30) Days written notice to the Redeveloper and to any Person entitled to notice pursuant to Section 10.04 hereof, to terminate this Amended Agreement only with respect to the specific Phase of the Project that is the subject of the Redeveloper Event of Default. Upon termination of this Amended Agreement, the Town shall have the right but not the obligation to enter upon that portion of the Project Premises owned by Redeveloper relating to the subject Phase (hereinafter referred to as the "Uncompleted Portion") and take possession of same. At the same time that the Town enters onto and takes possession of the relevant Phase of the Project, the Redeveloper shall execute and deliver a Deed(s) to the Town for same. Upon the occurrence of any such conveyance, this Amended Agreement shall be deemed to have terminated with respect to the subject Phase of the Project and there shall be no further rights or obligations of the Parties except as expressly set forth in this Section 6.04 and otherwise herein. Any vesting of title in the Town under this Section 6.04 shall always be subject to and limited by, and shall not defeat, render invalid, or limit in any way, the lien of any Mortgage authorized

by this Amended Agreement for the protection of the Mortgagees or any condominium master deed, by-laws or the rights of third party purchasers of residential or commercial units in the condominium regime created by the Redeveloper. In the event the Redeveloper is unable to complete construction of the subject Phase of the Project within the time period permitted by this Amended Agreement or otherwise causes a Redeveloper Event of Default to occur, said Redeveloper Event of Default shall not entitle the Town to terminate this Amended Agreement as to any other Phase of the Project. The intent of this provision is to acknowledge that the approval of the Project will be in “stand alone” Phases.

(b) In the event this Amended Agreement is terminated by the Town pursuant to Section 6.04(a) hereof for an uncured Redeveloper Event of Default, the Redeveloper shall no longer have any rights to continue the redevelopment of the subject Phase of the Project or upon the relevant portion of the Project Premises.

**6.05 Resale of Uncompleted Portion.** Subject to the provisions of Section 6.04 hereof, upon the vesting of title in the Town to the Uncompleted Portion or the relevant Phase of the Project, the Town shall, pursuant to its responsibilities under Applicable Law, use good faith efforts to resell the subject Phase and the associated Improvements constructed thereupon in an arm’s length transaction for fair market value to any financially qualified third party. Such sale and conveyance shall be made, as soon and in such manner as the Town shall find feasible and consistent with the objectives of the Applicable Law(s) and of the Redevelopment Plan, as determined by the Town in its reasonable discretion, which financially qualified third Party will assume the obligation of Completing the subject Phase of the Project or shall alternatively propose the development and construction of alternative Improvements provided that such alternative Improvements do not materially affect the other Phases of the Redeveloper’s project. Any alternative Improvements shall be satisfactory to the Town and in accordance with the uses specified in the Redevelopment Plan for the relevant portion of the Project Premises. Any action by the Town under this Section 6.05 shall not interfere with or violate any Mortgage authorized by this Amended Agreement or any condominium master deed, by-laws or the rights of third party purchasers of residential or commercial units in the condominium regime created by the Redeveloper.

Upon any resale of the Uncompleted Portion, 100% of the proceeds thereof shall be paid to the Town.

**6.06 No Waiver of Rights and Remedies by Delay.** Any delay by the aggrieved Party in instituting or prosecuting any actions or proceedings or otherwise asserting its rights under this Amended Agreement shall not operate as a waiver of such rights and shall not deprive the aggrieved Party of or limit that Party's rights in any way. It is the intent of this provision that the concepts of waiver, laches, or other similar concepts, should not deprive or limit the exercise of an aggrieved Party's remedies provided herein, nor compel the aggrieved Party to exercise such rights at a time when, the aggrieved Party may still hope otherwise to resolve the subject Event(s) of Default involved. In addition, no waiver made by the aggrieved Party with respect to any specific Event of Default by the defaulting Party under this Amended Agreement shall be considered or treated as a waiver of the rights of the aggrieved Party with respect to any other Event(s) of Default by the Party under this Amended Agreement or with respect to the particular Event of Default except to the extent specifically waived in writing.

**6.07 Rights and Remedies Cumulative.** The rights and remedies of the Parties to this Amended Agreement, whether provided by the Applicable Law or by this Amended Agreement, shall be cumulative, and the exercise by either Party of any one (1) or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same Event of Default or of any of its remedies for any other Event of Default or breach by the other Party. No waiver made by either such Party with respect to the performance, or manner or time thereof, or any obligation of the other Party or any condition to its own obligation under this Amended Agreement shall be considered a waiver of any rights of the Party making the waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

**6.08 Additional Termination Rights of Town.** Subject to an event of Force Majeure pursuant to Section 14.01 of this Amended Agreement, this Amended Agreement shall terminate

upon notice by the Town to the Redeveloper of its decision to so terminate, whether or not an Event of Default by the Redeveloper has occurred, if:

- (a) On or before Eighteen (18) months from the Effective Date, the Redeveloper has not received the Governmental Approvals necessary to Commence Construction of the Project;
- (b) On or before Twenty (20) months from the Effective Date, the Redeveloper has not Commenced Construction on the Project; or
- (c) A final Certificate of Completion for the entire Project pursuant to this Amended Agreement has not been issued Seven (7) years from the Effective Date.

Nothing in this Section 6.08 shall prevent the Town from declaring that an Event of Default by the Redeveloper hereunder has occurred or from pursuing any of its other remedies hereunder.

## **ARTICLE VII**

### **COVENANTS AND RESTRICTIONS**

**7.01 Declaration of Covenants and Restrictions.** The covenants and restrictions set forth in Section 7.02 hereof shall hereinafter be referred to as the “Covenants and Restrictions”. On the applicable Closing Date, the Redeveloper shall record a Declaration of Covenants and Restrictions, in the form attached hereto as **Exhibit T** (hereinafter referred to as the “Declaration”), with respect to all of the parcels of property contained within the Project Premises, with respect to the subject Phase, which, subject to the terms hereof, shall run with the lands to all Transferees and subsequent holders of title, imposing upon said lands the Covenants and Restrictions pursuant to Section 7.02.

**7.02 Description of Covenants and Restrictions.** The Covenants and Restrictions to be imposed upon the Redeveloper, and its Transferee(s), and recorded in the Declaration, shall set forth that the Redeveloper and its Transferees shall:

- (a) devote the Project Premises to the uses specified in the Redevelopment Plan and shall not devote the Project Premises to any other uses without the approval of the Town;

(b) to the extent provided for by Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status in the sale, lease, use or occupancy of the Project Premises or any Improvements, buildings or structures erected or to be erected thereon, or any portion thereof;

(c) to the extent provided for by Applicable Law, in the sale, lease or occupancy of the Project Premises or any portion thereof, not effectuate or execute any covenant, lease agreement, conveyance or other instrument whereby the land or any Improvement, building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status, and the Redeveloper, its successors and Transferee(s) shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or marital status; and

(d) not sell, lease or otherwise Transfer the Project Premises, or any portion thereof, without the written consent of the Governing Body, as set forth in Section 8.01 hereof other than those Transfers deemed to be Permitted Transfers pursuant to Section 8.03 hereof.

**7.03 Effect and Term of Covenants and Restrictions.** Subject to the provisions of Section 8.02 hereof, it is intended and agreed and the Declaration shall so expressly provide, that the Covenants and Restrictions set forth in Section 7.02 hereof 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 Amended Agreement, be binding, to the fullest extent permitted by the Applicable Laws, for the benefit and in favor of, and enforceable by, the Town, its successors and assigns, against the Redeveloper, or its Transferee(s). It is further intended and agreed that the Covenants and Restrictions set forth in Section 7.02 hereof shall remain in effect as to each Phase of the Project until the issuance by the Town of a Certificate of Completion for a specific Phase, as provided for in Section 4.10 hereof at which time all terms, conditions, obligations, including the Covenants and Restrictions set forth in this Amended Agreement shall cease and terminate as to that Phase of the Project, except, however, that the Covenants and Restrictions provided for in Sections 7.02(b) and (c) hereof, shall remain in effect without limitation as to time subject to any changes in the Applicable Laws.

**7.04 Enforcement by Town.** In amplification, and not in restriction of the provisions of this Article VII, it is intended and agreed that the Town shall be deemed a beneficiary of the Covenants and Restrictions set forth in Section 7.02 hereof both for and in its own right but also for the purposes of protecting the interests of the community.

## ARTICLE VIII

### **PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER**

**8.01 Prohibition Against Speculative Development.** The Redeveloper covenants that its undertakings pursuant to this Amended Agreement shall be for the purpose of redevelopment of the Project Premises and not for speculation in land holding. Similarly, the Town shall not (i) require the Redeveloper to acquire directly, or (ii) be obligated to exercise its power of eminent domain to acquire, any parcels of property other than, subject to the terms of this Amended Agreement, those situated in the specific Phase of the Project upon which the Redeveloper's development and construction activities are proceeding upon.

**8.02 Prohibition Against Transfers.** The Parties to this Amended Agreement acknowledge that pursuant to Section 7.02(d) hereof, the Redeveloper has covenanted not to effectuate any Transfer without first having obtained the consent of the Town to such Transfer, which consent shall not be unreasonably withheld, conditioned or delayed, except for those Transfers deemed in Section 8.03 to be a Permitted Transfer. In addition, the Redeveloper recognizes that, in view of (a) the importance of the Project to the general welfare of the community; (b) the public assistance to be made available by the Applicable Laws and by the Town on the conditions stated herein, for the purpose of making such redevelopment possible; and (c) the fact that a change in control of the Redeveloper is for practical purposes a Transfer, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Town, and, therefore, there shall be no change in control of Redeveloper, without the prior written consent of the Town, which shall not be unreasonably withheld, conditioned or delayed, except for those Transfers deemed in this Section 8.03 to be a Permitted Transfer.

**8.03 Permitted Transfers.** Notwithstanding the Covenants and Restrictions contained in Sections 7.02 and 8.02 hereof, the following Transfers are deemed to be "Permitted Transfers", and shall serve as exceptions to the general prohibition set forth in the previous

paragraph and in Section 7.02(d) hereof and shall not require prior approval of the Town: (a) a public offering statement filing with the State of New Jersey Department of Community Affairs; (b) utility and other development easements; (c) conveyances, purchase and sale contracts or leases to the ultimate users or tenants of any portion of the Project Premises or the Improvements constructed thereupon as a component of the Project; (d) the Transfer of any interest in this Amended Agreement or in any portion of the Project Premises to a Transferee Controlled by, or controlling, the Redeveloper (or Controlled by, or controlling, one or more members of the Redeveloper with Control of the Redeveloper) and provided the Transferee is subject to the applicable terms of this Amended Agreement; (e) a Mortgage or Mortgages for the purposes of financing any aspect of the Project associated with, or incurred in connection with, the acquisition of the properties, the development and construction of any aspect or Phase of the Project or its continued operation after construction; (f) an assignment and/ or Transfer of Redeveloper's interest in this Amended Agreement to an Affiliate, provided that such new entity is subject to terms of this Amended Agreement; (g) Transfer of any interest in the Project Premises or the Improvements to a qualified urban renewal entity, pursuant to and in accordance with the Long Term Tax Exemption Law, Controlled by the Redeveloper or an Affiliate of Redeveloper; (h) a Transfer by foreclosure; (i) a Transfer by deed in lieu of foreclosure and any Transfer by any Mortgagee after foreclosure; (j) a Transfer of any interest in this Amended Agreement, the Project, the Project Premises (or any portion thereof) or the Improvements to a Financial Institution in exchange for any form of financing vehicle; (k) the Transfer of NJ 106 Morristown Limited Partnership's membership interest in Redeveloper to MCRT Investments LLC; (l) any transfer or issuance of any interest in an Equity Investor or member of Redeveloper or any of their respective affiliates, any merger or sale of substantially all of the assets of an Equity Investor or member of Redeveloper, or any of their respective affiliates, or any similar corporate transaction involving an Equity Investor, member of Redeveloper or any of their respective affiliates, so long as there is no change in Control of Redeveloper; (m) any direct or indirect transfer of interests in Redeveloper among the current equity owners thereof, so long as there is no change in control of Redeveloper; and (n) any contract or agreement with respect to any of the foregoing exceptions. The above listed Permitted Transfers shall apply individually to each Phase of the Project.

**8.04 Notice of Permitted Transfers.** With respect to any of the Permitted Transfers listed in Section 8.03 hereof, except for those Permitted Transfers described in subsection (c), the Redeveloper shall provide the Town with written notice within Thirty (30) Days prior to the consummation of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the Transferee(s) involved.

**8.05 Transfers in Violation of this Amended Agreement.** Any Transfer in violation of this Amended Agreement shall be deemed to be a Redeveloper Event of Default and shall be null and void *ab initio*. The occurrence of such Redeveloper Event of Default shall entitle the Town to seek all available remedies under the terms of this Amended Agreement, including the right to terminate this Amended Agreement with respect to any Phase of the Project that was the subject of the Transfer, and all other remedies available under the Applicable Law(s).

**8.06 Conditions of Transfer.** Except as otherwise provided in this Amended Agreement, and except with respect to those Permitted Transfers defined under Section 8.03 hereof, the Town shall be entitled to require, as a condition(s) to its approval of any Transfer that:

(i) The proposed Transferee will have qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken in this Amended Agreement with respect to the Transferred portion of the Project and other obligations pursuant to Governmental Approvals or any part of such obligations that may pertain to the Transferred interest or the Transferred portion of the Project Premises, as determined from:

(1) Audited financial statements indicating (a) net worth or (b) unencumbered lines of credit; or evidence of loan commitments sufficient to carry out the relevant aspect of the Project; and

(2) Submission of letters of recommendation from reputable Parties for whom the prospective Transferee has undertaken a comparable development, stating that the proposed Transferee of the relevant aspect of the Project possesses the competence and integrity to undertake same.

(ii) Any proposed Transferee, by instrument in writing reasonably acceptable to the

Town, will, for itself and its Transferees, and expressly for the benefit of the Town, have expressly assumed all of the relevant obligations of the Redeveloper under this Amended Agreement with respect to the subject Phase or aspect of the Project and agrees to be subject to all the Covenants and Restrictions to which the Redeveloper is subject with respect to such Phase or aspect of the Project.

(iii) Any Transferee under this Article VIII will absolutely release the Redeveloper from any and all relevant obligations under this Amended Agreement which relate to the portion of the Project subject to the Transfer, except as to any liability or obligation of the Redeveloper as to which the Redeveloper has incurred or defaulted prior to such Transfer.

(iv) The Transferee will comply with such other reasonable conditions as the Town may find necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

Notwithstanding anything to the contrary contained herein, the Town's consent to any Transfer shall not be unreasonably withheld, conditioned or delayed. The Town shall notify the Redeveloper whether the Town consents to a Transfer within thirty (30) Days after Redeveloper's request to the Town for such consent. If the Town does not deliver a written response to the Redeveloper's request within said thirty (30) Day period, then the Redeveloper may deliver a second written request to the Town for consent to the Transfer and the Town shall be deemed to have consented to any requested Transfer if the Town does not deliver a written response to the Redeveloper within Thirty (30) Days after Redeveloper's second request to the Town for such consent.

## **ARTICLE IX**

### **PROJECT FINANCING**

**9.01. Financing and Equity Capital.** Subject to the Redeveloper's covenant under Section 12.01(m) hereof, the Redeveloper represents that it shall use commercially reasonable efforts to obtain sufficient funding for all costs associated with the Project. The Redeveloper represents that such funding may be a combination of debt financing, equity financing and an equity contribution of the Redeveloper and may be obtained in coordination with the phased

development of the Project. Subject to the terms of this Amended Agreement, including, without limitation, Section 14.01 hereof, on or prior to the earlier to occur of (i) Sixty (60) Days after the Redeveloper has obtained all Governmental Approvals with respect to the applicable Phase of the Project, or (ii) Sixty (60) Days prior to Commencement of Construction on such Phase of the Project, the Redeveloper shall submit to the Town a financial package that the Redeveloper believes to be complete describing the anticipated sources of funding for that Phase of the Project, including, but not limited to, commitments to construction financing required for that Phase of the Project and a representation regarding any equity capital necessary for the Commencement of Construction of the relevant Phase of the Project.

## ARTICLE X

### MORTGAGE FINANCING AND RIGHTS OF MORTGAGEE

**10.01 Notice to Town.** Subject to the Permitted Transfers set forth in Section 8.03 hereof, prior to the Completion of each Phase of the Project, as certified by the issuance of the Certificate of Completion by the Town, the Redeveloper shall not engage in any financing or any other transaction creating any Mortgage, whether by express agreement or operation of law, except for the purpose of obtaining funds on prevailing market terms for similar projects and similar financing structures, to acquire property in the Redevelopment Area and to construct, own, operate, manage and maintain the Improvements. The Redeveloper shall promptly notify the Town of any financing, proposed to be secured by a Mortgage on any portion of the Project Premises prior to the Completion of each Phase of the Project, as such Completion is certified by the issuance of the Certificate of Completion by the Town, which it proposes to enter into with respect to the Project Premises or any portion thereof and, in any event, the Redeveloper shall promptly notify the Town of any encumbrance or lien that has been created on or attached to the Project Premises, or relevant portion thereof whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same. The Town shall respond within thirty (30) Days of Redeveloper's notice of proposed financing whether it objects to the proposed terms of such financing for failing to be in compliance with the terms of Section 12.01(m) hereof and this Article 10. The Redeveloper shall provide contact information for any Mortgagee in

writing to the Town, such that the Town may comply with notice obligations in Section 10.04 below.

**10.02 Mortgagee Not Bound.** Any Mortgagee who obtains title to the Project Premises or any portion thereof as a result of foreclosure proceedings, or action in lieu thereof, or otherwise takes possession of the Project or any portion thereof, and any such Mortgagee's successors and/or assigns, shall not be obligated by the provisions of this Amended Agreement, including but not limited to those provisions which are or are intended to be the Covenants and Restrictions.

**10.03 Completion of Project.** Any Mortgagee who obtains title to the Project Premises or any portion thereof as a result of foreclosure proceedings, or action in lieu thereof, and any such Mortgagee's successor and/or assigns, shall have the right to receive an assignment of all of Redeveloper's rights under this Amended Agreement, with respect to Project Premises, or portion thereof (as applicable), and undertake or continue the timely construction or Completion of the Project, or relevant portion thereof (as applicable), including the construction of the Improvements already begun provided such Mortgagee, or its successors and/or assigns, expressly assumes all of Redeveloper's obligations under this Amended Agreement, by written agreement satisfactory to the Town, with respect to the Project or the relevant portion thereof to which the lien or title of such Mortgagee or Person relates. Any such Mortgagee, and/or its successors and assigns, who shall properly Complete the relevant Phase of the Project shall be entitled, upon written request made to the Town, to receive Certificate(s) of Occupancy and/or the individual Certificates of Occupancy or the Certificate(s) of Completion as set forth in Section 4.10 hereof.

**10.04 Notice to and from Mortgagee.** Whenever the Town shall deliver any notice or demand to the Redeveloper with respect to any Event of Default on the part of the Redeveloper under this Amended Agreement, the Town shall at the same time forward a copy of such notice or demand to (i) each Mortgagee at the last known address of such Mortgagee as indicated in the records of the Town, and (ii) any equity investor in Redeveloper or the Project, or any Phase thereof, for whom Redeveloper has delivered a notice address to the Town ("Equity Investor"). The Redeveloper shall cause any Mortgage relating to this Amended Agreement to include a

provision obligating Redeveloper to forward to the Town a copy of any default notice received by the Redeveloper pursuant to such Mortgage, promptly after Redeveloper receives such notice.

**10.05 Mortgagee's Right to Cure Default and Assume The Redeveloper's Obligations.** (a) After any Redeveloper Event of Default, each Mortgagee shall (insofar as the rights of the Town are concerned) have the right to cure or remedy such Redeveloper Event(s) of Default and to add the cost thereof to the Mortgage; provided that, if the Redeveloper Event(s) of Default is/are with respect to the construction of the Project or relevant Phase thereof, nothing contained in this Section 10.05 or any other section of this Amended Agreement shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or action in lieu thereof, to undertake or continue the construction or Completion of the Project or relevant portion thereof (beyond the extent necessary to conserve or protect the Mortgagee's security), including the construction of the Improvements already begun without first having expressly assumed all of Redeveloper's obligations under this Amended Agreement, by written agreement satisfactory to the Town, with respect to the Project or the relevant portion thereof to which the lien or title of such Mortgagee or Person relates. The Town shall not seek to enforce any of its remedies under this Amended Agreement during the period in which any such Mortgagee is proceeding diligently and in good faith to cure a Redeveloper Event of Default. Any Mortgagee who shall properly Complete the relevant Phase of the Project in accordance with this Amended Agreement and the Redevelopment Plan shall be entitled, upon written request made to the Town, to receive Certificate(s) of Occupancy and/or the individual Certificates of Occupancy or the Certificate(s) of Completion as set forth in Section 4.10 hereof. Each Phase may have its own financing vehicles and Mortgage(s), even if more than a single Phase is financed by the same Financial Institution, the Phases shall be approved and considered as stand alone Phases, and the Mortgage on one Phase is not contingent or dependent on the Mortgage on another Phase of the Project.

(b) After any Redeveloper Event of Default, each Equity Investor entitled to notice pursuant to Section 10.04 hereof (insofar as the rights of the Town are concerned) shall have the right to cure or remedy such Redeveloper Event(s) of Default; provided that, if the Redeveloper Event(s) of Default is/are with respect to the construction of the Project or relevant

Phase thereof, nothing contained in this Section 10.05(b) or any other section of this Amended Agreement shall be deemed to permit or authorize such Equity Investor to undertake or continue the construction or Completion of the Project or relevant portion thereof, including the construction of the Improvements already begun without first having expressly assumed all of Redeveloper's obligations under this Amended Agreement, by written agreement satisfactory to the Town, with respect to the Project or the relevant portion thereof to which the lien or title of such Equity Investor relates. The Town shall not seek to enforce any of its remedies under this Amended Agreement during the period which any Equity Investor is proceeding diligently and in good faith to cure a Redeveloper Event of Default. Any Equity Investor who shall properly Complete the relevant Phase of the Project in accordance with this Amended Agreement and the Redevelopment Plan shall be entitled, upon written request made to the Town, to receive Certificate(s) of Occupancy and/or the individual Certificates of Occupancy or the Certificate(s) of Completion as set forth in Section 4.10 hereof.

**10.06 Town's Option To Pay Mortgage Debt and Purchase Project Premises.** The Town shall have the right to acquire the Project Premises, or relevant portion thereof, if, subsequent to a Redeveloper Event of Default under the terms of this Amended Agreement, any Mortgagee and any Equity Investor, fail to exercise, their respective rights, pursuant to, and in accordance with, Section 10.05 of this Amended Agreement, and such failure continues for a period of Ninety (90) Days after such Mortgagee and Equity Investor have been notified of the occurrence of the Redeveloper Event of Default; *provided, however,* that under no circumstances shall the Town have the right to acquire the Project Premises, or relevant portion thereof, pursuant to this Section 10.06 at any time after such Mortgagee or Equity Investor has exercised its rights pursuant to and in accordance with Section 10.05 of this Amended Agreement unless such Redeveloper Event of Default shall not have been cured within Ninety (90) Days after written demand by the Town to do so unless such Redeveloper Event of Default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such ninety (90) Days in which case such Mortgagee or Equity Investor shall have such longer period as shall be necessary to cures such default, so long as such Mortgagee or Equity Investor prosecutes such cure to completion with due diligence and advises the Town of the actions being taken and the progress being made. The Town's acquisition right pursuant to this Section 10.06 is subject to

the Town's payment to Mortgagee of an amount equal to the sum of: (i) the outstanding Mortgage debt at the time of the Town's acquisition (less all appropriate credits, including those resulting from collection and application of rentals or other income received by Mortgagee); (ii) all expenses with respect to foreclosure; (iii) the net expense, if any (exclusive of general overhead), incurred by Mortgagee in and as a direct result of the subsequent management of the Project Premises or relevant portion thereof; (iv) the costs of any Improvements made by Mortgagee; (v) all fees, penalties and other charges due and owing under the Mortgage; (vi) an amount equivalent to the interest that would have accrued on the aggregate of items (i) through (v) had all such amounts become part of the mortgage debt and such debt had continued in existence to maturity.

## ARTICLE XI

### QUALITY OF TITLE

**11.01 Marketable Title.** In conveying good and marketable title to each parcel of property that the Town either is the record owner of or that the Town will acquire on behalf of the Redeveloper by Deed(s) to the Redeveloper at the respective closing(s) of title, the Town shall convey such title as the Title Insurer will approve and insure at its regular premium, subject only to the Permitted Exceptions defined in Section 11.02 hereof.

**11.02 Permitted Exceptions.** The following are not objections to title, but rather are deemed to be permitted title encumbrances and shall (hereinafter be referred to as the "Permitted Exceptions") with respect to each parcel of property that the Town either is the record owner of or that the Town will acquire on behalf of the Redeveloper.

- (a) The Declaration;
- (b) Any facts disclosed by a Survey, provided that same do not materially or adversely affect the ability of the Redeveloper to develop, construct, operate, maintain or market the Improvements on the subject parcel(s) of property.

(c) Present and future statutes, laws, ordinances, regulations, restrictions, legal requirements and orders of any federal, state, county or municipal government or other public authority relating to the subject parcels of property or the use thereof, provided that same does not prohibit the development of the Project Premises, or any portion thereof, in the manner contemplated by this Amended Agreement;

(d) Statutory liens for real estate taxes not due and payable;

(e) Applicable local building laws and regulations;

(f) The provisions of the Redevelopment Law;

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

(h) The fact that some or all of the subject parcels of property do not have access to or adjoin existing public rights-of-way, thoroughfares and/or streets.

## ARTICLE XII

### REPRESENTATIONS; COVENANTS

**12.01 Representations, Warranties and Covenants by Redeveloper.** The Redeveloper hereby represents and warrants the following to the Town for the purpose of inducing the Town to enter into this Amended Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Redeveloper is a limited liability company organized under the laws of the State of Delaware, is in good standing under the laws of the State of Delaware, is qualified to do business in New Jersey and is in good standing under the laws of the State of New Jersey, and has all requisite power and authority to carry on its business as now conducted, and to enter into and perform its obligations under this Amended Agreement.

(b) The Redeveloper has the legal power, right and authority to enter into this Amended Agreement inclusive of all attached and incorporated instruments to which the Redeveloper is a party.

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

(d) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any other Applicable Laws that are applicable to the Redeveloper has been filed as of the Effective Date.

(e) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other Applicable Laws that are applicable to the Redeveloper has been filed.

(f) No indictment has been returned against any member of the Redeveloper with respect to any transaction contemplated by the terms of this Amended Agreement.

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

(h) To the best of Redeveloper's knowledge, all materials and documentation submitted by the Redeveloper and its agents to the Town and its agents were, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall continue to inform the Town of any material adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Town to enter into this Amended Agreement.

(i) The Redeveloper is financially and technically capable of acquiring those parcels of property contained within the Project Premises and of the sequential development, design, financing and construction of each Phase of the Project.

(j) There is no pending or, to the best of the Redeveloper's knowledge, threatened litigation, action or proceeding that (i) would prevent or delay the Redeveloper from performing its duties and obligations hereunder and/or (ii) questions the validity or enforceability of this Amended Agreement or any essential element on which this Amended Agreement depends.

(k) The Redeveloper acknowledges that, to the best of Redeveloper's knowledge, it has had the opportunity to review all official documents contained in the public record relating to the Town's designation of the Redevelopment Area as an "area in need of redevelopment", the Town's adoption of the Redevelopment Plan, and the Town's selection of the Redeveloper to undertake redevelopment of the Redevelopment Area all in accordance with the Redevelopment Law (collectively, the "Official Acts"). The Redeveloper hereby waives any cause of action it may have or seek to prosecute against the Town and the Town Planning Board in the event that the Redeveloper's rights as set forth in this Amended Agreement are affected by any determination of a court of competent jurisdiction that one or more of the Official Acts, or any portion thereof, is invalid.

(l) The Redeveloper hereby covenants to execute all of its obligations under this Amended Agreement in good faith, with reasonable expedition, diligence and continuity.

(m) The Redeveloper has the financial capacity to undertake the development, construction and operation of the Project, including, without limitation, the capacity to obtain financing, to obtain and maintain the Guaranty, in accordance with Section 2.22 hereof, and to provide an equity contribution, if and to the extent required to satisfy its obligations hereunder. At all times during the term of this Amended Agreement, with respect to each Phase, the Redeveloper shall not incur debt financing secured by the Project Premises and/or the Improvements, in an amount exceeding seventy (70%) percent of the project cost of the relevant Phase of the Project incurred to date. The Redeveloper further represents that, and covenants to maintain, Prudential as an Equity Investor. The failure of the Redeveloper to maintain Prudential as an Equity Investor shall be a Redeveloper Event of Default, however, the Redeveloper shall have sixty (60) Days to replace Prudential with an Equity Investor with an equivalent or better credit rating, subject to the Town's prior review and written approval, which consent shall not be

unreasonably withheld, delayed or conditioned. The Redeveloper shall demonstrate compliance with this Section 12.01(m) at the time of any construction loan closing. The Redeveloper further covenants to cause any and all loan, financing, and funding documents to contain terms and conditions that are not inconsistent with the terms of this Amended Agreement.

**12.02 Representations of Town.** The Town hereby makes the following representations and covenants for the purpose of inducing the Redeveloper to enter into this Amended Agreement and to consummate the transactions contemplated hereby, all of which shall be true as of the date hereof:

(a) The Town is a municipal corporation duly organized and validly existing pursuant to the laws of the State of New Jersey and has the requisite power and authority to enter into this Amended Agreement.

(b) This Amended Agreement has been duly authorized by virtue of a certain Resolution, Resolution No. [ ] validly adopted by the Town on [ ], [ ], 2012 and, on or after the Effective Date, shall constitute a legal, valid and binding obligation of the Town enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization or other Applicable Law(s) affecting creditors' rights and subject to the availability of equitable remedies.

(c) The execution and delivery of this Amended Agreement by the Town and consummation of the transactions contemplated hereby do not violate, conflict with or constitute a default under the provisions of any agreement, understanding or arrangement to which the Town is a Party or by which it is bound or of any in force as of the Effective Date.

(d) There is no pending or, to the best of the Town's knowledge, threatened litigation, action or proceeding that (i) would prevent or delay the Town from performing its duties and obligations hereunder and/or (ii) questions the validity or enforceability of this Amended Agreement or any essential element on which this Amended Agreement depends or (iii) relates specifically to the Project Premises or the title thereto.

(e) No contracts or other agreements, whether oral or written, have been entered into by the Town with respect to the subject matter of this Amended Agreement, including, without limitation, any existing or pending contracts of sale, options to purchase or rights of first refusal or first offer with respect to the Project Premises, or any part thereof, recorded or unrecorded.

(f) No official or employee of the Town has any personal interest, direct or indirect, in this Amended Agreement.

(g) The execution and delivery hereof and the performance by the Town of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any Applicable Laws applicable to the Town or the Project Premises.

(h) There are no management, service, maintenance, or other agreements with respect to or affecting the DPW Property, recorded or unrecorded, which will survive the closing of title.

(i) As of the Phase One Closing Date, there will be no leases or occupancies affecting any portion of the Phase One DPW Property; and as of the Phase Two Closing Date, there will be no leases or occupancies affecting any portion of the Phase Two DPW Property.

(j) The existing sanitary sewer trunk lines extending to the sewer plant have the capacity to carry the additional flows generated by the Project, as well as all other redevelopment projects in the Town. There is sufficient potable water and sanitary sewer capacity to service the Project.

(k) After the Completion of any Phase, the Town shall not amend or cause the amendment of the Redevelopment Plan, or any other law, rule, regulation, statute, resolution, order and/or ordinance, in a manner that negatively impacts the marketing, management, maintenance or operation of the Completed Phase. This covenant shall survive each Closing or any termination of this Agreement with respect to the Project or any Phase thereof.

**12.03 Survival of Representations and Warranties.** (a) The representations and warranties contained in Section 12.02 are true, accurate and complete and not misleading in any material respect as of the date hereof and shall be deemed to be repeated at and as of each closing. The representations and warranties contained in Section 12.02 shall survive each closing.

(b) The representations and warranties contained in Section 12.01 are true, accurate and complete and not misleading in any material respect as of the date hereof and shall be deemed to be repeated at and as of each closing. The representations and warranties contained in Section 12.01 shall survive each closing.

### **ARTICLE XIII**

#### **NOTICES AND DEMANDS**

**13.01 Manner of Notice.** Any notice, demand, or other communication permitted or required under this Amended Agreement by either Party to the other shall be considered given and delivered if it is dispatched by (a) registered or certified mail, postage prepaid, return receipt requested, or (b) delivered personally by a reputable messenger service or a nationally recognized priority delivery service such as Federal Express at the addresses listed below for each party:

#### **AS TO THE TOWN OF MORRISTOWN**

Honorable Mayor Timothy Dougherty  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to: Vijayant Pawar, Esq., Town Attorney  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to: Michael Rogers, Business Administrator  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

and a copy to: John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

**AS TO THE REDEVELOPER**

Richard Murphy  
Morristown Development, LLC  
c/o Mill Creek Residential  
135 Route 202/206, 3rd Floor  
Bedminster, New Jersey 07921

with a copy to: Andy S. Norin, Esq.  
Drinker, Biddle & Reath, LLP  
500 Campus Drive  
Florham Park, New Jersey 07932

With a copy to: Linda Parkis, Esq.  
Lewis and Roca LLP  
40 North Central Ave.  
Phoenix, Arizona 85004

**AS TO THE ESCROW AGENT**

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, on the first business day after transmittal. Counsel for a Party may give notice to the other Party with the same effect as if given by a Party.

## ARTICLE XIV

### MISCELLANEOUS

**14.01 Events of Force Majeure.** It is agreed that the terms, obligations and responsibilities set forth in this Amended Agreement and the schedules and deadlines set forth throughout this Amended Agreement shall be suspended or modified if the acquisition of the Project Premises or any portion thereof, or the acquisition of the Governmental Approvals for the Project, Commencement of Construction, completion of construction of any aspect of the Project or other compliance with this Amended Agreement is/are prevented by an Event of Force Majeure, as such term is defined elsewhere in this Amended Agreement. Where the acquisition of the necessary Governmental Approvals for or the completion of the construction of the Improvements or other compliance with this Amended Agreement is prevented by an Event of Force Majeure, the relevant terms of this Amended Agreement and any schedules and deadlines shall be modified/extended for the period of delay caused thereby. The Party who seeks the benefit of the above described modification/extension shall, within Thirty (30) Days after that Party's actual discovery of any such Event of Force Majeure, notify the other Party in writing of the Event of Force Majeure and of the cause(s) thereof, and therein a modification/extension of the term and an extension for the period of the enforced delay. The performance or non-performance by the Parties or either of them of any obligation, requirement, commitment or responsibility set forth in this Amended Agreement shall not be deemed to be an Event of Default pursuant to this Amended Agreement where such performance, failure of performance or delay in performance is/are the result of an Event of Force Majeure; provided, however, that the Event of Force Majeure was not the result of any unlawful action or non-action of the Party relying on such Event of Force Majeure as justification for the non-performance, failure of performance or delay in performance of the subject obligation, requirement, commitment or responsibility.

**14.02 Right of Entry for Utility Service.** The Town reserves for itself, and any public utility company, as may be appropriate, the right to enter upon the Project Premises at any reasonable time and upon reasonable notice for the purpose of reconstructing, maintaining, repairing, or servicing the public utilities located within the Project Premises boundary lines. No

written approval or notice shall be required in the case of an emergency occurring on or around the Project Premises the conditions of which would require immediate or emergency entry.

The Town shall, in accordance with its mutual interest in efficiently advancing the Project and upon the request of the Redeveloper, promptly intervene with any public utility on the Redeveloper's behalf to effectuate such timely cooperation as is reasonably necessary, customary and practical to avoid any creation of unsafe conditions, delay or undue cost.

**14.03 The Redeveloper Not To Construct Over Utility Easements.** The Redeveloper shall not construct any building on, over, or within the boundary lines of any easement for public utilities, unless such construction is provided for in such easement or has been approved by the Town or public utility, as the case may be.

**14.04 Equal Employment Opportunity.** The Redeveloper agrees that during the construction of the Improvements:

(a) To the extent required by Applicable Law, the Redeveloper will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. To the extent required by Applicable Law, the Redeveloper will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. To the extent required by Applicable Law, the Redeveloper agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause and any such notices provided by the Town which are consistent therewith.

(b) To the extent required by Applicable Law, the Redeveloper will, in all solicitations or advertisements for employees placed by or on behalf of the Redeveloper, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) To the extent required by Applicable Law, subcontractors and suppliers to the Project shall to the extent reasonably possible include qualified and certified minority enterprises.

(d) To the extent required by the Applicable Law, the obligations in this Section 14.04 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 shall so provide.

**14.05 Entire Agreement.** This Amended Agreement constitutes the entire agreement of the Parties on the subject matter hereof and supersedes any prior or contemporaneous writings, representations, discussions, or agreements between the Parties with respect to the subject matter hereof, including, without limitation, the Original Agreement and any and all letter agreements entered into by the Parties, including without limitation that certain letter agreement dated August 2, 2010; *provided, however*, that the Administrative and Professional Costs Escrow Agreement shall remain in full force and effect, in accordance with the terms of this Amended Agreement.

**14.06 Successors and Assigns.** This Amended Agreement shall be binding upon and inure to the benefit of the permitted successors in interest, Transferees and assigns of the Parties hereto, and the respective heirs, executors, and administrators.

**14.07 Exhibits.** All Exhibits attached hereto and/or referred to in this Amended Agreement are incorporated herein, as though set forth in full.

**14.08 Severability.** If any term or provision of this Amended Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, to any Person or circumstances, the remainder of this Amended Agreement, or the application of such term or provision to any Persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Amended Agreement shall be valid and shall be enforced to the extent permitted by Applicable Law.

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

**14.10 Execution of Counterparts.** This Amended Agreement may be executed in One (1) or more counterparts. This Amended Agreement shall become binding on the Parties and such counterparts shall constitute One (1) and the same instrument, upon the Effective Date.

**14.11 Drafting Ambiguities; Interpretation.** In interpreting any provision of this Amended Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Amended Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Amended Agreement and have contributed to the final form of same.

**14.12 Time Period for Notices.** All notices to be given hereunder shall be given in writing in conformance with Section 13.01 hereof, and, unless a certain number of Days is specified, within a reasonable time.

**14.13 Waivers and Amendments in Writing.** The waiver by either Party of an Event of Default on the part of the other Party shall not operate or be construed to be a waiver of any other or subsequent Event of Default as provided for in Article 6 hereof.

**14.14 Governing Law.** The Applicable Laws of the State of New Jersey govern this Amended Agreement without regard to conflict of laws principles.

**14.15 Withholding of Approvals.** All approvals, consents and acceptances required to be given or made by any Person or Party, shall not be unreasonably withheld, conditioned or delayed, except for instances in which such approval is expressly allowed in a Party's sole discretion.

**14.16 Recitals Incorporated; Definitions Incorporated.** The Recitals to this Amended Agreement and the Definitions contained in this Amended Agreement are incorporated by reference into this Amended Agreement, as if set forth at length.

**14.17 Titles of Articles and of Sections.** Any titles of the several Articles or Sections of this Amended Agreement: are inserted for reference only and shall be disregarded in construing or interpreting any of its provisions; and are not intended to limit or define the contents of the Articles or Sections.

**14.18 Limitation on Liability.** Notwithstanding anything to the contrary in this Amended Agreement, any liability(ies), commitments, obligations and/or responsibility or responsibilities of any type or kind whatsoever (whether actual, contingent, consequential or otherwise) (hereinafter referred to collectively as "Liability") of the Redeveloper in, resulting from, or relating in any way to this Amended Agreement shall be those of the Redeveloper only. Nothing in this Amended Agreement, arising out of, or related in any way to this Amended Agreement or to the Project or any aspect thereof shall, in any way, give the Town or any other Person recourse to, or be construed to impose, directly or indirectly, any Liability on any Person other than the Redeveloper.

The foregoing limitation on Liability shall apply to, but is not limited to, (i) any Affiliate of the Redeveloper or of the Redeveloper's members, (ii) any member, shareholder, manager, officer, director, partner, managing member, vendor, venturer, trustee, employee, agent, and/or other representative (hereinafter collectively referred to as the "Agent") of the Redeveloper or of the Redeveloper's members, (iii) any Agent of any Affiliate of the Redeveloper or of the Redeveloper's members, (iv) any Affiliate of any Agent of the Redeveloper or of the Redeveloper's members, (v) any Agent of any Agent of the Redeveloper or of the Redeveloper's members, (vi) any Person directly or indirectly holding, controlling and/or owning any interest in the Redeveloper or in the Redeveloper's members, in any Agent or Affiliate of the Redeveloper or of the Redeveloper's members, in any Agent of any Affiliate of the Redeveloper or of the Redeveloper's members, and/or in any Affiliate of any Agent of the Redeveloper or of the Redeveloper's members, and/or (vii) any successors and/or assigns of any of the Parties referenced in subsections (i) through (vi), above unless the Parties have assumed an interest in the Project in accordance with a Permitted Transfer and Article VIII hereof.

The Town understands and acknowledges that their respective acceptance of the Limitation on Liability set forth in this Section 14.18 is a condition precedent to the

Redeveloper's execution of this Amended Agreement and constitutes specifically bargained-for consideration.

**14.19 Town's Limitation on Liability.** Any liabilities, obligations or responsibilities of any type or kind (contingent or otherwise) herein are solely those of the Town. No member, director, employee, officer, representative or agent of the Town shall be liable to the Redeveloper or any other Person for any matter arising out of or related to the payment or performance of any such liabilities, obligations or responsibilities of the Town in this Amended Agreement.

**14.20 Limitation on Third Parties.** Nothing in this Amended Agreement is intended to nor shall create any rights for or confer any benefits on any third party.

**14.21 Estoppel Certificate.** (a) Within Thirty (30) Days following written request therefore by Redeveloper, or of any Mortgagee, purchaser, tenant or other party having an interest in the Project Premises, the Town shall issue a signed estoppel certificate either stating that (i) this Amended Agreement is in full force and effect, (ii) no Town Event of Default has occurred under this Amended Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Town Event of Default under this Amended Agreement), or stating the nature of the Town Event of Default, if any (iii) to the best of the Town's knowledge, no Redeveloper Event of Default has occurred under this Amended Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Redeveloper Event of Default) or stating the nature of the Redeveloper Event of Default, if any; and (iv) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses an Event of Default, it shall also state the manner in which such Event of Default may be cured.

(b) Within Thirty (30) Days following written request therefore by the Town, the Redeveloper shall issue a signed estoppel certificate either stating that (i) this Amended Agreement is in full force and effect, (ii) to the best of the Redeveloper's knowledge, no Town Event of Default has occurred under this Amended Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Town Event of

Default under this Amended Agreement), or stating the nature of the Town Event of Default, if any (iii) no Redeveloper Event of Default has occurred under this Amended Agreement (nor any event which, with the passage of time and the giving of notice would result in the occurrence of a Redeveloper Event of Default) or stating the nature of the Redeveloper Event of Default, if any; and (iv) stating any such other reasonable information as may be requested. In the event the estoppel certificate discloses an Event of Default, it shall also state the manner in which such Event of Default may be cured.

**14.22 No Brokerage Commissions.** The Town and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Amended Agreement as broker, agent, or otherwise acting on behalf of either the Town or the Redeveloper, and the Town and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

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

**14.24 Maintenance.** The Redeveloper shall be responsible for the maintenance and security of each parcel of property contained within the Project Premises subject to the terms of this Amended Agreement subsequent to its acquisition of title to each such parcel of property and until such time as the Redeveloper no longer owns the Project Premises or any portions thereof.

**14.25 Lender Changes.** If the Redeveloper's Financial Institution(s) requires modifications of the terms of this Amended Agreement, the Town shall reasonably cooperate with the Redeveloper in approving such modifications, so long as such modifications, do not materially and substantially change the rights or obligations of the Town as set forth in this Amended Agreement and, in the opinion of the Town, do not materially impair the objectives and interest of the Town or render the completion of the Project or any Phase thereof in jeopardy.

**14.26 Conflict of Interest.** No member, official or employee of the Town shall have any direct or indirect interest in this Amended Agreement, nor participate in any decision relating to the Amended Agreement which is prohibited by the Applicable Laws.

**14.27 Local Purchase of Services, Supplies, Materials and Equipment.** Whenever possible and practicable, and to the extent permitted by law, the Redeveloper, its contractors and/or subcontractors shall purchase services, supplies, materials and equipment from businesses located within the Town assuming such goods or services are available at the same or lesser cost.

**14.28 Hazardous Substances.** In the event that prior to the conveyance of any parcel within the Project Premises (including the DPW Property) there is a spill, discharge, release, deposit or emplacement of any Hazardous Substance on or near the Project Premises which results or could result in contamination of the Project Premises or any portion thereof, and the remediation thereof is estimated by Redeveloper's environmental consultant to exceed \$200,000.00 for any individual parcel, or \$500,000.00 in the aggregate for each Phase, or take longer than ninety (90) days to complete, then Redeveloper shall have the right, in its sole discretion, to (i) omit the affected parcel from the Project Premises and reconfigure the Project, or (ii) terminate this Amended Agreement in its entirety or with respect to the Phase of the Project affected. If this Amended Agreement is terminated with regard to any Phase pursuant to the terms of this Section 14.28, then except as expressly set forth herein to the contrary, this Amended Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder, but only with respect to the Phase that has been terminated; and the Town shall return to the Redeveloper any Offer Price deposited with the Town or the court with respect to the terminated Phase. In the event this Amended Agreement is terminated by

Redeveloper pursuant to this Section 14.28 prior to Phase One Preliminary Approval, the DPW Deposit shall be refunded to Redeveloper.

**IN WITNESS WHEREOF**, the Governing Body has caused this Amended Agreement to be duly executed in its name of and by the Mayor of the Town of Morristown on behalf of the Town of Morristown, and its seal to be hereunto duly affixed and attested by the Town Clerk, and the Redeveloper has caused this Amended Agreement to be duly executed in its name and behalf by the managing member, on or as of the day first above written.

**TOWN OF MORRISTOWN**

Attest:

\_\_\_\_\_  
Town Clerk

By: \_\_\_\_\_  
Timothy Dougherty, Mayor

Date: \_\_\_\_\_

**MORRISTOWN DEVELOPMENT, LLC**, a Delaware limited liability company

By: NJ 106 Morristown Limited Partnership, a Delaware limited liability company

By: NJ 103 Apartments GP LLC, a Delaware limited liability company, its general partner

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

Date: \_\_\_\_\_

Escrow Agent hereby agrees to hold and disburse the DPW  
Deposit in accordance with the terms of this Agreement.

**ESCROW AGENT:**

**Inglesino, Pearlman, Wyciskala & Taylor, LLC**

By: \_\_\_\_\_  
Name: John P. Inglesino, Esq.  
Title: Managing Member

Date: \_\_\_\_\_

**EXHIBIT A**

**REDEVELOPMENT AREA PARCEL SCHEDULE**

**Tax Block: 5001**

**Lots: 4, 5, 6, 7, 7.01, 8, 9, 10, 11 & 12**

**Tax Block: 5702**

**Lots: 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 & 29**

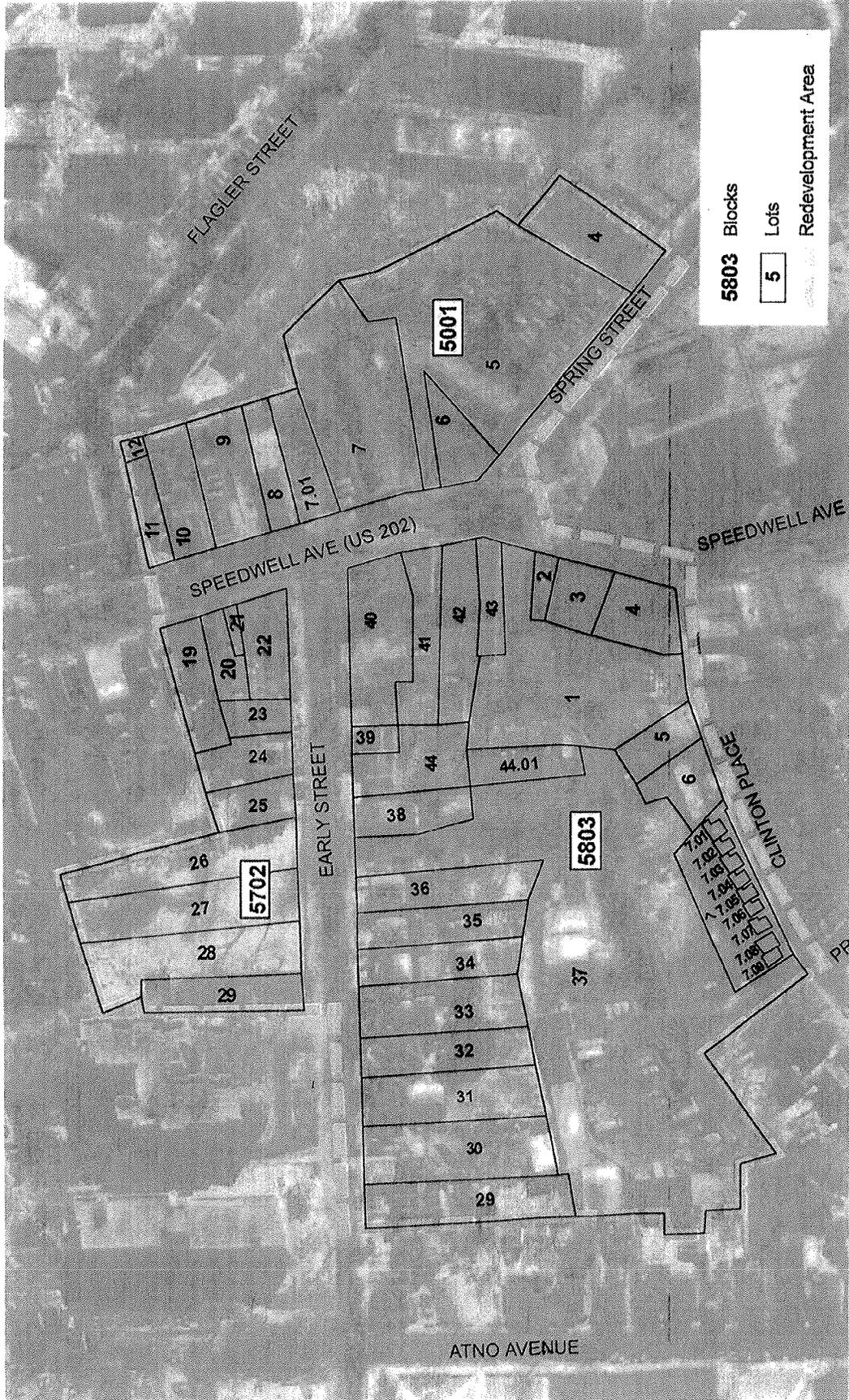
**Tax Block: 5803**

**Lots: 1, 2, 3, 4, 5, 6, 7, 7.01, 7.02, 7.03, 7.04, 7.05, 7.06, 7.07, 7.08, 7.09, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 44.01, 44.02 & 44.03**

**EXHIBIT B**

**REDEVELOPMENT AREA MAP**

**[Attached]**



**Figure 1: Delineation of Redevelopment Area Properties by Block and Lot**

SPEEDWELL AVENUE REDEVELOPMENT PLAN  
TOWN OF MORRISTOWN, NEW JERSEY

Prepared by PPSA using basemaps from T&M Associates

## **EXHIBIT C**

### **MORRISTOWN DEVELOPMENT LLC OWNERSHIP DISCLOSURE**

**Morristown Development LLC**  
**A Delaware limited liability corporation**  
**Formed February 6, 2007**

The members of the Morristown Development LLC are NJ 106 Morristown Limited Partnership, a Delaware limited liability partnership, its managing member, and PR II Morristown Apartments LLC, a Delaware limited liability company. NJ 106 Morristown Limited Partnership owns 40% of the membership interest of Morristown Development LLC. PR II Morristown Apartments LLC owns 60% of the membership interest of Morristown Development LLC.

**EXHIBIT D**

**REDEVELOPMENT PROJECT SCHEDULE**

**[Attached]**

**EXHIBIT D**  
**REDEVELOPMENT PROJECT SCHEDULE**

**PHASE ONE**

	<i>Task</i>	<i>Completion Date</i>
1	Redeveloper and Town execute the Amended and Restated Redevelopment Agreement.	"Effective Date"
2	Redeveloper deposits the DPW Deposit Deficiency	Within Five (5) Days after the Effective Date
3	Redeveloper provides updated Fiscal Impact Statement for Phase One	Within Thirty (30) Days after the Effective Date
4	Town shall cause the DPW Environmental Investigation Work to be performed	Within Forty-Five (45) Days after the Effective Date
5	Redeveloper submits Phase One Preliminary Plans to Town Administrator	Within Sixty (60) Days after the Effective Date
6	Preparation of Remedial Action Work Plans for both the Phase One and Phase Two DPW Property	Within Thirty (30) Days after receiving the results of the DPW Environmental Investigation Work
7	Town Administrator, in consultation with Town's professionals, approval of Phase One Preliminary Plans or written notice of required changes to render Phase One Preliminary Plans in conformance with Redevelopment Plan	Within Forty Five (45) Days after Redeveloper's submission of Phase One Preliminary Plans
8	Redeveloper submits application to Planning Board for Phase One Preliminary Plans	Within Forty-Five (45) Days after the date that the Town Administrator notifies the Redeveloper of its approval of the Phase One Preliminary Plans
9	Town and Redeveloper enter into Financial Agreement with respect to Phase One; Governing Body adopts Ordinance approving Financial Agreements	Within One Hundred (120) Days after submission of application for Financial Agreements by Redeveloper (anticipated to be within Thirty (30) Days of the Effective Date)
10	Planning Board approval of preliminary site plan and subdivision application for Phase One	Within One Hundred (120) Days after the date that the site plan and subdivision application for Phase One is deemed complete.
11	Redeveloper obtains all Governmental Approvals necessary to commence construction of Phase One	Within Eighteen (18) months after the Effective Date
12	Town conveys Phase One DPW Property to Redeveloper	Thirty (30) Days after Redeveloper has obtained all Governmental Approvals for Phase One (the "Phase One Closing Date")
13	Redeveloper closes on acquisition of Private Parcels for Phase One	Phase One Closing Date
14	Town closes on first tranche of financing for Phase One Public Improvements and	Phase One Closing Date

	<i>Task</i>	<i>Completion Date</i>
	makes same available to Redeveloper	
15	Town relocates DPW Facility	Prior to Phase One Closing Date
16	Redeveloper deposits the DPW Interest Payment in escrow	Within Thirty (30) Days after request by the Township after the Phase One Closing Date
17	Commencement of Construction of Phase One and associated road improvements	Within Sixty (60) Days after Phase One Closing Date
18	Redeveloper commences environmental remediation of Phase One Premises and Phase Two Premises	Within Sixty (60) Days after Phase One Closing Date
19	Completion of Construction of Phase One	Within Thirty (30) months after the commencement of construction
20	Issuance of Certificate of Completion	Within Thirty (30) Days after Completion of Phase One

## PHASE TWO

	<i>Task</i>	<i>Completion Date</i>
1	Town obtains and delivers to Redeveloper an appraisal for the Phase Two DPW Property	Within thirty (30) Days after the Phase One Closing Date
2	Parties enter into amendment to Redevelopment Agreement with respect to Phase Two	One Hundred Eighty (180) days after the Phase One Closing
3	Redeveloper provides Fiscal Impact Analysis	Within thirty (30) Days after the Parties enter into the Phase Two Amendment
4	Town and Redeveloper enter into Financial Agreement with respect to Phase Two; Governing Body adopts Ordinance approving Financial Agreement	Within One Hundred (120) Days after submission of application for Financial Agreement by Redeveloper (anticipated to be within Thirty (30) Days after the Parties enter into the Phase Two Amendment)
5	Phase Two Due Diligence Period	One Hundred Eighty (180) Day period after the Parties enter into the Phase Two Amendment
6	Redeveloper acquires fee simple title to, enters into purchase contracts for, or submits Acquisition Notification for the Phase Two Premises	Within One Hundred Eighty (180) days after the Parties enter into the Phase Two Amendment
7	Redeveloper submits Phase Two Preliminary Plans to Town Administrator	Within One Hundred Twenty (120) Days after the expiration of the Phase Two Due Diligence Period
8	Town Administrator, in consultation with the Town's professionals, approval of Phase Two Preliminary Plans or written notice of required changes to render Phase Two Plans	Within Forty Five (45) Days after Redeveloper's submission of Phase Two Preliminary Plans

	<i>Task</i>	<i>Completion Date</i>
	in conformance with Redevelopment Plan	
9	Redeveloper submits application to Planning Board for Phase Two	Within Forty-Five (45) Days after the date that the Town Administrator notifies the Redeveloper of its approval of the Phase Two Preliminary Plans
10	Planning Board approval of Phases Two	Within One Hundred (120) Days of submission of application for Phase Two
11	Redeveloper obtains all Governmental Approvals for construction of Phase Two	Within twenty-four (24) months after entering into the Phase Two Amendment
12	Town to convey Phase Two DPW Property to Redeveloper	Thirty (30) Days after Redeveloper has obtained all Governmental Approvals for Phase Two (the "Phase Two Closing Date")
13	Redeveloper closes on conveyance of Private Parcels for Phase Two	Phase Two Closing Date
14	Town completes second tranche of financing for Public Improvements and provides same to Redeveloper	Phase Two Closing Date
15	Town relocates Ambulance Squad Building	Prior to Phase Two Closing Date
16	Commencement of Construction of Phase Two and associated road improvements	Within Sixty (60) Days after Phase Two Closing
17	Completion of Construction of Phase Two	Within Thirty (30) Months after Commencement of Construction

### PHASE THREE

	<i>Task</i>	<i>Completion Date</i>
1	Redeveloper shall provide written notice to the Town whether Redeveloper elects to develop and construct Phase Three	Not later than sixty (60) days after the Phase Two Closing
2	Parties enter into amendment to Redevelopment Agreement with respect to Phase Three	One Hundred Eighty (180) days after the Phase Two Closing
3	Redeveloper provides Fiscal Impact Analysis	Within Thirty (30) Days after the Parties enter into the Phase Three Amendment
4	Town and Redeveloper enter into Financial Agreement with respect to Phase Three; Governing Body adopts Ordinance approving Financial Agreement	Within One Hundred (120) Days after submission of application for Financial Agreement by Redeveloper (anticipated to be within Thirty (30) Days after the Parties enter into the Phase Three Amendment)
5	Phase Three Due Diligence Period	One Hundred Eighty (180) Day period after the Parties enter into the Phase Three Amendment
6	Redeveloper acquires fee simple title to, enters into purchase contracts for, or submits Acquisition Notification for the	Within One Hundred Eighty (180) days after the Parties enter into the Phase Three Amendment

	<i>Task</i>	<i>Completion Date</i>
	Phase Three Premises	
7	Redeveloper submits Phase Three Preliminary Plans to Town Administrator	Within One Hundred Twenty (120) Days after the expiration of the Phase Three Due Diligence Period
8	Town Administrator, in consultation with Town's professionals, approval of Phase Three Preliminary Plans or written notice of required changes to render Phase Three Plans in conformance with Redevelopment Plan	Within Forty Five (45) Days after Redeveloper's submission of Phase Three Preliminary Plans
9	Redeveloper submits application to Planning Board for Phase Three Preliminary Plans	Within Forty-Five (45) Days after the date that the Town Administrator notifies the Redeveloper of its approval of the Phase Three Preliminary Plans
10	Planning Board approval of Phase Three Preliminary Plans	Within One Hundred (120) Days after submission of Governmental Application to Planning Board for Phase Three Preliminary Plans
11	Redeveloper obtains all Governmental Approvals for Construction of Phase Three	Within Twenty Four (24) Months after entering into the Phase Three Amendment
12	Redeveloper closes on conveyance of Private Parcels within Phase Three Premises	Thirty (30) Days after Redeveloper has obtained all Governmental Approvals for Phase Three (the "Phase Three Closing Date")
13	Town completes third tranche of financing for Public Improvements and provides same to Redeveloper	Phase Three Closing Date
14	Commencement of Construction of Phase Three and associated road improvements	Within Sixty (60) Days after Phase Three Closing Date
15	Completion of Construction of Phase Three	Within Thirty (30) Months after Commencement of Construction, but not later than Seven (7) years after the Effective Date

**EXHIBIT E**

**REDEVELOPER'S CONCEPT PLAN AND PROJECT RENDERINGS**

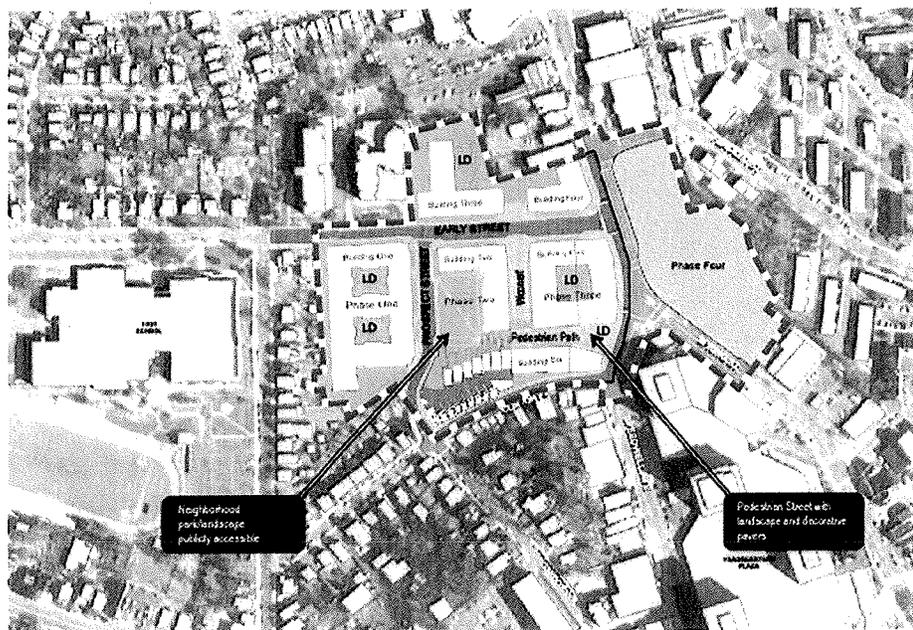
**[Attached]**



## Appendix B: Illustrative Concept Plan

**SPEEDWELL AVENUE REDEVELOPMENT**  
*Town of Morristown, New Jersey*

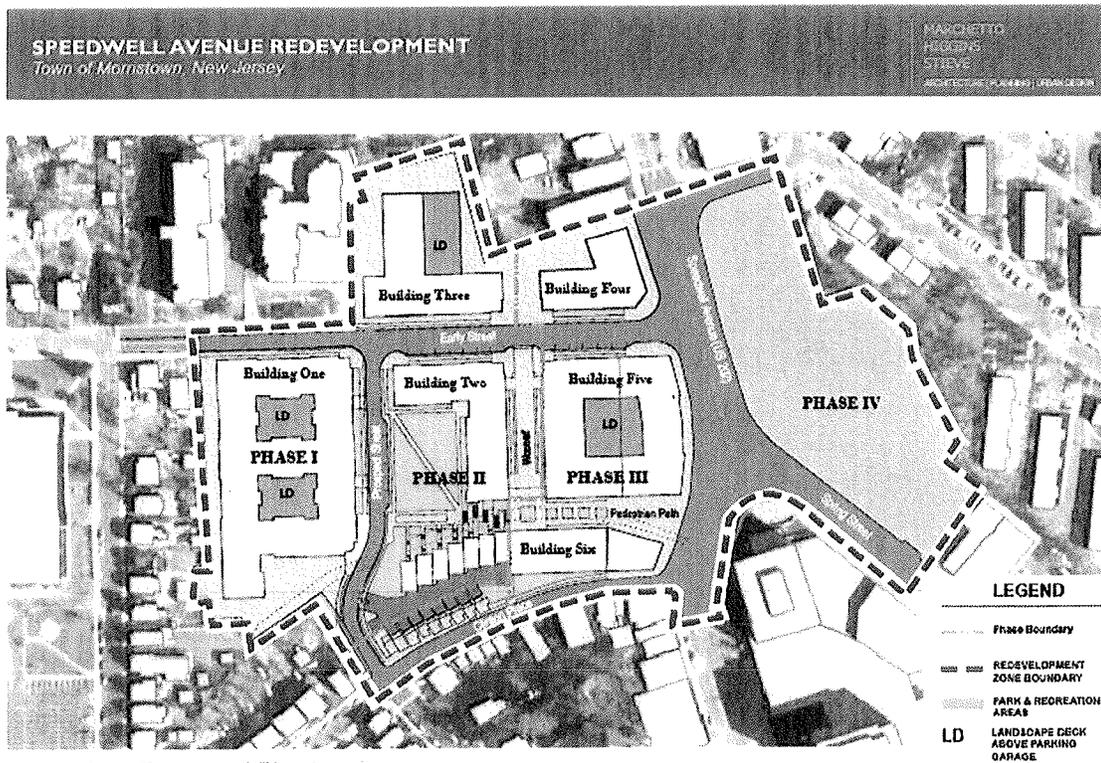
MARCHETTO  
 HIGGINS  
 STIEVE  
 ARCHITECTURE | PLANNING | URBAN DESIGN



**Appendix B: Illustrative Concept Plan**  
 Speedwell Avenue Redevelopment Plan  
 Town of Morristown, New Jersey

Phase 1,2,3 Graphio represents concept design prepared by Morristown Redevelopment LLC & Marchetto Higgins Stieve Architecture | Planning | Urban Design  
 Prepared using base maps prepared by Dewberry-Occidant, r.c. and Marchetto Higgins Stieve Architects | Planning | Urban Design

Appendix C: Tracts and Phasing

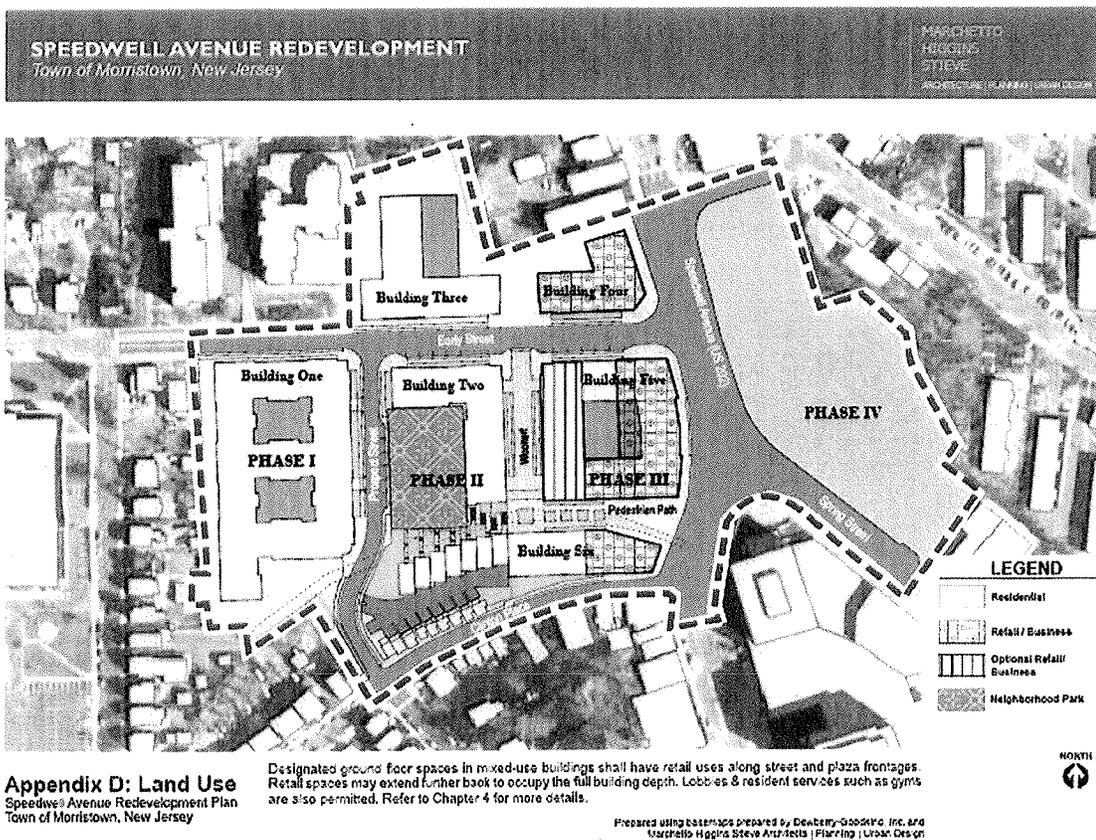


**Appendix C: Tracts and Phasing**  
Speedwell Avenue Redevelopment Plan  
Town of Morristown, New Jersey

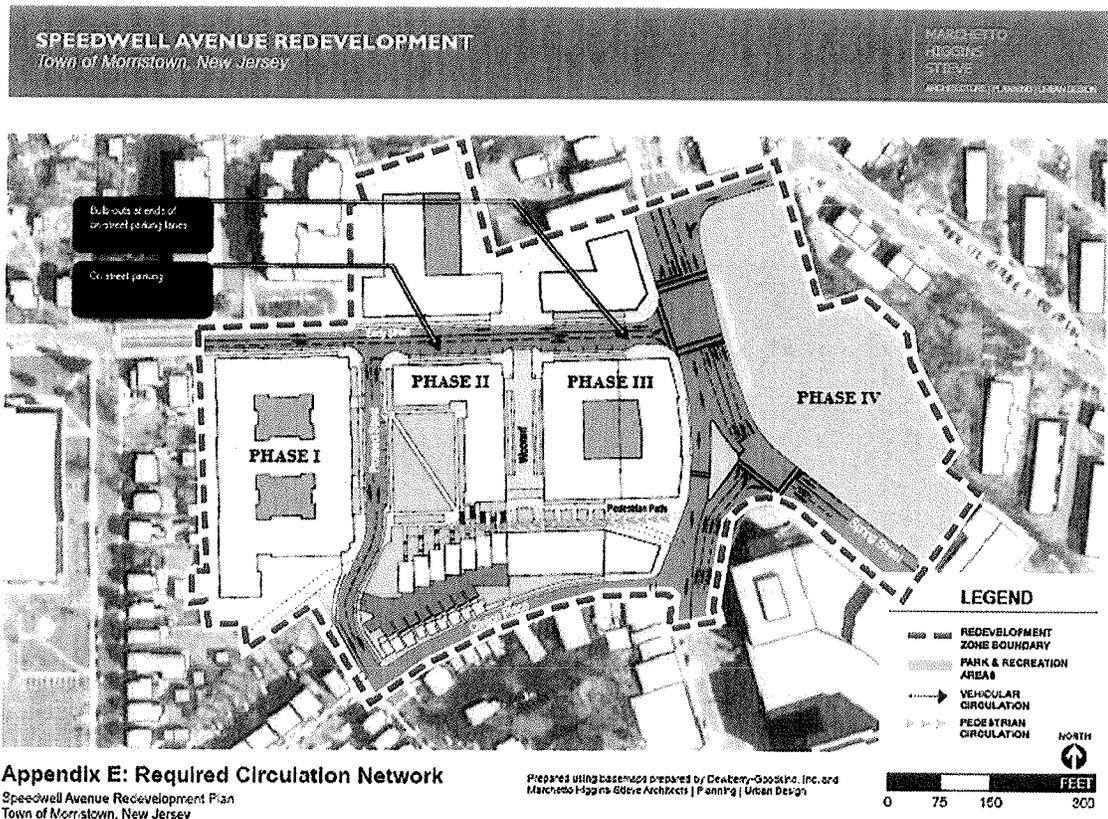
Prepared using base maps prepared by Devovery-Gookind, Inc. and Marchetto Prospero Steves Architects | Planning | Urban Design



## Appendix D: Land Use

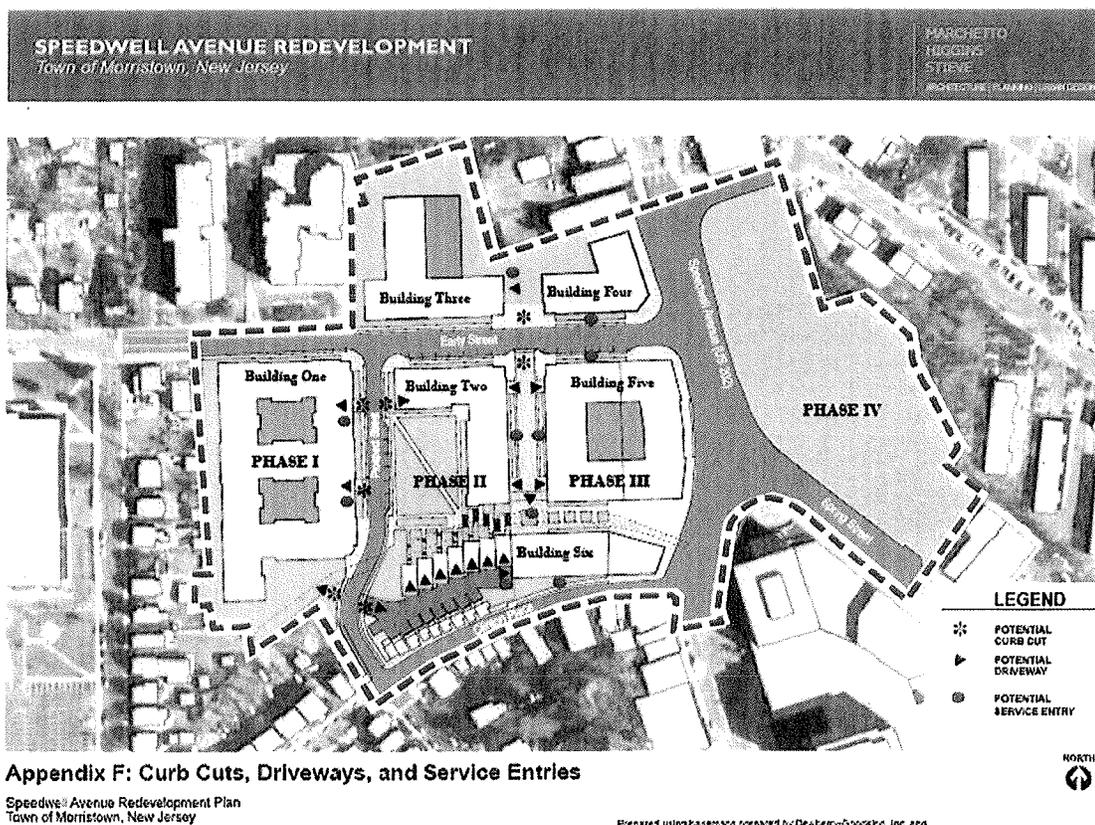


## Appendix E: Required Circulation Network

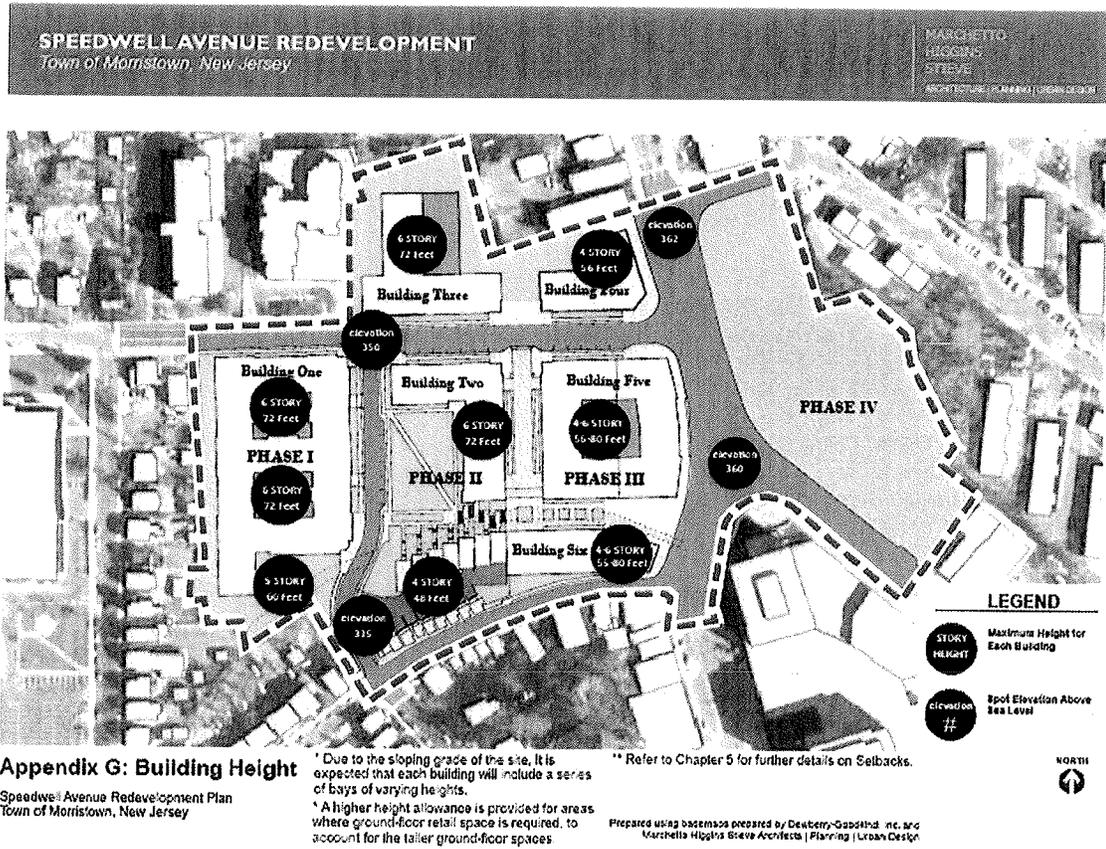




## Appendix F: Curb Cuts, Driveways, and Service Entries



## Appendix G: Building Height



**EXHIBIT F**

**DPW PROPERTY**

**[Attached]**



SmithSurveying Inc.

## Richard Smith Surveyor

Courthouse Plaza • 60 Washington St., Suite 106 • Morristown, NJ 07960  
Telephone: 973-540-9004 • Fax: 973-292-0220 • www.smithsurveyor.com

July 28, 2011

Tax Lot 37 in Block 5803  
Town of Morristown, Morris County, New Jersey

Beginning on the southerly sideline of Early Street, 50 wide right of way, where the same is intersected by the division line of 14 Early LLC as described in Deed Book 5944 at Page 297, distant 308.91 feet measured westerly along said sideline from the westerly sideline of Speedwell Avenue, and running; thence,

1) along 14 Early LLC, South 09 degrees 11 minutes 46 seconds East 72.25 feet to an angle in the same; thence,

2) South 22 degrees 41 minutes 46 seconds East 62.84 feet to an angle in the same; thence,

3) along The Town of Morristown, South 12 degrees 26 minutes 46 seconds East 198.52 feet to the intersection of lands hereindescribed, 14 Early LLC and lands now or formerly of Town of Morristown as described in Deed Book 5121 at Page 244; thence,

4) along the same, then along lands now or formerly as Clinton Place Condominium as described in Deed Book 2796 at Page 542, South 58 degrees 31 minutes 20 seconds West 178.13 feet; thence,

5) along Clinton Place Condominium, South 52 degrees 19 minutes 20 seconds West 60.03 feet to an angle in the same; thence,

6) along Clinton Place Condominium South 39 degrees 58 minutes 40 seconds East 68.22 feet to a point in the northerly line of Clinton Street; thence,

7) along Clinton Street, South 44 degrees 33 minutes 32 seconds West 23.81 feet to a point where the same is intersected by the easterly line of lands now or formerly of Hundai & Kaur as described in Deed Book 5491 at Page 166; thence,

8) along Hundai & Kaur, North 45 degrees 26 minutes 27 seconds West 150.00 feet to an angle in the same; thence,

9) along Hundai & Kaur, then along lands now or formerly of Palacio & Gonzales as described in the Official Records Book 21607 at Page 999 and then along lands now or formerly of Keefe as described in Deed Book W-52 at Page 166, South 44 degrees 33 minutes 33 seconds West 138.38 feet to the intersection of lands hereindescribed and

lands now or formerly of Kaur & Singh as described in Deed Book 5491 at Page 35 and lands now or formerly of Olivio & Milelli as described in the Official Records Book 21515 at Page 1095; thence,

10) along Olivio & Milelli, North 17 degrees 18 minutes 48 seconds West 38.71 feet to an angle in the same; thence,

11) South 82 degrees 32 minutes 36 seconds West 52.10 feet to a point where the same is intersected by lands now or formerly of France as described in Deed Book 3118 at Page 328; thence,

12) along France, North 07 degrees 27 minutes 24 seconds West 40.00 feet to a point in the same; thence,

13) along France, South 82 degrees 32 minutes 36 seconds West 23.70 feet to a point where the same is intersected by lands hereindescribed and lands now or formerly of Durand as described in the Official Records Book 20505 at Page 1994; thence,

14) along Durand, North 10 degrees 39 minutes 24 seconds West 45.38 feet to a point where the same is intersected by lands hereindescribed and lands now or formerly of Tsang as described in the Official Records Book 21289 at Page 1610; thence,

15) along Tsang, North 80 degrees 37 minutes 41 seconds East 24.43 feet to an angle in the same; thence,

16) along Tsang and then along lands now or formerly Dattolo as described in the Official Records Book 21216 at Page 1402, North 09 degrees 50 minutes 56 seconds West 103.26 feet to a point where the same is intersected lands hereindescribed and lands now or formerly of Neiman as described Deed Book 5139 at Page 218 and lands now or formerly of Meza as described in Deed Book 6333 at Page 291; thence,

17) along Meza and then along lands now or formerly of 32 Early Street as described in Deed Book 6416 at page 186 and then along lands now or formerly of Gesualdo as described in Deed Book 2211 at Page 1090 and then along lands now or formerly of Gesualdo as described in Deed Book 3535 at Page 236 and then along lands now or formerly of Opipari as described in Deed Book 2665 at Page 964, North 70 degrees 08 minutes 44 seconds East 279.63 feet to an angle point intersected by of lands hereindescribed and lands now or formerly of Gesuzza & Opipari as described in Deed Book 3383 at Page 290; thence,

18) along Gesuzza & Opipari, North 89 degrees 08 minutes 44 seconds East 42.60 feet to an angle point intersected by lands hereindescribed and lands now or formerly Alberto & Pullano as described in Deed Book 5926 at Page 37; thence,

19) along Alberto & Pullane, South 88 degrees 58 minutes 45 seconds East 44.35 feet to an angle point intersected by lands hereindescribed and lands now or formerly of Parisi as described in Deed Book 4987 at Page 273; thence,

20) along Parisi, South 75 degrees 20 minutes 46 seconds East 44.86 feet to an angle in the same; thence,

21) along Parisi, North 12 degrees 26 minutes 46 seconds West 212.82 feet to a point in the aforementioned southerly sideline of Early Street; thence;

22) along Early Street, North 80 degrees 52 minutes 56 seconds East 44.61 feet to the point and place of Beginning.

Containing 103,118 square feet.

This description was prepared by Richard F. Smith, Jr. for the firm of SmithSurveying, Inc., in accordance with its survey dated December 14, 2006 and revised through July 28, 2011.



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Richard F. Smith, Jr., Professional Land Surveyor License No. 24GSO2504800

**EXHIBIT G**

**PARKING AUTHORITY PROPERTY**

**[Attached]**



SmithSurveying Inc.

July 28, 2011

## **Richard Smith Surveyor**

Courthouse Plaza • 60 Washington St., Suite 106 • Morristown, NJ 07960  
Telephone: 973-540-9004 • Fax: 973-292-0220 • www.smithsurveyor.com

Tax Lot 1 and 37.01 Block 5803  
Town of Morristown, Morris County, New Jersey

Beginning at a point in the westerly sideline of Speedwell Avenue, also known as US Route 202, formerly known as Bridge Street, variable width right of way, at a point where the same is intersected by the division line between lands hereindescribed and lands now or formerly of Speedwell L.C., Inc. as described in Deed Book 4067 at Page 169, distant 200.80 feet measured northerly along said sideline from the northerly sideline of Clinton Place, and running; thence,

- 1) along Speedwell Avenue, South 01 degrees 37 minutes 39 seconds East 37.61 feet to a point where the same is intersected by the division line between lands hereindescribed and lands now or formerly of 104 Speedwell Avenue LLC as described in OR. Book 21469 at Page 549; thence,
- 2) along 104 Speedwell Avenue LLC, South 86 degrees 31 minutes 20 seconds West 76.00 feet to an angle in the same; thence,
- 3) South 07 degrees 27 minutes 52 seconds East 15.68 feet to a point in the line of Speedwell Associates No. 4, L.P. as described in Deed Book 2728 at Page 311; thence,
- 4) along Speedwell Associates No.4, L.P. and then along Speedwell Associates No. 1 as described in Deed Book 5998 at page 261, South 08 degrees 50 minutes 34 seconds West 137.08 feet to an angle in the same; thence,
- 5) South 13 degrees 23 minutes 37 seconds East 21.86 feet to a point in the northerly sideline of Clinton Place, variable width right of way; thence,
- 6) along Clinton Place, South 77 degrees 56 minutes 03 seconds West 42.60 feet to an angle in the same; thence,
- 7) South 69 degrees 11 minutes 03 seconds West 21.00 feet to a point where the same is intersected by the division line between lands hereindescribed and lands now or formerly of Speedwell Associates, No. 4, L.P. as described in Deed Book 3265 at Page 162; thence,
- 8) along Speedwell Associates, No. 4, L.P., North 31 degrees 39 minutes 30 seconds West 98.72 feet to an angle in the same; thence,

9) along the same and along lands now or formerly of Speedwell Associates No. 3, L.P. as described in Official Records Book 20918 at Page 1586, South 53 degrees 49 minutes 00 seconds West 70.16 feet to an angle in the same; thence,

10) South 12 degrees 00 minutes 00 seconds East 23.69 feet to an angle in the same; thence,

11) South 48 degrees 00 minutes 00 seconds West 48.31 feet to a point in the line of lands now or formerly of Clinton Place Condominium described in Deed Book 2796 at Page 542; thence,

12) along the same, North 37 degrees 04 minutes 40 seconds West 30.10 feet to a point in the line of lands now or formerly of the Town of Morristown described in Deed Book 5084 at Page 4; thence,

13) along the same, North 58 degrees 31 minutes 20 seconds East 43.81 feet to an angle in the same; thence,

14) North 12 degrees 26 minutes 46 seconds West 198.52 feet to a point in the southerly line of lands now or formerly of lands of 14 Early LLC described in Deed Book 5944 at Page 297; thence,

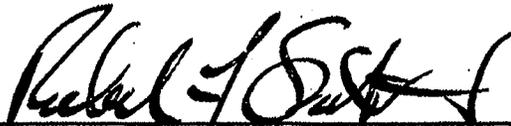
15) along the same and then along the aforementioned Habitat-Early Street, A Condominium, North 78 degrees 32 minutes 34 seconds East 84.74 feet to a point in the line of lands now or formerly of the Town of Morristown described in Deed Book 5404 at Page 208; thence,

16) along Habitat and then along lands of Speedwell, L.C., Inc. as described in Deed Book 4067 at Page 169, North 85 degrees 46 minutes 24 seconds East 103.81 feet to an angle in the same; thence,

17) South 03 degrees 20 minutes 59 seconds East 30.00 feet to an angle in the same; thence,

18) North 86 degrees 07 minutes 21 seconds East 125.00 feet to the point and place of Beginning.

This description was prepared by Richard F. Smith, Jr. for the firm of SmithSurveying, Inc., in accordance with its survey dated December 14, 2006 and revised through July 28, 2011.



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Richard F. Smith, Jr., Professional Land Surveyor License No. 246802504800

**EXHIBIT H**

**PROJECT PREMISES PHASING MAP**

**[Attached]**



**EXHIBIT I-1**

**PHASE ONE PUBLIC IMPROVEMENTS**

**[Attached]**

## EXHIBIT I-1

### PHASE ONE PUBLIC IMPROVEMENTS

#### ROADWAY IMPROVEMENTS

As more particularly shown on the Concept Plans and in the Redevelopment Plan, the extension of Prospect Street from Clinton Place to Early Street shall be completed as part of Phase One of the Redevelopment Plan.

#### SANITARY SEWER

The sanitary sewers servicing the Phase One Premises are owned and maintained by the Town. The existing sanitary sewer mains located within the Phase One Premises shall be relocated, as necessary, and connection of new improvements shall be made, as more specifically determined in preparation of the Preliminary Plans and the Final Site Plans.

#### WATER MAINS

The Water Mains servicing the Phase One Premises are owned and maintained by Southeast Morris County Municipal Utilities Authority (hereinafter referred to as SMCMUA). Water Mains exist in Speedwell Avenue, Early Street, Clinton Place and Spring Street. The Redeveloper will cooperate with SMCMUA to assure that an adequate water supply is provided to meet the need for domestic water flow and fire water flow in Phase One. To service the needs of this area of the Town, as part of Phase One, a new main extension is anticipated to be constructed within the extension of Prospect Street providing a looped system.

#### STORM SEWERS

The storm sewers located in and around the Phase One Premises are owned and maintained by the Town. Storm water drains will be constructed by the Redeveloper along the Prospect Street extension and along the portion of Early Street within Phase One.

### **GAS MAINS**

The gas mains servicing the Phase One Premises are owned and maintained by Public Service Electric and Gas Company, (hereinafter referred to as PSE&G). Gas mains exist in the Speedwell Avenue, Clinton Place and Early Street right of ways. The Redeveloper will cooperate with PSE&G to assure that an adequate gas supply is provided to meet the demands of Phase One of the Project.

### **ELECTRIC**

Electric distribution and service connections servicing the Phase One Premises are owned and maintained by the New Jersey Central Power & Light Company (hereinafter referred to as JCP&L). The electric distribution network is generally located underground and the service connections are overhead. Service connections to the Phase One Premises will be constructed underground in coordination with the construction activities of Phase One of the Project. The Redeveloper shall cooperate with JCP&L in order to assure that adequate electric service is provided to meet the demands of Phase One of the Project.

### **TELEPHONE**

Communications networks within the Phase One Premises are owned and maintained by Verizon. The existing communications system is a combination of overhead and underground service connections and distribution equipment. The Redeveloper will cooperate with Verizon to assure that adequate communications services are provided to meet the demand of Phase One of the Project, including the potential installation of wireless technology capacities.

### **CABLE COMMUNICATIONS**

The cable system network servicing the Phase One Premises is owned and operated by Cablevision. The Redeveloper will cooperate with Cablevision in order to assure that appropriate levels of service are provided to the Phase One Premises.

### **STREETSCAPE IMPROVEMENTS**

The Redeveloper shall construct all streetscape improvements within Phase One as described in and required by the Redevelopment Plan.

**EXHIBIT I-2**

**PHASE TWO PUBLIC IMPROVEMENTS**

**[Attached]**

## **EXHIBIT I -2**

### **PHASE TWO PUBLIC IMPROVEMENTS**

#### **OPEN SPACE**

As more particularly shown on the Concept Plans and in the Redevelopment Plan, the District Park and the portion of the Pedestrian Greenway within the Phase Two Premises shall be completed as a part of Phase Two.

#### **ROADWAY IMPROVEMENTS**

As more particularly shown on the Concept Plans and in the Redevelopment Plan, the pedestrian/car path (woonerf) connecting Early Street to the pedestrian greenway shall be completed as part of Phase Two. In addition, further road improvements may be included in Phase Two based on the results of the traffic studies that will be conducted pursuant to Section 2.3 of the Redevelopment Plan as part of a detailed engineering study associated with the implementation of the Redevelopment Plan as well as the mobility element of the Master Plan.

#### **SANITARY SEWER**

The sanitary sewers servicing the Phase Two Premises are owned and maintained by the Town. The existing sanitary sewer mains located within the Phase Two Premises shall be relocated, as necessary, and connection of new improvements shall be made, as more specifically determined in preparation of the Preliminary Plans and the Final Site Plans.

#### **WATER MAINS**

The Water Mains servicing the Phase Two Premises are owned and maintained by Southeast Morris County Municipal Utilities Authority (hereinafter referred to as SMCMUA). Water Mains exist in Speedwell Avenue, Early Street, Clinton Place and Spring Street. The Redeveloper will cooperate with SMCMUA to assure that an adequate water supply is provided to meet the need for domestic water flow and fire water flow in Phase Two.

#### **STORM SEWERS**

The storm sewers located in and around the Phase Two Premises are owned and maintained by the Town. Storm water drains will be constructed by the Redeveloper along the portion of Early Street within Phase Two.

### **GAS MAINS**

The gas mains servicing the Phase Two Premises are owned and maintained by Public Service Electric and Gas Company, (hereinafter referred to as PSE&G). Gas mains exist in the Speedwell Avenue, Clinton Place and Early Street right of ways. The Redeveloper will cooperate with PSE&G to assure that an adequate gas supply is provided to meet the demands of Phase Two of the Project.

### **ELECTRIC**

Electric distribution and service connections servicing the Phase Two Premises are owned and maintained by the New Jersey Central Power & Light Company (hereinafter referred to as JCP&L). The electric distribution network is generally located underground and the service connections are overhead. Service connections to the Phase Two Premises will be constructed underground in coordination with the construction activities of Phase Two of the Project. The Redeveloper shall cooperate with JCP&L in order to assure that adequate electric service is provided to meet the demands of Phase Two of the Project.

### **TELEPHONE**

Communications networks within the Phase Two Premises are owned and maintained by Verizon. The existing communications system is a combination of overhead and underground service connections and distribution equipment. The Redeveloper will cooperate with Verizon to assure that adequate communications services are provided to meet the demand of Phase Two of the Project, including the potential installation of wireless technology capacities.

### **CABLE COMMUNICATIONS**

The cable system network servicing the Phase Two Premises is owned and operated by Cablevision. The Redeveloper will cooperate with Cablevision in order to assure that appropriate levels of service are provided to the Phase Two Premises.

### **STREETSCAPE IMPROVEMENTS**

The Redeveloper shall construct all streetscape improvements within Phase Two as described in and required by the Redevelopment Plan.

**EXHIBIT I-3**

**PHASE THREE PUBLIC IMPROVEMENTS**

**[Attached]**

## **EXHIBIT I -3**

### **PHASE THREE PUBLIC IMPROVEMENTS**

#### **OPEN SPACE**

As more particularly shown on the Concept Plans and in the Redevelopment Plan, the portion of the Pedestrian Greenway within the Phase Three Premises shall be completed as a part of Phase Three.

#### **ROADWAY IMPROVEMENTS**

Certain road improvements may be included in Phase Three based on the results of the traffic studies that will be conducted pursuant to Section 2.3 of the Redevelopment Plan as part of a detailed engineering study associated with the implementation of the Redevelopment Plan as well as the mobility element of the Master Plan.

#### **SANITARY SEWER**

The sanitary sewers servicing the Phase Three Premises are owned and maintained by the Town. The existing sanitary sewer mains located within the Phase Three Premises shall be relocated, as necessary, and connection of new improvements shall be made, as more specifically determined in preparation of the Preliminary Plans and the Final Site Plans.

#### **WATER MAINS**

The Water Mains servicing the Phase Three Premises are owned and maintained by Southeast Morris County Municipal Utilities Authority (hereinafter referred to as SMCMUA). Water Mains exist in Speedwell Avenue, Early Street, Clinton Place and Spring Street. The Redeveloper will cooperate with SMCMUA to assure that an adequate water supply is provided to meet the need for domestic water flow and fire water flow in Phase Three.

#### **STORM SEWERS**

The storm sewers located in and around the Phase Three Premises are owned and maintained by the Town. Storm water drains will be constructed by the Redeveloper along the portions of Early Street and Speedwell Avenue within Phase Three.

### **GAS MAINS**

The gas mains servicing the Phase Three Premises are owned and maintained by Public Service Electric and Gas Company, (hereinafter referred to as PSE&G). Gas mains exist in the Speedwell Avenue, Clinton Place and Early Street right of ways. The Redeveloper will cooperate with PSE&G to assure that an adequate gas supply is provided to meet the demands of Phase Three of the Project.

### **ELECTRIC**

Electric distribution and service connections servicing the Phase Three Premises are owned and maintained by the New Jersey Central Power & Light Company (hereinafter referred to as JCP&L). The electric distribution network is generally located underground and the service connections are overhead. Service connections to the Phase Three Premises will be constructed underground in coordination with the construction activities of Phase Three of the Project. The Redeveloper shall cooperate with JCP&L in order to assure that adequate electric service is provided to meet the demands of Phase Three of the Project.

### **TELEPHONE**

Communications networks within the Phase Three Premises are owned and maintained by Verizon. The existing communications system is a combination of overhead and underground service connections and distribution equipment. The Redeveloper will cooperate with Verizon to assure that adequate communications services are provided to meet the demand of Phase Three of the Project, including the potential installation of wireless technology capacities.

### **CABLE COMMUNICATIONS**

The cable system network servicing the Phase Three Premises is owned and operated by Cablevision. The Redeveloper will cooperate with Cablevision in order to assure that appropriate levels of service are provided to the Phase Three Premises.

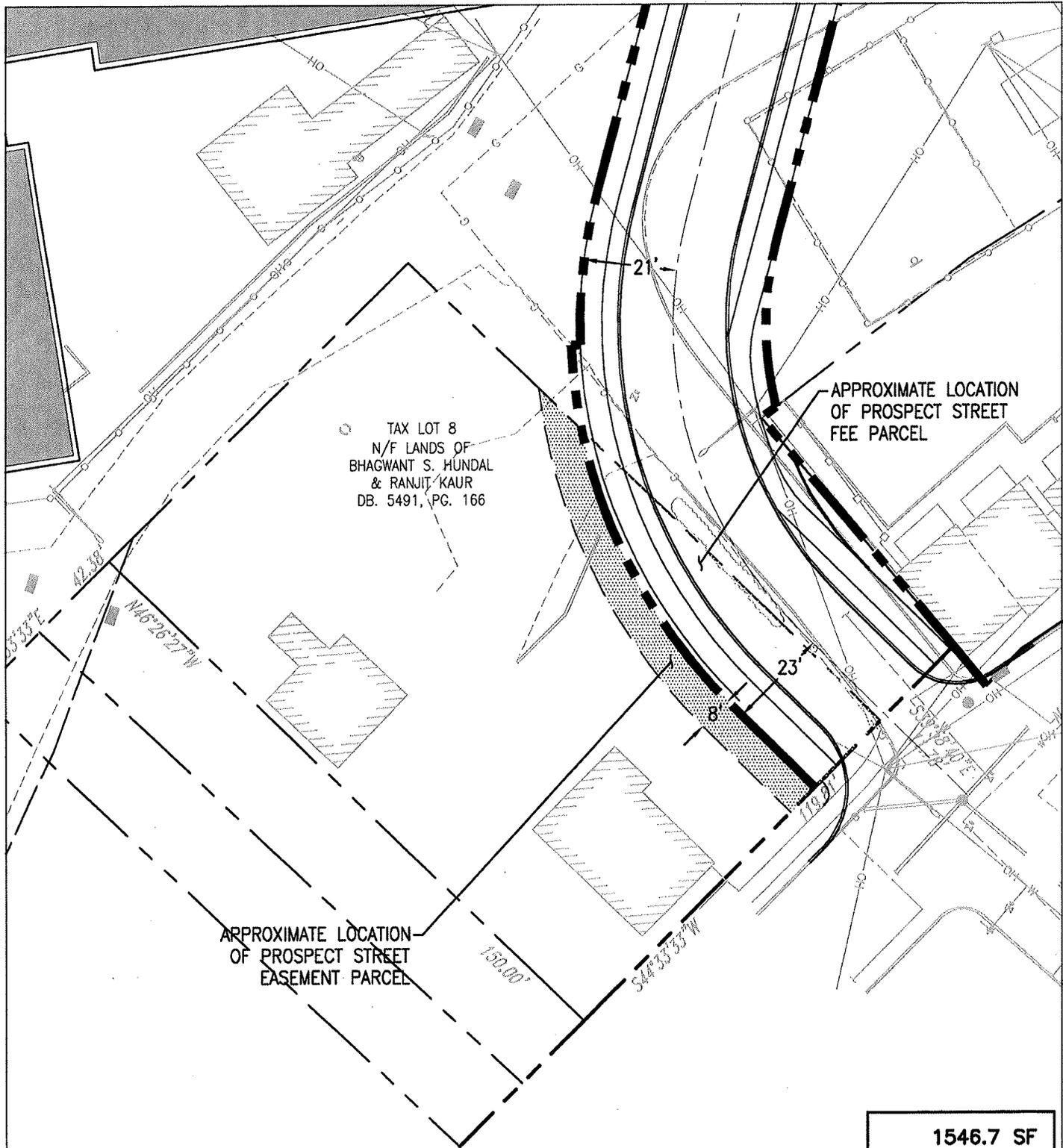
### **STREETSCAPE IMPROVEMENTS**

The Redeveloper shall construct all streetscape improvements within Phase Three as described in and required by the Redevelopment Plan.

**EXHIBIT J**

**PROSPECT STREET FEE PARCEL AND  
PROSPECT STREET EASEMENT PARCEL**

**[Attached]**



**EXHIBIT J**  
**PROSPECT STREET FEE PARCEL AND**  
**PROSPECT STREET EASEMENT PARCEL**

	<b>1546.7 SF</b>
	<b>859.5 SF</b>



SCALE: 1"=30'  
 OCTOBER 11, 2011



**EXHIBIT K**

**PROPOSAL FOR DPW ENVIRONMENTAL INVESTIGATION WORK**

**[Attached]**



# TERMS

Environmental Services, Inc.

599 Springfield Avenue, Berkeley Heights, NJ 07922

November 1, 2011

Michael Rogers  
Town Administrator  
Town of Morristown  
200 South Street  
P.O. Box 914  
Morristown, NJ 07960

Re: Proposal to Complete the RI and Implement  
Dewberry's recommendations  
Morristown DPW Site

Dear Michael:

Per the Town's request, **TERMS Environmental Services, Inc. (TERMS)** is pleased to present this proposal and cost estimate to complete the investigation tasks previously proposed in our November 2, 2010 proposals for both Phase 1 and Phase 2 of the Redevelopment Plan and to implement the additional testing recommended by Dewberry at the Morristown DPW site. We have provided separate sections for the work originally proposed and the work needed to address Dewberry's recommendations.

## **ADDITIONAL INVESTIGATION (Redevelopment Phase I)**

### **Task 1 Baseline Groundwater Sampling**

This task includes sampling and analysis of 3 monitoring wells for VO+10 and lead. The Low Flow sampling technique will be utilized for collecting the sample for lead analysis to minimize the particulates, which should reveal much lower concentrations than were previously detected.

*Estimated Cost Task 1*                      *\$ 1,200.00*

### **Task 2 Complete the Delineation of Groundwater Contamination**

Installation of 2 additional monitoring wells for horizontal delineation and installation of 1 monitoring well to confirm no vertical migration of contamination. This task includes one round of sampling at the 3 proposed new wells for VO+10 and lead.

*Estimated Cost Task 2*                      *\$ 12,200.00*

### **Task 3 Additional Soil Delineation of Historic Fill**

Based on the available documents, additional delineation of the contaminants not associated with the leaking tanks is necessary. It has been suggested that these contaminants are related to historic fill. There are several approaches to dealing with the potential historic fill contaminants. Test pits can be excavated to determine the visual extent of the fill and additional analysis may not be required. Or soil borings can be advanced and samples collected/analyzed around the former sample locations in an attempt to delineate the identified contaminants. In the event a Deed Notice is not acceptable, the delineation would be required. This task assumes that additional borings will be advanced to delineate the contaminants in the Redevelopment Phase I area including conducting evaluation of the material under the DPW building. For the purposes of this

proposal, we assume that 1 full day of borings with a geoprobe and 1 full day of hand borings will be sufficient and that 1 sample will be collected and analyzed for Full Toxic Compound List (TCL+30 and Target Analyte List (TAL metals) with 5 samples to be analyzed for Base neutral compounds (BN+15) and TAL Metals.

*Estimated Cost Task 3*                      *\$ 5,500.00*

Task 4                      Vapor Intrusion Testing

The NJDEP regulations require that a vapor intrusion be conducted on for structures within certain proximity of groundwater contamination plumes. Although the plan is to raze the existing building, the regulations do require vapor intrusion testing at this site. Based on the size and use of the building, we estimate that 4 sub-slab soil gas samples and 4 indoor air samples will be required. The sub-slab samples will be collected via hand coring through the floor slab. All samples will be collected in accordance with the NJDEP Vapor Intrusion Guidance Document and analyzed for TO-15 as required.

*Estimated Cost Task 4*                      *\$ 5,800.00*

***Total Estimated Cost – (Tasks 1-4)***                      ***\$ 24,700.00***

Task 9 Project Management/Reporting/Misc. Expenses

*Note: This task will be required regardless of whether a deed notice is acceptable or not.*

The task includes the time and costs necessary to provide all anticipated project management/oversight for the outlined tasks. In addition, this task anticipates completing one Remedial Investigation Report and one Remedial Action Workplan. The upper end of the range includes preparing the final Remedial Action Report. This task also includes anticipated expenses such as field equipment rental, mileage, tolls, disposable materials, copying and shipping.

*Estimated Cost Task 9*                      *\$ 10,500.00-15,000.00*

***Total Estimated Investigation Cost – Redevelopment Phase 1***                      ***\$ 35,200.00-39,700.00***

**ADDITIONAL INVESTIGATION (Redevelopment Phase 2)**

Task 1                      Additional Soil Delineation of Historic Fill

Based on the available documents, additional delineation of the historic fill contaminants identified on the DPW may be necessary for the Phase Two portion of the property. There are several approaches to dealing with the potential historic fill contaminants. Test pits can be excavated to determine the visual extent of the fill and additional analysis may not be required. Or soil borings can be advanced and samples collected/analyzed around the former sample locations in an attempt to delineate the identified contaminants. In the event a Deed Notice is not acceptable, the delineation would be required. This task assumes that additional borings will be advanced to delineate the contaminants in the Redevelopment Phase Two area including conducting evaluation of the material under the Ambulance Squad building. For the purposes of this proposal, we assume that 1 full day of borings with a geoprobe and hand borings will be sufficient and that 1 sample will be collected and analyzed for Full Toxic Compound List (TCL+30) and Target Analyte List (TAL metals) with 2 samples to be analyzed for Base neutral compounds (BN+15) and TAL Metals.

*Estimated Cost Task 1*                      *\$ 3,500.00*

**Task 2 Vapor Intrusion Testing**

The NJDEP regulations require that a vapor intrusion be conducted on for structures within certain proximity of groundwater contamination plumes. This task may not be required based on the results of the proposed delineation of groundwater at the DPW site. However, although the plan is to raze the existing building, the regulations may require vapor intrusion testing at this site. For the purposes of this estimate we assume vapor testing will be required. Based on the size and use of the building, we estimate that 1 sub-slab soil gas samples and 2 indoor air samples will be required. The sub-slab samples will be collected via hand coring through the floor slab. All samples will be collected in accordance with the NJDEP Vapor Intrusion Guidance Document and analyzed for TO-15 as required.

*Estimated Cost Task 2* \$ 3,500.00

**Total Estimated Cost – Task 1&2** **\$ 7,000.00**

**Task 5 Project Management/Reporting/Misc. Expenses**

*Note: This task will be required regardless of whether a deed notice is acceptable or not.*

The task includes the time and costs necessary to provide all anticipated project management/oversight for the outlined tasks. In addition, this task anticipates completing one Remedial Investigation Report and one Remedial Action Workplan. The upper end of the range includes preparing the final Remedial Action Report. This task also includes anticipated expenses such as field equipment rental, mileage, tolls, disposable materials, copying and shipping.

*Estimated Cost Task 5* \$ 2,500.00-5,000.00

**Total Estimated Investigation Cost – Redevelopment Phase 2** **\$ 9,500.00-12,000.00**

**TOTAL INVESTIGATION COST – REDEVELOPEMNT PHASES 1&2** **\$ 44,700.00-51,700.00**

The following are Dewberry's comments and recommendations followed by a breakdown of the estimated cost to implement the recommendations.

**Comment/Recommendation**

**D – (5 Chemical Storage Cabinets)** Soil boring adjacent to cabinet in any nearby stained area or nearby floor joint to 4' below grade. One sample from each location for TPH and TCL VOs + 10 at depth with highest PID screening level.

**Comment/Recommendation**

**E – (One Floor Drain)** Two soil borings adjacent to former floor drain to 4' below grade. TPH on both samples with waste oil parameters on sample with highest TPH concentration.

**Comment/Recommendation**

**G – (2 Dry Wells)** Soil borings to 4 feet below grade adjacent to each of the two dry wells to groundwater. TPH and waste oil parameters on both samples.

**Comment/Recommendation**

**I – (3 Hazardous Material Storage Areas)** One soil boring adjacent to each hazardous material storage area to 4' below grade. TPH and TCL VO's+10 on each sample.

**Comment/Recommendation**

**Waste Oil Storage** - 1 soil boring (4') adjacent to storage area, TPH and Waste oil parameters on 1 sample collected at depth with greatest contamination as indicated by field screening.

**Comment/Recommendation**

**Kerosene Storage Cabinet** - 1 soil boring (4') adjacent to cabinet with sample analyzed for TCL VO+10 and naphthalene's. 1 sample collected at depth with greatest contamination as indicated by field screening.

**Comment/Recommendation**

**Motor Oil Storage** - 1 soil boring to 4' adjacent to storage area with sample collected at depth with greatest indication of contamination, analyze sample for TPH and PAHs.

Based on the number of recommended samples, the accessibility of the locations and the proposed depths, we believe that the entire scope can be accomplished with a geoprobe for one full day and an additional day to core through the floor slab and advance borings by hand in areas that are inaccessible to the geoprobe. The analytical costs provided below are based directly on Dewberry's recommendation and assume a standard 2 week turnaround.

**SCOPE OF WORK/COST TO IMPLEMENT DEWBERRY'S RECOMMENDATIONS**

Geoprobe with operator: 1 Day @ \$ 1,750/day	\$ 1,750.00
Materials, equipment and miscellaneous expense	175.00
Subsurface Evaluator: 2 days @ \$ 700/day	1,400.00
Coring Device; 1 Day @ \$425/day	425.00
Laboratory Analysis:	
14 samples for Extractable Petroleum Hydrocarbons (EPH) @ \$ 190/sample	
8 samples Volatile Organic Compounds (VO+10) @ \$ 205/sample	
4 samples for Waste Oil Parameters @ \$ 825/sample	
1 sample for Polycyclic Aromatic Hydrocarbons (PAHs) @ \$ 290/sample	
1 sample for VO+10 and Napthalene @ \$ 540/sample	
Subtotal Laboratory Analysis	8,430.00
Project Manager: 3 Hours @ \$105/hour	315.00
Report Preparation (Lump Sum)	<u>1,200.00</u>
(Note this cost is in addition to the cost provided for TERMS' initial proposed scope)	

**TOTAL ESTIMATED COST FOR DEWBERRY RECOMMENDATIONS**                    **\$ 13,695.00**

**TOTAL COST FOR INVESTIGATION TASKS**    **\$ 58,395.00-65,395.00**

**NOTE: This cost does not include any NJDEP oversight fees. If this case remains with the NJDEP oversight, the fees are estimated to be approximately 15% of the project costs. If the case is transferred to the Licensed Site Remediation Professional (LSRP) program as planned, the NJDEP fees will be substantially reduced (likely to approximately \$ 2,500/year until cleanup is complete and annual cost thereafter of approximately \$1,000/year for Permits related to Deed Notice and CEA. Some costs will be added for the LSRP oversight (approximately 5-7%).**

**Additionally, TERMS conducted a rough calculation of the potential Natural Resource Damage (NRD) exposure. Based on a 3 acre groundwater plume area and a 15 year Classification Exception Area (CEA) duration, the NRD (Groundwater Injury Calculation) yields a value of approximately \$15,000.00. In our recent experience the NJDEP is not focused on pursuing NRD claims like they were several years bak.**

**It should be noted that whether or not the indoor air at the current building is impacted, the NJDEP typically requires that a vapor barrier and vapor mitigation piping be installed at part of any redevelopment project (Especially for residentially developments). For budgeting purposes based on the size of proposed Building One, we estimate the cost of installation of the piping and vapor barrier to be approximately \$ 5,000.00. It should be noted that based on the plan for below grade parking this may not be required and in any event venting of the underground parking will be required regardless of whether there is a vapor intrusion issue related to groundwater.**

If you have any questions or require additional information concerning this proposal, please do not hesitate to contact me.

Sincerely,  
TERMS Environmental Services, Inc.

*Ronald Dooney, Jr.*

Ronald Dooney, Jr., LSRP  
President

**EXHIBIT L-1**

**FORM PHASE ONE DPW REMEDIATION ESCROW AGREEMENT**

**[Attached]**

**EXHIBIT L-1**  
**FORM OF**  
**PHASE ONE DPW REMEDIATION FUNDING**  
**ESCROW AGREEMENT**

**THIS PHASE ONE DPW REMEDIATION FUNDING ESCROW AGREEMENT** (this "Agreement"), dated [\_\_\_\_], between **TOWN OF MORRISTOWN**, a body corporate and politic of the State of New Jersey (the "Town"); **MORRISTOWN DEVELOPMENT LLC**, a Delaware limited liability company ("Redeveloper"); and Inglesino, Pearlman, Wyciskala & Taylor, LLC a [\_\_\_\_] limited liability company ("Escrow Agent").

WITNESSETH

**WHEREAS**, The Town and Redeveloper are parties to that certain Amended and Restated Redevelopment Agreement dated [\_\_\_\_], 2012 (the "Redevelopment Agreement"), pursuant to which, among other things, the Town agreed to sell to Redeveloper, and Redeveloper agreed to purchase from the Town, the Phase One DPW Property (as defined in the Redevelopment Agreement), subject, however, to the terms and conditions of the Redevelopment Agreement;

**WHEREAS**, On the date hereof, the Town is conveying the Phase One DPW Property to the Redeveloper;

**WHEREAS**, Section 2.09 of the Redevelopment Agreement requires the Town to fund the cost of Redeveloper's environmental remediation of the Phase One DPW Property and post an escrow at the Phase One Closing to secure such obligation, subject to, and in accordance with, the terms of the Redevelopment Agreement and this Escrow Agreement;

**WHEREAS**, all capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Redevelopment Agreement;

**NOW, THEREFORE**, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Contemporaneously with the execution of this Agreement, Redeveloper deducted from the Phase One Purchase Price and paid to Escrow Agent [\$\_\_\_\_] (the "Phase One DPW Remediation Escrow Funds"). Escrow Agent acknowledges receipt of the Phase One DPW Remediation Escrow Funds. Escrow Agent shall hold the Phase One DPW Remediation Escrow Funds in a federally insured, interest bearing account with [\_\_\_\_] or with another bank or savings and loan association doing business and having an office in the State of New Jersey and approved by the Town and Redeveloper. Any interest earned on the Phase One DPW Remediation Escrow Funds shall become part of the Phase One DPW Remediation Escrow Funds. The Phase One DPW Remediation Escrow Funds shall be held and disbursed by Escrow Agent in accordance with the terms hereof.

2. (a) Redeveloper shall have the right to draw on the Phase One DPW Remediation Escrow Funds to pay the costs incurred by Redeveloper in connection with the Phase One DPW Remediation in accordance with the terms of the Redevelopment Agreement. If at any time during the term of Escrow Agent's obligations hereunder, Redeveloper shall be of the opinion that it is entitled to all or any portion of the Phase One DPW Remediation Escrow Funds, the Redeveloper shall deliver to Escrow Agent and the Town a request for payment of all or any portion of the Phase One DPW Remediation Escrow Funds together with invoices evidencing the costs for which Redeveloper is requesting payment along with a reasonably detailed description of the work for which payment is being requested (a "Reimbursement Request"). Escrow Agent shall not disburse any portion of the Phase One DPW Remediation Escrow Funds until at least ten (10) days after Escrow Agent's receipt of the Reimbursement Request, nor thereafter if Escrow Agent shall have received a written notice of objection from the Town in accordance with the terms of subparagraph (b) hereof.

(b) The Town shall have the right to object to the disbursement of any portion of the Phase One DPW Remediation Escrow Funds by sending written notice of such objection to Escrow Agent and Redeveloper within ten (10) days after receipt of the Reimbursement Request. Such notice shall set forth the basis for objecting to the disbursement of the Phase One DPW Remediation Escrow Funds. In the event of any dispute between the parties regarding disbursement of the Phase One DPW Remediation Escrow Funds, Escrow Agent shall, at its option, either (i) hold the Phase One DPW Remediation Escrow Funds until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both the Town and Redeveloper, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the Phase One DPW Remediation Escrow Funds into a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations with respect to the Phase One DPW Remediation Escrow Funds from and after the date of such deposit).

(c) If Escrow Agent shall receive written instructions signed by both the Town and Redeveloper specifying the party to whom any Phase One DPW Remediation Escrow Funds are to be delivered (the "Designated Party") and the time and place where the same are to be delivered, Escrow Agent shall deliver the same in accordance with such written instructions, such delivery to be made against a signed receipt therefor from the Designated Party.

(d) After the completion of the Phase One DPW Remediation, including, without limitation, completion of any operation, inspection, maintenance, reporting, and any other requirements related to any Engineering Controls and/or Institutional Controls, upon written request from the Town (the "Release Request"), Escrow Agent shall refund to the Town any remaining Phase One DPW Remediation Escrow Funds, together with accrued interest thereon, provided, however, that Escrow Agent shall not disburse any portion of the Phase One DPW Remediation Escrow Funds to the Town until at least ten (10) days after Escrow Agent's receipt of the Release Request, nor thereafter if Escrow Agent shall have received a written notice of objection from the Redeveloper in accordance with the terms of subparagraph (e) hereof.

(e) Redeveloper shall have the right to object to the disbursement of the remaining portion of the Phase One DPW Remediation Escrow Funds by sending written notice of such objection to Escrow Agent and the Town within ten (10) days after receipt of the Release

Request. Such notice shall set forth the basis for objecting to the disbursement of the Phase One DPW Remediation Escrow Funds. In the event of any dispute between the parties regarding disbursement of the Phase One DPW Remediation Escrow Funds, Escrow Agent shall, at its option, either (i) hold the Phase One DPW Remediation Escrow Funds until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both the Town and Redeveloper, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the Phase One DPW Remediation Escrow Funds into a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations with respect to the Phase One DPW Remediation Escrow Funds from and after the date of such deposit).

3. Escrow Agent may act in reliance on any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Agent's duties hereunder shall be limited to the safekeeping of the Phase One DPW Remediation Escrow Funds and any interest earned thereon and the disposition of same in accordance with the terms hereof. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be liable for any mistakes of fact, or efforts of judgment, or for any acts or omission unless caused by the willful misconduct or gross negligence of Escrow Agent.

4. The Town and Redeveloper, jointly and severally, hereby agree to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits, or proceedings at law or in equity, or any other expense, fees, or charges of any character or nature, which it may incur by reason of its acting as escrow agent under this Agreement (excluding losses arising out of the willful misconduct or negligence of Escrow Agent), including reasonable attorneys' fees, and the cost of defending any such action, suit, or proceeding or resisting any claim.

5. If the parties hereto shall be in disagreement about the interpretation of this Agreement, or about their rights and obligations hereunder, or the propriety of any action contemplated by Escrow Agent hereunder, any party hereto may, at its discretion, file an action in a court of competent jurisdiction to resolve this disagreement. The Town and Redeveloper, jointly and severally, shall indemnify Escrow Agent from and against all costs, including reasonable attorney's fees, in connection with any such action, and shall be fully protected in suspending all or a part of the activities of Escrow Agent under this Agreement until a final judgment, order, or decree in the action is received.

6. Escrow Agent may resign at any time by giving thirty (30) calendar days prior written notice of such resignation to the Town and Redeveloper. Thereafter, Escrow Agent shall have no further obligation hereunder except to hold any Phase One DPW Remediation Escrow Funds then in escrow. In such event Escrow Agent shall not take any action until Redeveloper and the Town have designated a title insurance company or agency, banking corporation, trust company, attorney or other person as successor Escrow Agent. Upon receipt of such

instructions, Escrow Agent shall promptly deliver any Phase One DPW Remediation Escrow Funds held in escrow and any interest thereon to such successor Escrow Agent and shall thereafter have no further obligations hereunder (other than to execute all instruments evidencing such transfer as may be reasonably required by Redeveloper and the Town). Redeveloper and the Town together may terminate the appointment of Escrow Agent hereunder upon prior written notice to Escrow Agent specifying the date upon which such termination shall have effect. In the event of such termination, Redeveloper and the Town shall within thirty (30) days of such notice jointly appoint a successor Escrow Agent and Escrow Agent shall turn over to such successor Escrow Agent all Phase One DPW Remediation Escrow Funds held by it pursuant to this Agreement and shall execute all instruments evidencing such transfer as may be reasonably requested by Redeveloper or the Town. Upon receipt of the Phase One DPW Remediation Escrow Funds, the successor Escrow Agent thereupon shall be bound by all of the provisions hereof.

7. Escrow Agent's agreements and obligations hereunder shall terminate and Escrow Agent shall be discharged from further duties and obligations hereunder upon final payment of the Phase One DPW Remediation Escrow Funds in accordance with the terms of this Agreement.

8. All notices, demands, reports or other communications required or permitted to be given hereunder shall be given in writing and delivered either by (a) certified mail, return receipt requested, postage prepaid, or (b) a reputable messenger service or a nationally recognized priority delivery service such as Federal Express, addressed as follows:

**To the Town:**

Honorable Mayor Timothy Dougherty  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Vijayant Pawar, Esq., Town Attorney  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Michael Rogers, Business Administrator  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

and a copy to:

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

**TO THE REDEVELOPER:**

Richard Murphy  
Morristown Development LLC  
c/o Mill Creek Residential Trust  
135 Route 202/206, 3rd Floor  
Bedminster, New Jersey 07921

with a copy to:

Andy S. Norin, Esq.  
Drinker, Biddle & Reath, LLP  
500 Campus Drive  
Florham Park, New Jersey 07932

with a copy to:

Linda Parkis, Esq.  
Lewis and Roca LLP  
40 North Central Ave.  
Phoenix, Arizona 85004

**TO THE ESCROW AGENT:**

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by certified mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, on the first business day after transmittal provided the sender has evidence of delivery. Counsel for a party may give notice to the other party with the same effect as if given by a party.

9. This Agreement and the rights and benefits created by it are for the sole and exclusive benefit of Escrow Agent, the Town and Redeveloper and, without limiting the generality of the foregoing, this Agreement shall not be deemed to be for the direct or indirect benefit of any third party.

10. This Agreement shall be governed by the laws of the State of New Jersey, without regard to principles of conflict of laws.

11. No failure of any party to this Agreement to exercise any power or right granted under this Agreement, or to insist upon strict compliance by any other party of any obligation under this Agreement, and no custom or practice of any party with regard to the terms of performance hereof, shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of this Agreement.

12. This Agreement contains the entire Agreement of the parties and no representations, inducements, promises, or agreements, whether oral or otherwise, between such party not embodied in this Agreement shall be of any force or effect.

13. Each clause or term of this Agreement is severable from the entire Agreement, and if any clause or term is declared invalid, the remaining clauses or terms shall remain in effect.

14. All references in this Agreement to "days" shall mean and refer to calendar days. If any action is required to be performed, or if any notice, consent, or other communication is given, on a day that is a Saturday or a Sunday, or a legal holiday in the jurisdiction in which the action is required to be performed, or in which is located the intended recipient of such notice, consent, or other communication, such performance shall be deemed to be required, and such notice, consent, or other communication, shall be deemed to be required on the first business day following such Saturday, Sunday or legal holiday.

15. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

16. This Agreement may be executed in any number of counterparts, each of which, when taken together, shall constitute an original fully enforceable agreement for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**TOWN OF MORRISTOWN**

By: \_\_\_\_\_  
Timothy Dougherty, Mayor

**MORRISTOWN DEVELOPMENT LLC**, a Delaware limited liability company

By: NJ 106 Morristown Limited Partnership, a Delaware limited liability company

By: NJ 103 Apartments GP LLC, a Delaware limited liability company, its general partner

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

**INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC**

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

**EXHIBIT L-2**

**FORM PHASE TWO DPW REMEDIATION ESCROW AGREEMENT**

**[Attached]**

**EXHIBIT L-2**

**FORM OF**  
**PHASE TWO DPW REMEDIATION FUNDING**  
**ESCROW AGREEMENT**

**THIS PHASE TWO DPW REMEDIATION FUNDING ESCROW AGREEMENT** (this "**Agreement**"), dated [\_\_\_\_], between **TOWN OF MORRISTOWN**, a body corporate and politic of the State of New Jersey (the "**Town**"); **MORRISTOWN DEVELOPMENT LLC**, a Delaware limited liability company ("**Redeveloper**"); and Inglesino, Pearlman, Wyciskala & Taylor, LLC a [\_\_\_\_] limited liability company ("**Escrow Agent**").

WITNESSETH

**WHEREAS**, The Town and Redeveloper are parties to that certain Amended and Restated Redevelopment Agreement dated [\_\_\_\_], 2012 (the "**Redevelopment Agreement**"), pursuant to which, among other things, the Town agreed to sell to Redeveloper, and Redeveloper agreed to purchase from the Town, the DPW Property (as defined in the Redevelopment Agreement), subject, however, to the terms and conditions of the Redevelopment Agreement;

**WHEREAS**, On the date hereof, the Town is conveying the Phase One DPW Property to the Redeveloper;

**WHEREAS**, Section 2.09 of the Redevelopment Agreement requires the Town to fund the cost of Redeveloper's environmental remediation of the DPW Property and post an escrow at the Phase One Closing to secure such obligation, subject to, and in accordance with, the terms of the Redevelopment Agreement and this Escrow Agreement;

**WHEREAS**, all capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Redevelopment Agreement;

**NOW, THEREFORE**, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Contemporaneously with the execution of this Agreement, Redeveloper deducted from the Phase One Purchase Price and paid to Escrow Agent [\$\_\_\_\_] (the "**Phase Two DPW Remediation Escrow Funds**"). Escrow Agent acknowledges receipt of the Phase Two DPW Remediation Escrow Funds. Escrow Agent shall hold the Phase Two DPW Remediation Escrow Funds in a federally insured, interest bearing account with [\_\_\_\_] or with another bank or savings and loan association doing business and having an office in the State of New Jersey and approved by the Town and Redeveloper. Any interest earned on the Phase Two DPW Remediation Escrow Funds shall become part of the Phase Two DPW Remediation Escrow Funds. The Phase Two DPW Remediation Escrow Funds shall be held and disbursed by Escrow Agent in accordance with the terms hereof.

2. (a) Redeveloper shall have the right to draw on the Phase Two DPW Remediation Escrow Funds to pay the costs incurred by Redeveloper in connection with the Phase Two DPW Remediation in accordance with the terms of the Redevelopment Agreement. If at any time during the term of Escrow Agent's obligations hereunder, Redeveloper shall be of the opinion that it is entitled to all or any portion of the Phase Two DPW Remediation Escrow Funds, the Redeveloper shall deliver to Escrow Agent and the Town a request for payment of all or any portion of the Phase Two DPW Remediation Escrow Funds together with invoices evidencing the costs for which Redeveloper is requesting payment along with a reasonably detailed description of the work for which payment is being requested (a "Reimbursement Request"). Escrow Agent shall not disburse any portion of the Phase Two DPW Remediation Escrow Funds until at least ten (10) days after Escrow Agent's receipt of the Reimbursement Request, nor thereafter if Escrow Agent shall have received a written notice of objection from the Town in accordance with the terms of subparagraph (b) hereof.

(b) The Town shall have the right to object to the disbursement of any portion of the Phase Two DPW Remediation Escrow Funds by sending written notice of such objection to Escrow Agent and Redeveloper within ten (10) days after receipt of the Reimbursement Request. Such notice shall set forth the basis for objecting to the disbursement of the Phase Two DPW Remediation Escrow Funds. In the event of any dispute between the parties regarding disbursement of the Phase Two DPW Remediation Escrow Funds, Escrow Agent shall, at its option, either (i) hold the Phase Two DPW Remediation Escrow Funds until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both the Town and Redeveloper, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the Phase Two DPW Remediation Escrow Funds into a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations with respect to the Phase Two DPW Remediation Escrow Funds from and after the date of such deposit).

(c) If Escrow Agent shall receive written instructions signed by both the Town and Redeveloper specifying the party to whom any Phase Two DPW Remediation Escrow Funds are to be delivered (the "Designated Party") and the time and place where the same are to be delivered, Escrow Agent shall deliver the same in accordance with such written instructions, such delivery to be made against a signed receipt therefor from the Designated Party.

(d) If the Redevelopment Agreement is terminated with respect to Phase Two prior to the Phase Two Closing, or after the completion of the Phase Two DPW Remediation, including, without limitation, completion of any operation, inspection, maintenance, reporting, and any other requirements related to any Engineering Controls and/or Institutional Controls, upon written request from the Town (the "Release Request"), Escrow Agent shall refund to the Town any remaining Phase Two DPW Remediation Escrow Funds, together with accrued interest thereon, provided, however, that Escrow Agent shall not disburse any portion of the Phase Two DPW Remediation Escrow Funds to the Town until at least ten (10) days after Escrow Agent's receipt of the Release Request, nor thereafter if Escrow Agent shall have received a written notice of objection from the Redeveloper in accordance with the terms of subparagraph (e) hereof.

(e) Redeveloper shall have the right to object to the disbursement of the remaining portion of the Phase Two DPW Remediation Escrow Funds by sending written notice of

such objection to Escrow Agent and the Town within ten (10) days after receipt of the Release Request. Such notice shall set forth the basis for objecting to the disbursement of the Phase Two DPW Remediation Escrow Funds. In the event of any dispute between the parties regarding disbursement of the Phase Two DPW Remediation Escrow Funds, Escrow Agent shall, at its option, either (i) hold the Phase Two DPW Remediation Escrow Funds until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both the Town and Redeveloper, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the Phase Two DPW Remediation Escrow Funds into a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations with respect to the Phase Two DPW Remediation Escrow Funds from and after the date of such deposit).

3. Escrow Agent may act in reliance on any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Agent's duties hereunder shall be limited to the safekeeping of the Phase Two DPW Remediation Escrow Funds and any interest earned thereon and the disposition of same in accordance with the terms hereof. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be liable for any mistakes of fact, or efforts of judgment, or for any acts or omission unless caused by the willful misconduct or gross negligence of Escrow Agent.

4. The Town and Redeveloper, jointly and severally, hereby agree to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits, or proceedings at law or in equity, or any other expense, fees, or charges of any character or nature, which it may incur by reason of its acting as escrow agent under this Agreement (excluding losses arising out of the willful misconduct or negligence of Escrow Agent), including reasonable attorneys' fees, and the cost of defending any such action, suit, or proceeding or resisting any claim.

5. If the parties hereto shall be in disagreement about the interpretation of this Agreement, or about their rights and obligations hereunder, or the propriety of any action contemplated by Escrow Agent hereunder, any party hereto may, at its discretion, file an action in a court of competent jurisdiction to resolve this disagreement. The Town and Redeveloper, jointly and severally, shall indemnify Escrow Agent from and against all costs, including reasonable attorney's fees, in connection with any such action, and shall be fully protected in suspending all or a part of the activities of Escrow Agent under this Agreement until a final judgment, order, or decree in the action is received.

6. Escrow Agent may resign at any time by giving thirty (30) calendar days prior written notice of such resignation to the Town and Redeveloper. Thereafter, Escrow Agent shall have no further obligation hereunder except to hold any Phase Two DPW Remediation Escrow Funds then in escrow. In such event Escrow Agent shall not take any action until Redeveloper and the Town have designated a title insurance company or agency, banking corporation, trust

company, attorney or other person as successor Escrow Agent. Upon receipt of such instructions, Escrow Agent shall promptly deliver any Phase Two DPW Remediation Escrow Funds held in escrow and any interest thereon to such successor Escrow Agent and shall thereafter have no further obligations hereunder (other than to execute all instruments evidencing such transfer as may be reasonably required by Redeveloper and the Town). Redeveloper and the Town together may terminate the appointment of Escrow Agent hereunder upon prior written notice to Escrow Agent specifying the date upon which such termination shall have effect. In the event of such termination, Redeveloper and the Town shall within thirty (30) days of such notice jointly appoint a successor Escrow Agent and Escrow Agent shall turn over to such successor Escrow Agent all Phase Two DPW Remediation Escrow Funds held by it pursuant to this Agreement and shall execute all instruments evidencing such transfer as may be reasonably requested by Redeveloper or the Town. Upon receipt of the Phase Two DPW Remediation Escrow Funds, the successor Escrow Agent thereupon shall be bound by all of the provisions hereof.

7. Escrow Agent's agreements and obligations hereunder shall terminate and Escrow Agent shall be discharged from further duties and obligations hereunder upon final payment of the Phase Two DPW Remediation Escrow Funds in accordance with the terms of this Agreement.

8. All notices, demands, reports or other communications required or permitted to be given hereunder shall be given in writing and delivered either by (a) certified mail, return receipt requested, postage prepaid, or (b) a reputable messenger service or a nationally recognized priority delivery service such as Federal Express, addressed as follows:

**To the Town:**

Honorable Mayor Timothy Dougherty  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Vijayant Pawar, Esq., Town Attorney  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Michael Rogers, Business Administrator  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

and a copy to:

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

**TO THE REDEVELOPER:**

Richard Murphy  
Morristown Development LLC  
c/o Mill Creek Residential Trust  
135 Route 202/206, 3rd Floor  
Bedminster, New Jersey 07921

with a copy to:

Andy S. Norin, Esq.  
Drinker, Biddle & Reath, LLP  
500 Campus Drive  
Florham Park, New Jersey 07932

with a copy to:

Linda Parkis, Esq.  
Lewis and Roca LLP  
40 North Central Ave.  
Phoenix, Arizona 85004

**TO THE ESCROW AGENT:**

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by certified mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, on the first business day after transmittal provided the sender has evidence of delivery. Counsel for a party may give notice to the other party with the same effect as if given by a party.

9. This Agreement and the rights and benefits created by it are for the sole and exclusive benefit of Escrow Agent, the Town and Redeveloper and, without limiting the generality of the foregoing, this Agreement shall not be deemed to be for the direct or indirect benefit of any third

party.

10. This Agreement shall be governed by the laws of the State of New Jersey, without regard to principles of conflict of laws.

11. No failure of any party to this Agreement to exercise any power or right granted under this Agreement, or to insist upon strict compliance by any other party of any obligation under this Agreement, and no custom or practice of any party with regard to the terms of performance hereof, shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of this Agreement.

12. This Agreement contains the entire Agreement of the parties and no representations, inducements, promises, or agreements, whether oral or otherwise, between such party not embodied in this Agreement shall be of any force or effect.

13. Each clause or term of this Agreement is severable from the entire Agreement, and if any clause or term is declared invalid, the remaining clauses or terms shall remain in effect.

14. All references in this Agreement to "days" shall mean and refer to calendar days. If any action is required to be performed, or if any notice, consent, or other communication is given, on a day that is a Saturday or a Sunday, or a legal holiday in the jurisdiction in which the action is required to be performed, or in which is located the intended recipient of such notice, consent, or other communication, such performance shall be deemed to be required, and such notice, consent, or other communication, shall be deemed to be required on the first business day following such Saturday, Sunday or legal holiday.

15. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

16. This Agreement may be executed in any number of counterparts, each of which, when taken together, shall constitute an original fully enforceable agreement for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**TOWN OF MORRISTOWN**

By: \_\_\_\_\_  
Timothy Dougherty, Mayor

**MORRISTOWN DEVELOPMENT LLC**, a Delaware limited liability company

By: NJ 106 Morristown Limited Partnership, a Delaware limited liability company

By: NJ 103 Apartments GP LLC, a Delaware limited liability company, its general partner

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

**INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC**

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

**EXHIBIT M**

**ADMINISTRATIVE AND PROFESSIONAL COSTS ESCROW AGREEMENT**

**[Attached]**

ESCROW AGREEMENT

This ESCROW AGREEMENT, made this <sup>April</sup> ~~30~~ day of ~~February~~, 2007, by and among THE TOWN OF MORRISTOWN, a body corporate and politic of the State of New Jersey with offices at 200 South Street, Morristown, New Jersey 07065 (the "Town") and TCR NJ/PA PROPERTIES, Inc. with offices at 10 Madison Avenue, Morristown, New Jersey 07963-0914 (hereinafter referred to as the "Redeveloper").

WITNESSETH

WHEREAS, the Town has designated Redeveloper to implement the redevelopment of properties located in the Speedwell Avenue Redevelopment Area (hereinafter referred to as the "Property"); and

WHEREAS, the Redeveloper will construct certain improvements on the Property in accordance with the Redevelopment Plan to be adopted by the Town (the "Project"); and

WHEREAS, the Town and Redeveloper are negotiating a redevelopment agreement which will, among other things, set forth the terms and conditions with respect to the redevelopment of the Property, the construction of the improvements and the payment of certain costs in connection therewith (hereinafter referred to as the "Redevelopment Agreement"); and

WHEREAS, the Town has and will incur certain costs including outside professional consultants such as attorneys, planners and engineers and any other costs which the Town deems are related to the Project (the "Administrative and Professional Costs") in connection with the negotiation of a Redevelopment Agreement, implementation of the Redevelopment Agreement, project financing and related amendments thereto and other costs; and

WHEREAS, the Town has requested Redeveloper to pay for these Administrative and Professional Costs through the deposit of \$50,000.00 in an escrow fund to be administered by the Town (the "Escrowed Funds"); and

NOW, THEREFORE, in consideration of the mutual promises and covenants, and other good and valuable consideration, the parties hereto agree as follows:

1. The Town agrees to serve as Escrow Agent as set forth in this Escrow Agreement.
2. Escrow Agent shall deposit the Escrowed Funds in a separate interest-bearing account maintained by Escrow Agent. Interest earned shall accrue to the party entitled to the Escrowed Funds. The custodian of the account shall be the Treasurer. When charges for Administrative and Professional Costs are received by the custodian of the Escrowed Funds, the amounts shall be transferred to the general fund of the Town for approval and disbursements. Use of the Escrowed Funds shall be subject to the same standards set forth in N.J.S.A. 40:55D-53.2 with respect to escrows under the Municipal Land Use Law.
3. The parties acknowledge that additional Escrowed Funds may be required at any time until the execution of a Redevelopment Agreement, which agreement shall supersede and

replace this Agreement. The Town shall request the additional Escrowed Funds in writing. The Redeveloper shall be required to pay such additional Escrowed Funds within fifteen (15) days of the Town's written request.

4. The Administrative and Professional Costs shall be charged in accordance with any professional service contracts authorized and approved by the Town. All payments for Administrative and Professional Costs shall be pursuant to charges from any professionals which state the hours spent, the hourly rate and the expenses incurred.

5. Upon execution of the Redevelopment Agreement, the Escrow Agent shall render a written final accounting to the Redeveloper on the uses of the Escrowed Funds. In the event the Redeveloper desires an accounting of the expenses or fees paid for Administrative and Professional Costs prior to such time, it may request such in writing to Escrow Agent.

6. Upon termination of this Escrow Agreement, any Escrowed Funds not expended shall be returned to the Redeveloper by the Escrow Agent.

7. Escrow Agent shall not be liable for any action taken by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Escrow Agreement.

8. This Escrow Agreement shall be governed by and construed in accordance with the local substantive and procedural laws of the State of New Jersey. The parties agree that any action instituted regarding this Escrow Agreement shall be filed in Morris County, New Jersey. Each party hereby consents to the jurisdiction and venue of any such court selected by the Escrow Agent for an interpleader action or for other purposes. The parties hereto irrevocably consent to the service of any and all process in any such action or proceeding by the mailing of copies of such process to it at its address specified in this Escrow Agreement. The parties hereto agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The parties hereto waive any objection to venue in such state and any objection to an action or proceeding in such state on the basis of forum non conveniens.

9. This Escrow Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective heirs, successors and assigns. This Escrow Agreement may be amended, modified, superseded, waived or cancelled only by a written instrument executed by all the parties hereto.

10. The failure of a party to insist upon strict adherence to any term of this Escrow Agreement on any occasion shall not be considered a waiver or deprive the party of the right thereafter to insist upon strict adherence to that term or any other term of this Escrow Agreement. Any waiver must be in writing signed by the party to be charged.

11. This Escrow Agreement may be executed in one or more counterparts, including facsimile counterparts, each of which, when taken together, shall be deemed one and the same instrument.

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

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

**ESCROW AGENT**

Michael Rogers  
Business Administrator  
Town of Morristown  
200 South Street  
P.O. Box 914  
Morristown, New Jersey 07963-0914

**REDEVELOPER:**

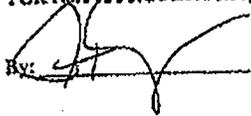
TCR NJ/PA Properties, Inc.  
10 Madison Avenue  
Morristown, New Jersey 07963-0914

13. Nothing contained in this Agreement shall prohibit the Town or the Redeveloper from seeking funds to reimburse the Redeveloper for payment of any services paid for under this Agreement. Such sources of funding may include, but are not limited to grants or public financings.

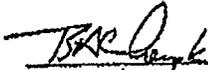
IN WITNESS WHEREOF the parties have hereunto executed this Agreement as of the day and year first above written.

ATTEST:

TCR NIPA PROPERTIES, INC.

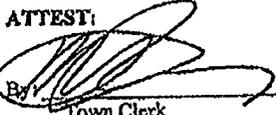
By: 

Name: Donald MURPHY, Vice President

  
\_\_\_\_\_  
Brian Clarke

ATTEST:

THE TOWN OF MORRISTOWN

By: 

Town Clerk

By: 

Mayor Donald Cresitello

::

**EXHIBIT N**

**FORM COMPLETION GUARANTY**

**[Attached]**

## GUARANTY AGREEMENT

This Guaranty Agreement (this "*Guaranty*"), dated as of [\_\_\_\_\_], is executed by MCRT East Assurance VIII LLC, a Delaware limited liability company (the "*Guarantor*"), in favor of Town of Morristown, a body corporate and politic of the State of New Jersey (the "*Town*").

1. Background. The Town and Morristown Development LLC, a Delaware limited liability company (the "*Redeveloper*"), are the parties to an Amended and Restated Redevelopment Agreement, dated as of [\_\_\_\_\_] (the "*Redevelopment Agreement*"). The Guarantor is an affiliate of the Redeveloper. The Redevelopment Agreement provides for the Redeveloper to construct a new mixed-use development (the "*Project*") within the Town's Speedwell Avenue Redevelopment Area. The Redevelopment Agreement contemplates that the Project will be built in phases (each, a "*Phase*"). The Guarantor is delivering this Guaranty to the Town to provide the Town with assurance that the Redeveloper will complete [Phase I] of the Project as required by the Redevelopment Agreement.

2. Defined Terms. Any defined term used in the Redevelopment Agreement has the meaning assigned to it in the Redevelopment Agreement when used in this Guaranty as a defined term, unless a contrary meaning is provided in this Guaranty.

3. Guaranty. The Guarantor guarantees to the Town the Redeveloper's obligations under the Redevelopment Agreement to complete [Phase I] of the Project when and as required by the Redevelopment Agreement (the "*Obligations*"). This Guaranty is a guaranty of performance and not merely of collection. The Town will not be required to pursue any other remedies before invoking the benefits of this Guaranty. Specifically, the Town will not be required, as a condition to pursuing the Guaranty, to take any action against the Redeveloper or any other person or entity that is liable for the Obligations or to commence or exhaust its remedies against any security. This Guaranty applies only to the Redeveloper's obligation to complete construction of [Phase I] of the Project. It does not cover the Redeveloper's obligations in connection with any other Phase of the Project, nor does it apply to any obligations of the Redeveloper under the Redevelopment Agreement other than for completion of construction.

4. Obligations Not Impaired. The obligations of the Guarantor under this Guaranty will not be released or impaired on account of the following:

(1) The voluntary or involuntary liquidation, sale or other disposition of all or substantially all of the assets of the Redeveloper, or any receivership, insolvency, bankruptcy, reorganization or other similar proceedings affecting the Redeveloper or its assets.

(2) Any impairment, modification, release or limitation of liability of, or stay of enforcement against, the Redeveloper or any of its properties, or any modification, discharge or extension of the Obligations resulting from the operation of any provision of the United States Bankruptcy Code or any other similar federal or state law.

(3) The Town's failure to preserve the liability of any person on the Obligations or in bringing suit to enforce collection of the Obligations.

(4) The exercise or failure of exercise by the Town of any right conferred upon it in this Guaranty or the Redevelopment Agreement.

(5) The Redeveloper is not liable because the act of creating the Obligations is ultra vires, or the persons creating the Obligations acted in excess of his or her authority, or for any other similar reason the Obligations cannot be enforced against the Redeveloper.

(6) Any payment by the Redeveloper is avoided under the United States Bankruptcy Code or other similar federal or state law, or for any reason the Town is required to refund any such payment to the Redeveloper or to pay over to any other party all or part of any such payment.

(7) Any extension of time granted to the Redeveloper in respect of any Obligation, any waiver or indulgence granted to the Redeveloper under the Redevelopment Agreement, or any modification of the Redevelopment Agreement.

5. Guarantor's Responsibility for Information. The Guarantor hereby waives any duty on the part of the Town to disclose to the Guarantor any facts the Town may now or hereafter know about the Redeveloper, regardless of whether the Town has reason to believe that any such facts materially increase the risk beyond that which the Guarantor intends to assume or that such facts are unknown to the Guarantor. As between the Town and the Guarantor, the Guarantor is responsible for being and keeping informed of the financial condition of the Redeveloper and of all circumstances bearing on the risk of non-performance of the Obligations.

6. Modification or Waiver. No modification, consent or waiver of any provision of this Guaranty, or consent to any departure by the Guarantor from this Guaranty, will be effective unless the same is in writing and signed by the Town. Any waiver, in all events, will be effective only in the specific instance and for the purpose for which given.

7. Exercise of Remedies. No delay or omission by the Town in exercising any power or right under this Guaranty will impair any such right or power or be construed as a waiver thereof nor will any single or partial exercise of any such power or right preclude other or further exercise thereof or the exercise of any other right or power hereunder. Subject to the limitations contained in this Guaranty, all rights and remedies of the Town under this Guaranty are cumulative of each other and of every other right or remedy which the Town may otherwise have at law or in equity or under any other contract or document, and the exercise of one or more rights or remedies will not prejudice or impair the concurrent or subsequent exercise of other rights or remedies.

8. Guarantor's Business Generally.

(A) The Guarantor agrees that it will limit its activities to guaranteeing loans for the Project and issuing other guarantees in connection with the Project or obligations of the Redeveloper and its affiliates related to the Project. The Guarantor will not engage in any other business or activity, and will not act as a guarantor with respect to any other obligation of any person, in any such case except with the express written consent of the Town.

(B) The Guarantor agrees that it will maintain cash and cash equivalents with an aggregate value of at least 10% of the Recourse Principal Amount for Guarantor; *provided that* the Guarantor and/or the Redeveloper shall have the right to correct any failure to comply with such requirement by (1) obtaining and delivering to the Town one or more other guaranties, each of which shall be in form and content substantially the same as this Guaranty (or in such other form as the Town may in its reasonable business judgment approve), from one or more other persons or entities who collectively have cash and cash equivalents with an aggregate value of at least 10% of the Recourse Principal Amount (calculated for such guarantor or guarantors in the same manner as provided herein in respect of Guarantor); or (2) providing to the Town and thereafter maintaining for so long as the deficiency exists cash, certificate(s) of deposit drawn on a Qualifying Bank and/or letter(s) of credit issued by a Qualifying Bank (in the case of letter(s) of credit, in form and content acceptable to the Town in the exercise of its reasonable business judgment) sufficient to relieve such deficiency. If the Guarantor and/or the Redeveloper provide one or more substitute guarantors in accordance with clause (1) above, the Guarantor shall have no further obligation under this

Guaranty and the Town shall, upon request of the Guarantor or the Redeveloper, confirm in writing the release of this Guaranty.

(C) "*Recourse Principal Amount*" means, as to any person, the portion of the principal balance of any loan guaranteed by such person for which the lender has recourse to such person, other than with respect to non-recourse carve outs or upon the occurrence of a bankruptcy, unpermitted transfer or encumbrance or similar event. The term "*cash equivalents*" include any U.S. Dollar denominated instruments consisting of one or more of the following: (1) interest bearing transaction accounts (including money market accounts) in a Qualifying Bank; (2) time deposits or certificates of deposit in a Qualifying Bank, in each case having a maturity of one year or less; (3) securities that, at the date of investment, are direct obligations of, or obligations fully guaranteed or insured by, the United States or any agency or instrumentality of the United States having a maturity of not more than one year from the date of purchase; (4) other investments having a maturity of three months or less rated at least "A" by Moody's Investor's Services, Inc. or "A2" by Standard & Poor's Ratings Group; and (5) money market mutual funds with assets of at least \$500,000,000, substantially all of the assets of which consist of obligations of the type included in clauses (1) through (4) above. "*Qualifying Bank*" means a bank or trust company that (1) is organized as a banking association or corporation under the laws of the United States or any state thereof or the District of Columbia, (2) is subject to supervision or examination by federal, state or District of Columbia banking authorities, (3) has capital and surplus of not less than \$250,000,000 and (4) has outstanding (or is a subsidiary of a bank holding company that has outstanding) any debt securities that are rated at least "A" by Moody's Investors Services, Inc. or "A2" by Standard & Poor's Ratings Group.

9. Reinstatement in Certain Circumstances. If at any time any payment by the Redeveloper in respect of the Obligations is rescinded or must be otherwise be returned as a result of the insolvency, bankruptcy or reorganization of the Redeveloper, the Guarantor's obligations hereunder with respect to such payment shall be reinstated.

10. Priority of Claims.

(A) The Town's claims against the Guarantor under this Guaranty are subordinate to all Guaranteed Loan Claims. If an Insolvency Proceeding shall be pending or a Guaranteed Loan Default shall have occurred and be continuing, the Guaranteed Lenders shall be entitled to receive payment and performance in full of all Guaranteed Loan Claims before the Town is entitled to receive any payment from the Guarantor. All payments received by the Town contrary to the provisions of this Section 11 shall be received and held in trust by the Town for the benefit of the Guaranteed Lenders entitled thereto in accordance with the foregoing provisions and shall, upon demand of any such Guaranteed Lender, be paid over to the Guaranteed Lender to be applied to the Guaranteed Loan Claims of such Guaranteed Lender. The Town will have no responsibility for allocating payments among Guaranteed Lenders, or for ascertaining if competing Guaranteed Loan Claims exists, and the Town will be fully relieved of liability in making payment upon demand made by any Guaranteed Lender in accordance with the foregoing provisions, regardless of whether other Guaranteed Lenders have outstanding Guaranteed Loan Claims or would be entitled to claim the related moneys. This Section 11 does not prohibit the Town from accepting payment from Guarantor if, at the time, no Insolvency Proceeding shall be pending and no Guaranteed Loan Default exists.

(B) As used in this Section 11, the following defined terms have the respective meanings assigned to them below:

*"Guaranteed Lender"* means the person entitled to receive payment of a Guaranteed Loan, as well as any servicer, collateral agent, trustee, depository, master servicer, special servicer or similar functionary acting for such person in respect of the Guaranteed Loan.

*"Guaranteed Loan"* means a loan as to which the Guarantor has provided a guaranty of payment of principal and/or interest, an obligation to complete related improvements and/or performance of other obligations, regardless of whether liability under such guaranty is unconditional (save for the borrower's failure to make payment or to perform its obligations) or the liability under the guaranty arises only on occurrence of some contingency, such as a non-recourse carve out event, a bankruptcy filing or an unpermitted transfer or encumbrance.

*"Guaranteed Loan Default"* means a default under a Guaranteed Loan (after expiration of all applicable grace and cure periods, if any).

*"Guaranteed Loan Claims"* means the claims of a Guaranteed Lender for payment of amounts due in respect of a Guaranteed Loan, but only to the extent of amounts for which the Guarantor is liable under its related guaranty to the Guaranteed Lender, as well as all right, title, security interest, lien and interest of the Guaranteed Lender in property or assets (whether of the borrower, the Guarantor or another person) provided as security for the Guaranteed Loan.

*"Insolvency Proceeding"* means the occurrence with respect to any person liable to a Guaranteed Lender in respect of a Guaranteed Loan (including the borrower or the Guarantor) of any one or more of the following events or the existence with respect to any person liable to a Guaranteed Lender in respect of a Guaranteed Loan (including the borrower or the Guarantor) of any one or more of the following circumstances:

(1) a general assignment by any such person for the benefit of creditors, or the appointment of a receiver, trustee or custodian for all or any substantial part of the property and assets of any such person, which appointment is not dismissed within 60 days;

(2) the commencement by any such person of any voluntary proceeding for relief under the United States Bankruptcy Code or any other bankruptcy, insolvency or other laws respecting debtor's rights; or the entry against any such person of any "order for relief" by any court of competent jurisdiction in any involuntary proceeding brought against any such person under the United States Bankruptcy Code or any other bankruptcy, insolvency or other laws respecting debtor's rights, but only if such order continues unstayed and in effect for a period of 120 consecutive days; or

(3) attachment, execution or other judicial seizure of all or substantially all of the assets of any such person, if such attachment, execution or seizure is not dismissed or discharged (through bonding or otherwise) within 60 days after the levy thereof.

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

12. Waiver of Jury. THE GUARANTOR AND THE TOWN EACH WAIVES RIGHT TO A JURY IN ANY LITIGATION IN CONNECTION WITH THIS GUARANTY OR PERFORMANCE UNDER THIS GUARANTY. THE GUARANTOR AND THE TOWN EACH ACKNOWLEDGES THAT THIS WAIVER HAS BEEN FREELY GIVEN AFTER CONSULTATION BY IT WITH COMPETENT COUNSEL.

13. Termination. This Guaranty will terminate upon issuance of a Certificate of Completion for [Phase I] of the Project and, thereafter, the Guarantor will have no obligation to the Town under this Guaranty or in respect of [Phase I] of the Project.

14. Entire Agreement. This Guaranty constitutes the entire agreement between the Guarantor and the Town as to its subject matter and it supersedes any prior or contemporaneous writings, representations, discussions, or agreements between the Guarantor and the Town with respect to the subject matter hereof.

15. Modifications, Etc. This Guaranty may be modified or amended only by a written agreement specifically referring to this Guaranty executed by the Guarantor and the Town. The Guarantor's obligations may be waived only by a written instrument executed by the Town.

16. Counterparts. This Guaranty may be executed in a number of counterparts, each of which for all purposes will be deemed an original.

17. Headings. The subdivision headings in this Guaranty have been inserted for convenience of reference only, and they may not be used in construing this Guaranty.

18. Choice of Law. This Guaranty will be governed by, construed in accordance with, and enforced under the laws of the State of New Jersey, without giving effect to principles of conflicts of law.

19. No Benefit to Third Parties. Except for Section 11, this Guaranty is intended for the benefit of the Town only. Except as provided in Section 11, nothing in this Guaranty shall create any rights for or confer any benefits on any person or entity other than the Town.

MCRT East Assurance VIII LLC

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

## **EXHIBIT O**

### **ANTICIPATED GOVERNMENTAL APPROVALS**

1. Preliminary and Final Site Plan Approval from the Morristown Planning Board
2. Preliminary and Final Subdivision Approval from the Morristown Planning Board
3. Site Plan and Subdivision Approval from the Morris County Planning Board
4. Soil Erosion and Sediment Control Plan Certification from the Morris County Soil Conservation District
5. NJDOT approval of Speedwell Avenue intersection improvements.
6. NJDEP Treatment Works Approval
7. NJDEP Bureau of Safe Drinking Water Permit
8. Southeast Morris County Municipal Utility Authority
9. NJDEP Flood Hazard Area Control permits
10. NJDEP Freshwater Wetlands permits
11. Response Action Outcome issued by Licensed Site Remediation Professional with respect to environmental remediation

**EXHIBIT P**

**PHASE ONE TOWN FINANCED PUBLIC IMPROVEMENTS**

**[Attached]**

EXHIBIT P

**Phase One Town Financed Public Improvements**

Item Description- Prospect Street Extension	Cost
All work within ROW - includes stormwater,grading,curbing,sidewalks, paving, lighting	\$ 520,000
ROW acquisition - Lot 33 of Block 5803 @ 31.5% of \$975k and Lot 34 of Block 5803 @ 76.2% of \$625k	\$783,375
Sanitary sewer relocation	\$ 64,800
Landscaping	\$ 35,000
Retaining Wall on Lot 8 Block 5803	\$ 25,000
ROW purchase/easement Lot 8 Block 5803	\$ 35,000
Engineering/Inspections	\$ 60,000
Water Main	\$ 70,000
Contingency	\$ 121,000
<b>TOTAL</b>	<b>\$ 1,714,175</b>

**EXHIBIT Q**

**FORM PUBLIC IMPROVEMENTS FINANCING ESCROW AGREEMENT**

**[Attached]**

FORM PUBLIC IMPROVEMENTS FINANCING ESCROW AGREEMENT

**PUBLIC IMPROVEMENTS FINANCING ESCROW AGREEMENT**

**THIS ESCROW AGREEMENT** (this "Agreement"), dated [\_\_\_\_], between **TOWN OF MORRISTOWN**, a body corporate and politic of the State of New Jersey (the "Town"), **MORRISTOWN DEVELOPMENT LLC**, a Delaware limited liability company ("Redeveloper") and **INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC**, a [\_\_\_\_] limited liability company ("Escrow Agent").

WITNESSETH

**WHEREAS**, The Town and Redeveloper are parties to that certain Amended and Restated Redevelopment Agreement dated [\_\_\_\_], 2012 (the "Redevelopment Agreement");

**WHEREAS**, all capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Redevelopment Agreement;

**WHEREAS**, Pursuant to the Redevelopment Agreement, among other things, the Town agreed to finance the construction of certain Public Improvements as part of the Project contemplated by the Redevelopment Agreement (the "Public Improvements Financing");

**WHEREAS**, Pursuant to the Redevelopment Agreement, for two (2) years after the Town makes the Public Improvements Financing available to Redeveloper for construction of the Town Financed Public Improvements with respect to Phase I of the Project, Redeveloper agreed to pay interest costs incurred by the Town for the Public Improvements Financing in an amount not to exceed One Hundred Thousand Dollars (\$100,000.00) (the "Public Improvements Interest Payment");

**WHEREAS**, Pursuant to Section 3.10(b) of the Redevelopment Agreement, Redeveloper agreed to deposit the Public Improvements Interest Payment in escrow so that the Town can draw on such funds to make interest payments on the Public Improvements Financing;

**WHEREAS**, the Town has closed on the first tranche of the Public Improvements Financing;

**WHEREAS**, Redeveloper has obtained all Governmental Approvals for Phase One of the Project;

**WHEREAS**, the Town has conveyed to Redeveloper title to the Phase One DPW Property;

NOW, THEREFORE, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Contemporaneously with the execution of this Agreement, Redeveloper has paid to Escrow Agent [\$ \_\_\_\_\_] (the "Escrow Funds"). Escrow Agent acknowledges receipt of the Escrow Funds. Escrow Agent shall hold the Escrow Funds in a federally insured, interest bearing account with [ \_\_\_\_\_] or with another bank or savings and loan association doing business and having an office in the State of New Jersey and approved by the Town and Redeveloper. Any interest earned on the Escrow Funds shall become part of the Escrow Funds. The Escrow Funds shall be held and disbursed by Escrow Agent in accordance with the terms hereof.

2. (a) Escrow Agent shall disburse the Escrow Funds to the Town in accordance with the schedule annexed hereto as Exhibit A (the "Interest Payment Schedule").

(b) Escrow Agent shall cease making disbursements to the Town, and release the Escrowed Funds to the Redeveloper, upon receiving written notice (a "Release Request") from the Redeveloper stating that there is a Town Event of Default under the Redevelopment Agreement. Provided; however, that Escrow Agent shall not release the Escrow Funds to the Redeveloper pursuant to this Section 2(b) until at least ten (10) days after Escrow Agent's receipt of a Release Request, nor thereafter if Escrow Agent shall have received a written notice of objection from the Town in accordance with the terms of subparagraph (c) hereof.

(c) The Town shall have the right to object to the release of the Escrow Funds to Redeveloper pursuant to Section 2(b) of this Agreement by sending written notice of such objection to Escrow Agent and Redeveloper within ten (10) days after receipt of the Release Request. Such notice shall set forth the basis for objecting to the release of the Escrow Funds. In the event of any dispute between the parties regarding release of the Escrow Funds, Escrow Agent shall, at its option, either (i) hold the Escrow Funds until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both the Town and Redeveloper, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the Escrow Funds into a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations with respect to the Escrow Funds from and after the date of such deposit).

(d) If Escrow Agent shall receive written instructions signed by both the Town and Redeveloper specifying the party to whom any Escrow Funds are to be delivered (the "Designated Party") and the time and place where the same are to be delivered, Escrow Agent shall deliver the same in accordance with such written instructions, such delivery to be made against a signed receipt therefor from the Designated Party.

(e) After the final Public Improvements Interest Payment is made pursuant to the Interest Payment Schedule, Escrow Agent shall disburse any remaining Escrow Funds to the Redeveloper.

3. Escrow Agent may act in reliance on any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Agent's duties hereunder shall be limited to the safekeeping of the Escrow Funds and any interest earned thereon and the disposition of same in accordance with the terms hereof. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be liable for any mistakes of fact, or efforts of judgment, or for any acts or omission unless caused by the willful misconduct or gross negligence of Escrow Agent.

4. The Town and Redeveloper, jointly and severally, hereby agree to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits, or proceedings at law or in equity, or any other expense, fees, or charges of any character or nature, which it may incur by reason of its acting as escrow agent under this Agreement (excluding losses arising out of the willful misconduct or negligence of Escrow Agent), including reasonable attorneys' fees, and the cost of defending any such action, suit, or proceeding or resisting any claim.

5. If the parties hereto shall be in disagreement about the interpretation of this Agreement, or about their rights and obligations hereunder, or the propriety of any action contemplated by Escrow Agent hereunder, any party hereto may, at its discretion, file an action in a court of competent jurisdiction to resolve this disagreement. The Town and Redeveloper, jointly and severally, shall indemnify Escrow Agent from and against all costs, including reasonable attorney's fees, in connection with any such action, and shall be fully protected in suspending all or a part of the activities of Escrow Agent under this Agreement until a final judgment, order, or decree in the action is received.

6. Escrow Agent may resign at any time by giving thirty (30) calendar days prior written notice of such resignation to the Town and Redeveloper. Thereafter, Escrow Agent shall have no further obligation hereunder except to hold any Escrow Funds then in escrow. In such event Escrow Agent shall not take any action until Redeveloper and the Town have designated a title insurance company or agency, banking corporation, trust company, attorney or other person as successor Escrow Agent. Upon receipt of such instructions, Escrow Agent shall promptly deliver any Escrow Funds held in escrow and any interest thereon to such successor Escrow Agent and shall thereafter have no further obligations hereunder (other than to execute all instruments evidencing such transfer as may be reasonably required by Redeveloper and the Town). Redeveloper and the Town together may terminate the appointment of Escrow Agent hereunder upon prior written notice to Escrow Agent specifying the date upon which such termination shall have effect. In the event of such termination, Redeveloper and the Town shall within thirty (30) days of such notice jointly appoint a successor Escrow Agent and Escrow Agent shall turn over to such successor Escrow Agent all Escrow Funds held by it pursuant to this Agreement and shall execute all instruments evidencing such transfer as may be reasonably requested by Redeveloper or the Town. Upon receipt of the Escrow Funds, the successor Escrow Agent thereupon shall be bound by all of the provisions hereof.

7. Escrow Agent's agreements and obligations hereunder shall terminate and Escrow Agent shall be discharged from further duties and obligations hereunder upon final payment of the Escrow Funds in accordance with the terms of this Agreement.

8. All notices, demands, reports or other communications required or permitted to be given hereunder shall be given in writing and delivered either by (a) certified mail, return receipt requested, postage prepaid, or (b) a reputable messenger service or a nationally recognized priority delivery service such as Federal Express, addressed as follows:

**To the Town:**

Honorable Mayor Timothy Dougherty  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Vijayant Pawar, Esq., Town Attorney  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Michael Rogers, Business Administrator  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

and a copy to:

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

**TO THE REDEVELOPER:**

Richard Murphy  
Morristown Development, LLC  
c/o Mill Creek Residential  
135 Route 202/206, 3rd Floor  
Bedminster, New Jersey 07921

with a copy to:

Andy S. Norin, Esq.  
Drinker, Biddle & Reath, LLP  
500 Campus Drive  
Florham Park, New Jersey 07932

with a copy to:

Linda Parkis, Esq.  
Lewis and Roca LLP  
40 North Central Ave.  
Phoenix, Arizona 85004

**TO THE ESCROW AGENT:**

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by certified mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, on the first business day after transmittal provided the sender has evidence of delivery. Counsel for a party may give notice to the other party with the same effect as if given by a party.

9. This Agreement and the rights and benefits created by it are for the sole and exclusive benefit of Escrow Agent, the Town and Redeveloper and, without limiting the generality of the foregoing, this Agreement shall not be deemed to be for the direct or indirect benefit of any third party.

10. This Agreement shall be governed by the laws of the State of New Jersey, without regard to principles of conflict of laws.

11. No failure of any party to this Agreement to exercise any power or right granted under this Agreement, or to insist upon strict compliance by any other party of any obligation under this Agreement, and no custom or practice of any party with regard to the terms of performance hereof, shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of this Agreement.

12. This Agreement contains the entire Agreement of the parties and no representations, inducements, promises, or agreements, whether oral or otherwise, between such party not embodied in this Agreement shall be of any force or effect.

13. Each clause or term of this Agreement is severable from the entire Agreement, and if any clause or term is declared invalid, the remaining clauses or terms shall remain in effect.

14. All references in this Agreement to "days" shall mean and refer to calendar days. If any action is required to be performed, or if any notice, consent, or other communication is given, on a day that is a Saturday or a Sunday, or a legal holiday in the jurisdiction in which the action is required to be performed, or in which is located the intended recipient of such notice, consent, or other communication, such performance shall be deemed to be required, and such notice, consent, or other communication, shall be deemed to be required on the first business day following such Saturday, Sunday or legal holiday.

15. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

16. This Agreement may be executed in any number of counterparts, each of which, when taken together, shall constitute an original fully enforceable agreement for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**TOWN OF MORRISTOWN**

By: \_\_\_\_\_  
Timothy Dougherty, Mayor

**MORRISTOWN DEVELOPMENT, LLC, a  
Delaware limited liability company**

By: NJ 106 Morristown Limited Partnership, a Delaware limited liability company

By: NJ 103 Apartments GP LLC, a Delaware limited liability company, its general partner

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

**INGLESINO, PEARLMAN, WYCISKALA &  
TAYLOR, LLC**

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

EXHIBIT A

INTEREST PAYMENT SCHEDULE

[dates upon which the Town's payments of Public Improvements Interest are due and payable]

**EXHIBIT R**

**FORM OF CERTIFICATE OF COMPLETION**

**[Attached]**

EXHIBIT [ ]  
FORM OF CERTIFICATE OF COMPLETION

Record and Return to:  
Andy S. Norin  
Drinker Biddle & Reath LLP  
500 Campus Drive  
Florham Park, New Jersey 07932

**CERTIFICATE OF COMPLETION**

Pursuant to Section [ ] of the Amended and Restated Redevelopment Agreement by and between the Town of Morristown (the "Town") and Morristown Development, LLC (the "Redeveloper"), dated as of [ ], 2012, (the "Redevelopment Agreement"), the undersigned, as of the date hereof, certifies that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) Phase [ ] has been completed, in its entirety, as of [ ], in accordance with the Redevelopment Agreement, the Redevelopment Plan and in compliance with Governmental Approvals and Applicable Laws;

(ii) all Governmental Approvals that are required in order for the Redeveloper to Complete Phase [ ] of the Project, to the extent so required, are in full force and effect;

(iii) such Completion has been further evidenced by a written certificate of the Redeveloper and certificates of the Redeveloper's engineer and architect evidencing completion of Phase [ ], which certificate is attached hereto as **Exhibit 1**: and

(iv) a copy of the [Certificate of Occupancy/Temporary Certificate of Occupancy] issued with respect to Phase [ ] is attached hereto as **Exhibit 2**.

The conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment no longer exist with respect to the Phase [ ] Premises. The Phase [ ] Premises shall no longer be subject to (i) any covenant running with the land for the benefit of the Town, and (ii) eminent domain for purposes of redevelopment as a result of those determinations.

With respect to Phase [ ] and only Phase [ ], the Declaration recorded in the office of the Morris County clerk on [ ] in deed book [ ], page [ ] is hereby discharged of record and is void and of no further force and effect.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion to be executed as of the [ ] day of [ ].

WITNESS OR ATTEST:

TOWN OF MORRISTOWN

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

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

Acknowledgment

STATE OF NEW JERSEY :

:SS

COUNTY OF MORRIS:

On this [ ] day of [ ] before me, personally appeared \_\_\_\_\_, the Mayor of Morristown, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the corporation and that she was authorized to execute the foregoing instrument on behalf of the corporation.

\_\_\_\_\_

**Exhibit 1**

**REDEVELOPER'S CERTIFICATE**

Pursuant to Section [ ] of the Redevelopment Agreement by and between the TOWN OF MORRISTOWN (the "Town") and MORRISTOWN DEVELOPMENT, LLC (the "Redeveloper"), dated as of [ ], 2012], (the "Redevelopment Agreement"), the Redeveloper certifies, to its best knowledge, information and belief, as follows (capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Redevelopment Agreement):

(i) Phase [ ] has been completed in its entirety as of [ ], in accordance with the Redevelopment Agreement, the Redevelopment Plan and in compliance with Governmental Approvals and Applicable Laws;

(ii) all Governmental Approvals that are required in order for Redeveloper to Complete Phase [ ] of the Project are, to the extent so required, in full force and effect;

(iii) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to Phase [ ] of the Project; and

(iv) attached hereto is a certificate of [ ], Redeveloper's engineer, and a certificate of [ ], Redeveloper's architect, evidencing completion and certification of Phase [ ] of the Project.

**MORRISTOWN DEVELOPMENT, LLC**

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

**Exhibit 2**

**[CERTIFICATE OF OCCUPANCY/TEMPORARY CERTIFICATE OF OCCUPANCY]**

**EXHIBIT S**

**FORM OF DPW INTEREST PAYMENT ESCROW AGREEMENT**

**[Attached]**

## DPW INTEREST PAYMENT ESCROW AGREEMENT

**THIS ESCROW AGREEMENT** (this "Agreement"), dated [\_\_\_\_], between **TOWN OF MORRISTOWN**, a body corporate and politic of the State of New Jersey (the "Town"), **MORRISTOWN DEVELOPMENT LLC**, a Delaware limited liability company ("Redeveloper") and **INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC**, a [\_\_\_\_] limited liability company ("Escrow Agent").

### WITNESSETH

**WHEREAS**, The Town and Redeveloper are parties to that certain Amended and Restated Redevelopment Agreement dated [\_\_\_\_], 2012 (the "Redevelopment Agreement");

**WHEREAS**, all capitalized terms used herein, but not defined herein, shall have the meanings given to such terms in the Redevelopment Agreement;

**WHEREAS**, Pursuant to the Redevelopment Agreement, among other things, the Town agreed to sell to Redeveloper, and Redeveloper agreed to purchase from the Town, the Phase One DPW Property (as defined in the Redevelopment Agreement), subject, however, to the terms and conditions of the Redevelopment Agreement;

**WHEREAS**, Redeveloper proposes to construct a redevelopment project on the Phase One DPW Property and other adjacent lands in accordance with the Redevelopment Plan and the Redevelopment Agreement;

**WHEREAS**, The Town's Department of Public Works Facility (the "DPW Facility") is currently located on the Phase One DPW Property;

**WHEREAS**, the Town intends to relocate the DPW Facility so that the Redeveloper may construct the Project;

**WHEREAS**, pursuant to the Redevelopment Agreement, Redeveloper agreed to pay one year of interest (the "DPW Interest Payment") on the Town's financing to construct a new DPW Facility (the "DPW Financing");

**WHEREAS**, Pursuant to Section 5.10(e) of the Redevelopment Agreement, Redeveloper agreed to deposit the DPW Interest Payment in escrow so that the Town can draw on such funds to make interest payments on the DPW Financing;

**WHEREAS**, On [\_\_\_\_], the Town closed on its financing for the construction of the new DPW Facility;

**WHEREAS**, Redeveloper has obtained all Governmental Approvals for Phase One of the Project;

**WHEREAS**, the Town has conveyed to Redeveloper title to the Phase One DPW Property;

**NOW, THEREFORE**, for and in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Contemporaneously with the execution of this Agreement, Redeveloper has paid to Escrow Agent [\$ \_\_\_\_\_] (the "Escrow Funds"). Escrow Agent acknowledges receipt of the Escrow Funds. Escrow Agent shall hold the Escrow Funds in a federally insured, interest bearing account with [\_\_\_\_\_] or with another bank or savings and loan association doing business and having an office in the State of New Jersey and approved by the Town and Redeveloper. Any interest earned on the Escrow Funds shall become part of the Escrow Funds. The Escrow Funds shall be held and disbursed by Escrow Agent in accordance with the terms hereof.

2. (a) Escrow Agent shall disburse the Escrow Funds to the Town in accordance with the schedule annexed hereto as Exhibit A (the "Interest Payment Schedule").

(b) Escrow Agent shall cease making disbursements to the Town, and release the Escrowed Funds to the Redeveloper, upon receiving written notice (a "Release Request") from the Redeveloper stating that there is a Town Event of Default under the Redevelopment Agreement; provided, however, that Escrow Agent shall not release the Escrow Funds to the Redeveloper pursuant to this Section 2(b) until at least ten (10) days after Escrow Agent's receipt of a Release Request, nor thereafter if Escrow Agent shall have received a written notice of objection from the Town in accordance with the terms of subparagraph (c) hereof.

(c) The Town shall have the right to object to the release of the Escrow Funds to Redeveloper pursuant to Section 2(b) of this Agreement by sending written notice of such objection to Escrow Agent and Redeveloper within ten (10) days after receipt of the Release Request. Such notice shall set forth the basis for objecting to the release of the Escrow Funds. In the event of any dispute between the parties regarding release of the Escrow Funds, Escrow Agent shall, at its option, either (i) hold the Escrow Funds until the dispute is mutually resolved and Escrow Agent is advised of this fact in writing by both the Town and Redeveloper, or Escrow Agent is otherwise instructed by a final unappealable judgment of a court of competent jurisdiction, or (ii) deposit the Escrow Funds into a court of competent jurisdiction (whereupon Escrow Agent shall be released and relieved of any and all liability and obligations with respect to the Escrow Funds from and after the date of such deposit).

(d) If Escrow Agent shall receive written instructions signed by both the Town and Redeveloper specifying the party to whom any Escrow Funds are to be delivered (the "Designated Party") and the time and place where the same are to be delivered, Escrow Agent shall deliver the same in accordance with such written instructions, such delivery to be made against a signed receipt therefor from the Designated Party.

(e) After the final DPW Interest Payment is made pursuant to the Interest Payment Schedule, Escrow Agent shall disburse any remaining Escrow Funds to the Redeveloper.

3. Escrow Agent may act in reliance on any writing or instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such a writing or instrument and may assume that any person purporting to give any writing, notice, advice, or instruction in connection with the provisions hereof has been duly authorized to do so. Escrow Agent's duties hereunder shall be limited to the safekeeping of the Escrow Funds and any interest earned thereon and the disposition of same in accordance with the terms hereof. Escrow Agent undertakes to perform only such duties as are expressly set forth herein and no implied duties or obligations shall be read into this Agreement against Escrow Agent. Escrow Agent shall not be liable for any mistakes of fact, or efforts of judgment, or for any acts or omission unless caused by the willful misconduct or gross negligence of Escrow Agent.

4. The Town and Redeveloper, jointly and severally, hereby agree to indemnify Escrow Agent and hold it harmless from any and all claims, liabilities, losses, actions, suits, or proceedings at law or in equity, or any other expense, fees, or charges of any character or nature, which it may incur by reason of its acting as escrow agent under this Agreement (excluding losses arising out of the willful misconduct or negligence of Escrow Agent), including reasonable attorneys' fees, and the cost of defending any such action, suit, or proceeding or resisting any claim.

5. If the parties hereto shall be in disagreement about the interpretation of this Agreement, or about their rights and obligations hereunder, or the propriety of any action contemplated by Escrow Agent hereunder, any party hereto may, at its discretion, file an action in a court of competent jurisdiction to resolve this disagreement. The Town and Redeveloper, jointly and severally, shall indemnify Escrow Agent from and against all costs, including reasonable attorney's fees, in connection with any such action, and shall be fully protected in suspending all or a part of the activities of Escrow Agent under this Agreement until a final judgment, order, or decree in the action is received.

6. Escrow Agent may resign at any time by giving thirty (30) calendar days prior written notice of such resignation to the Town and Redeveloper. Thereafter, Escrow Agent shall have no further obligation hereunder except to hold any Escrow Funds then in escrow. In such event Escrow Agent shall not take any action until Redeveloper and the Town have designated a title insurance company or agency, banking corporation, trust company, attorney or other person as successor Escrow Agent. Upon receipt of such instructions, Escrow Agent shall promptly deliver any Escrow Funds held in escrow and any interest thereon to such successor Escrow Agent and shall thereafter have no further obligations hereunder (other than to execute all instruments evidencing such transfer as may be reasonably required by Redeveloper and the Town). Redeveloper and the Town together may terminate the appointment of Escrow Agent hereunder upon prior written notice to Escrow Agent specifying the date upon which such termination shall have effect. In the event of such termination, Redeveloper and the Town shall within thirty (30) days of such notice jointly appoint a successor Escrow Agent and Escrow Agent shall turn over to such successor Escrow Agent all Escrow Funds held by it pursuant to this Agreement and shall execute all instruments evidencing such transfer as may be reasonably

requested by Redeveloper or the Town. Upon receipt of the Escrow Funds, the successor Escrow Agent thereupon shall be bound by all of the provisions hereof.

7. Escrow Agent's agreements and obligations hereunder shall terminate and Escrow Agent shall be discharged from further duties and obligations hereunder upon final payment of the Escrow Funds in accordance with the terms of this Agreement.

8. All notices, demands, reports or other communications required or permitted to be given hereunder shall be given in writing and delivered either by (a) certified mail, return receipt requested, postage prepaid, or (b) a reputable messenger service or a nationally recognized priority delivery service such as Federal Express, addressed as follows:

**To the Town:**

Honorable Mayor Timothy Dougherty  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Vijayant Pawar, Esq., Town Attorney  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

with a copy to:

Michael Rogers, Business Administrator  
Town of Morristown  
200 South Street, CN 914  
Morristown, New Jersey 07963-0914

and a copy to:

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

**TO THE REDEVELOPER:**

Richard Murphy  
Morristown Development, LLC  
c/o Mill Creek Residential  
135 Route 202/206, 3rd Floor

Bedminster, New Jersey 07921

with a copy to:

Andy S. Norin, Esq.  
Drinker, Biddle & Reath, LLP  
500 Campus Drive  
Florham Park, New Jersey 07932

with a copy to:

Linda Parkis, Esq.  
Lewis and Roca LLP  
40 North Central Ave.  
Phoenix, Arizona 85004

**TO THE ESCROW AGENT:**

John P. Inglesino, Esq.  
Inglesino, Pearlman, Wyciskala & Taylor, LLC  
600 Parsippany Road, Suite 204  
Parsippany, New Jersey 07054

The foregoing addresses may be changed or supplemented by written notice given as above provided. Any such notice sent by certified mail shall be deemed to have been received by the addressee on the third business day after posting in the United States mail, or, if transmitted by messenger or a priority delivery service, on the first business day after transmittal provided the sender has evidence of delivery. Counsel for a party may give notice to the other party with the same effect as if given by a party.

9. This Agreement and the rights and benefits created by it are for the sole and exclusive benefit of Escrow Agent, the Town and Redeveloper and, without limiting the generality of the foregoing, this Agreement shall not be deemed to be for the direct or indirect benefit of any third party.

10. This Agreement shall be governed by the laws of the State of New Jersey, without regard to principles of conflict of laws.

11. No failure of any party to this Agreement to exercise any power or right granted under this Agreement, or to insist upon strict compliance by any other party of any obligation under this Agreement, and no custom or practice of any party with regard to the terms of performance hereof, shall constitute a waiver of the rights of such party to demand full and exact compliance with the terms of this Agreement.

12. This Agreement contains the entire Agreement of the parties and no representations,

inducements, promises, or agreements, whether oral or otherwise, between such party not embodied in this Agreement shall be of any force or effect.

13. Each clause or term of this Agreement is severable from the entire Agreement, and if any clause or term is declared invalid, the remaining clauses or terms shall remain in effect.

14. All references in this Agreement to "days" shall mean and refer to calendar days. If any action is required to be performed, or if any notice, consent, or other communication is given, on a day that is a Saturday or a Sunday, or a legal holiday in the jurisdiction in which the action is required to be performed, or in which is located the intended recipient of such notice, consent, or other communication, such performance shall be deemed to be required, and such notice, consent, or other communication, shall be deemed to be required on the first business day following such Saturday, Sunday or legal holiday.

15. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties.

16. This Agreement may be executed in any number of counterparts, each of which, when taken together, shall constitute an original fully enforceable agreement for all purposes.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

**TOWN OF MORRISTOWN**

By: \_\_\_\_\_  
Timothy Dougherty, Mayor

**MORRISTOWN DEVELOPMENT, LLC**, a Delaware limited liability company

By: NJ 106 Morristown Limited Partnership, a Delaware limited liability company

By: NJ 103 Apartments GP LLC, a Delaware limited liability company, its general partner

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

**INGLESINO, PEARLMAN, WYCISKALA & TAYLOR, LLC**

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

EXHIBIT A

INTEREST PAYMENT SCHEDULE

[dates upon which the Town's payments of DPW Interest are due and payable]

**EXHIBIT T**

**FORM DECLARATION OF COVENANTS AND RESTRICTIONS**

**[Attached]**

**EXHIBIT T**

**FORM OF DECLARATION**

Prepared by and record and return to:

Andy S. Norin  
Drinker Biddle & Reath LLP  
500 Campus Drive  
Florham Park, NJ 07932

**DECLARATION OF COVENANTS AND RESTRICTIONS**

This **DECLARATION OF COVENANTS AND RESTRICTIONS** (this "Declaration") is made this \_\_\_\_\_ day of \_\_\_\_, 20\_\_\_\_, by **MORRISTOWN DEVELOPMENT LLC**, a Delaware limited liability company with offices located at 135 Route 202/206, 3<sup>rd</sup> Floor, Bedminster, New Jersey 07921 ("Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant is party to that certain Amended and Restated Redevelopment Agreement, dated \_\_\_\_\_ by and between Declarant and the Town of Morristown (the "Town") with respect to a portion of the Speedwell Avenue Redevelopment Area (the "Redevelopment Agreement");

**WHEREAS**, capitalized terms used herein, but not defined herein shall have the meanings ascribed to such terms in the Redevelopment Agreement;

**WHEREAS**, on the date hereof, in accordance with the Redevelopment Agreement, Declarant has acquired the Phase [One] Premises designated as Block [\_\_\_\_], Lot [\_\_\_\_] on the official Tax Map of the Town of Morristown, and more particularly described on **Exhibit A** annexed hereto (the "Property"); and

**WHEREAS**, pursuant to the Redevelopment Agreement, Declarant is required to record this Declaration upon Declarant's acquisition of the Property.

**NOW, THEREFORE**, intending to be legally bound, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants and restrictions (the "Covenants and Restrictions"), which, subject to the terms hereof, shall run with title to the Property, and be binding upon all parties who have any right, title or interest in Declarant's Property, or any part thereof, their heirs, executors, administrators, successors and assigns.

1. The Declarant covenants and agrees that, subject to the terms of the Redevelopment Agreement, including, without limitation, Article 10 of the Redevelopment Agreement, the Declarant shall:

(a) devote the Property to the uses specified in the Redevelopment Plan and shall not devote the Property to any other uses without the approval of the Town;

(b) to the extent provided for by Applicable Law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status in the sale, lease, use or occupancy of the Property or any Improvements, buildings or structures erected or to be erected thereon, or any portion thereof;

(c) to the extent provided for by Applicable Law, in the sale, lease or occupancy of the Property or any portion thereof, not effectuate or execute any covenant, lease agreement, conveyance or other instrument whereby the land or any Improvement, building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or marital status, and the Declarant shall comply with all state and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or marital status; and

(d) not sell, lease or otherwise Transfer the Property, or any portion thereof, without the written consent of the Governing Body, as set forth in the Redevelopment Agreement other than those Transfers deemed to be Permitted Transfers pursuant to Section 8.03 of the Redevelopment Agreement.

2. The Covenants and Restrictions set forth in herein shall be covenants running with the land and they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Laws, for the benefit and in favor of, and enforceable by, the Town, its successors and assigns, against the Declarant, or its successors and assigns. Notwithstanding anything to the contrary contained herein, this Declaration shall not be binding on any Mortgagee except in accordance with the terms of Article 10 of the Redevelopment Agreement.

3. It is further intended and agreed that the Covenants and Restrictions set forth herein shall remain in effect only until the issuance by the Town of a Certificate of Completion for the Property, as provided for in Section 4.10 of the Redevelopment Agreement at which time the Covenants and Restrictions and all terms, conditions and obligations, set forth in the Redevelopment Agreement shall cease and terminate with respect to the Property, except, however, that the Covenants and Restrictions provided for in Sections 1(b) and 1(c) hereof, shall remain in effect without limitation as to time subject to any changes in Applicable Laws. Upon issuance of a Certificate of Completion for the Property, the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist with respect to the Property and the conditions and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Property.

4. In amplification, and not in restriction of the provisions of this Declaration and the Redevelopment Agreement, it is intended and agreed that the Town shall be deemed a

beneficiary of the Covenants and Restrictions set forth herein both for and in its own right but also for the purposes of protecting the interests of the community.

5. Notwithstanding anything to the contrary contained in this Declaration, in accordance with and subject to the terms of the Redevelopment Agreement, Declarant shall have the right to enter into a purchase and sale contract to convey, and to actually convey, good and marketable title to the residential units, units of retail/commercial space and other Improvements developed and constructed as part of the Project and to prepare creation documents and apply for approval of a condominium regime, and, subject to such approval, prepare and record a condominium Master Deed that is free and clear from the Covenants and Restrictions prior to the issuance of a Certificate of Completion with respect to the Property.

