

**AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT**

by and between

**THE BOROUGH OF SOMERVILLE
As Redevelopment Entity**

and

**SOMERVILLE URBAN RENEWAL PHASE III, LLC
(Successor in interest to JSM AT SOMERVILLE, LLC)
As Redeveloper**

Date: _____, 2020

EXHIBITS

- Exhibit 1. Project Schedule
- Exhibit 2. Overall Site Plan
- Exhibit 3. Planning Board Resolution
- Exhibit 4. Ownership Structure of Redeveloper
- Exhibit 5. Memorandum of Redevelopment Agreement
- Exhibit 6. AIA Document G703 – Subcontractor Application for Payment
- Exhibit 7. Estimated Construction Schedule

AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (the "Redevelopment Agreement" or "Agreement"), dated as of _____, 2020 (the "Effective Date"), by and between the **BOROUGH OF SOMERVILLE** (the "Borough"), a body corporate and politic of the State of New Jersey with offices at 25 West End Avenue, Somerville, New Jersey 08876, acting in the capacity of a Redevelopment Entity pursuant to the provisions of the "Local Redevelopment and Housing Law", N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law" or "LRHL") and **SOMERVILLE URBAN RENEWAL PHASE III, LLC (successor in interest to JSM AT SOMERVILLE, LLC)**, and/or its affiliates (the "Redeveloper") with offices at 1260 Stelton Road, Piscataway, New Jersey 08854, (singularly, a "Party", collectively referred to as the "Parties").

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

Recitals

WHEREAS, the Borough of Somerville (the "Borough") and JSM at Somerville, LLC and/or its affiliates (the "Redeveloper") entered into an amended and restated redevelopment agreement, dated November 15, 2010 (the "RDA"), providing for, among other things, the Redeveloper's construction of a mixed-use, transit-oriented development in the West Main Street Redevelopment Area (the "Redevelopment Area"); and

WHEREAS, subsequently, the Borough and Redeveloper entered into a memorandum of understanding, dated August 5, 2014 (the "MOU"); and

WHEREAS, Tax Block 117.01; Lot 1.03 (the "Property") is located in the Redevelopment Area; and

WHEREAS, the Borough of Somerville has been promoting the redevelopment of this Property consistent with the Borough's Master Plan and the West Main Street Redevelopment (the "Redevelopment Plan"), last amended on July 3, 2017; and

WHEREAS, the Property is privately owned by the Redeveloper; and

WHEREAS, the Redeveloper has completed the construction of other parcels in the Redevelopment Area, namely Phase 1 – Shoprite on Block 117, Lot 1.02; Phase 2 mixed use building with 108 residential units and ground floor retail on Block 117, Lot 1.03; and Phase 1A – bank Block 117.01, Lot 1.04; and

WHEREAS, the Redeveloper has been previously approved by the Borough to develop a project on the Property consisting of approximately 115 residential units, 20,000 square feet of retail space and a 40,000 square foot health club (the "Project"); and

WHEREAS, on December 12, 2018, the Redeveloper received approval to expand the project to include 41,407 square feet of retail space, 9,152 square feet of restaurant space, 40,400 square foot fitness center, 6,325 square foot pool/deck space, 153 residential units and a parking deck consisting of 521 parking spaces (the "Expanded Project"); and

WHEREAS, on or about August 7, 2018, Somerville Town Center Urban Renewal, LLC (f/k/a/ JSM at Somerville, LLC) and related entities filed a complaint against the Borough, its mayor and Michael Cole, which complaint was subsequently amended (Docket No.: SOM-L-000988-18) regarding the Property, Project and Expanded Project (the "Litigation"); and

WHEREAS, on August 29, 2019, Somerville Town Center Urban Renewal, LLC (f/k/a/ JSM at Somerville, LLC) and related entities, the Borough, its former mayor and Michael Cole entered into a Settlement

Agreement and Mutual Release and a Stipulation of Dismissal with regards to the Litigation was filed with the court on September 11, 2019 (the "Settlement Agreement"); and

WHEREAS, the Borough and Redeveloper have agreed to the terms and conditions with respect to the redevelopment of the Property, the construction of the Expanded Project and the payment of certain costs in connection; and

WHEREAS, this Agreement shall supersede and replace the RDA and MOU and incorporates certain terms of the Settlement Agreement regarding the Expanded Project and the financing and construction of a parking structure.

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

ARTICLE I
DEFINITIONS AND INTERPRETATIONS

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

"Affiliate" means with respect to the Redeveloper, any other Person directly or indirectly controlling or controlled by, or under direct or indirect common control with the Redeveloper. For purposes of this definition, the term "control" (including the correlative meanings of the terms "controlled by" and "under common control with") shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of voting securities or by contract or otherwise.

"Appeal Period" means the period of time specified by statute or court rule within which an appeal may be taken by any Party or other Person of a determination of a Governmental Agency and includes the period for filing an appeal to an appellate court after entry of a judgment or decision by a lower court or administrative Borough.

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

"Borough" means the Borough of Somerville, a political subdivision of the State of New Jersey, and its permitted successors and assigns.

"Borough Costs" is defined in Article III.

"Borough Indemnified Parties" means the Borough and their respective officers, elected officials, agents, employees, contractors and consultants.

"Certificate of Completion" means a certificate of completion issued by the Borough when (i) all work related to the Expanded Project, or any other work or actions to which such term is applied, has been substantially

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

"Certificate of Occupancy" means a temporary or permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued by the Borough with respect to the Expanded Project, upon Completion of the Expanded Project.

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

"Commence Construction" or "Commencement of Construction" means the beginning of physical construction of the Expanded Project.

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

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of another entity, whether through the ownership of voting securities or by contract or otherwise.

"Days" means calendar days.

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

"Estoppel Certificate" is defined in Section 2.9.

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

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

"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 and any publicly traded company engaged in the business of lending and/or development of real estate or recognized reputable source of construction and permanent financing for the project chartered under the laws of the United States of America, and/or any State thereof.

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

"Governmental Applications" shall mean any and all submissions, supporting documents, reports or other proofs transmitted to any Governmental Agency for the purpose of obtaining a Governmental Approval of any aspect of the Expanded Project or the Project Site. "Governmental Applications" shall also include, without limitation, any submission of any kind, communications, exhibits, notice of meetings and telephone conferences, relating to any Governmental Application. Redeveloper shall provide a copy of all the information and notices of meetings referred to in this direction, to the Borough.

"Governmental Approvals" means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, State or federal governmental or quasi-governmental entity required to be obtained with respect to the Expanded Project, the Project Site, with all applicable Appeal Periods having expired without any appeal having been taken by a third party therefrom or, if an appeal has been taken, such appeal has been disposed of to the reasonable satisfaction of the Parties without the right to further appeal or, if there is a right to further appeal, the time period therefore has expired without a further appeal having been taken.

"Holder" means a mortgagee, or its affiliate, of the Project Site or any part thereof.

"Impositions" shall mean all taxes, assessments (including 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 Site or on any of the Project Improvements constructed thereon.

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

"Long Term Tax Exemption Law" means the Long-Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq. and the acts amendatory thereof and supplemental thereto.

"Market Conditions" means conditions of the real estate market, financing market or any economic conditions which adversely affect the real estate market or financing of real estate as they affect the Expanded Project, as demonstrated by an independent commercially reasonable source that is reasonably acceptable to the Borough.

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

"Permitted Transfers" means the allowable Transfer of all or a portion of the Redeveloper's rights and obligations under this Redevelopment Agreement of the Expanded Project or a Project Improvement.

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

"Planning Board" means the Somerville Planning Board.

"Project Schedule" means the schedule for the design, permitting, financing, construction and Completion of the Expanded Project by the Redeveloper, as may be amended or supplemented from time to time. The Proposed Project Schedule is attached hereto as Exhibit 1.

"Project Site" means the Property upon which the Expanded Project is to be constructed.

"Project Costs" means all costs of the Expanded Project, including, without limitation, the acquisition of the Project Site, the design, permitting and construction of the Project Improvements, and the Borough Costs.

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

"Property" means Block 117.01, Lot 1.03 on the Borough's Tax Map, located on West Main Street in the Redevelopment Area.

"Public Improvements" means those Project Improvements, if any, to be dedicated to, and accepted by, the Borough.

"RAB Law" means the Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-65 et. seq., as amended

"Redeveloper" means Somerville Urban Renewal Phase III, LLC, successor in interest to JSM at Somerville, LLC or its affiliates, successors or assigns.

"Redeveloper Indemnified Parties" means the Redeveloper and its respective officers, directors, employees and agents, and the Redeveloper's successors and assigns.

"Redevelopment Agreement" means this Amended and Restated Redevelopment Agreement, as it may be amended or supplemented in accordance with its terms.

"Redevelopment Area" means the entirety of the area designated by the Borough pursuant to Applicable Law as an area in need of redevelopment, known as the West Main Street Redevelopment Area, and shown on the official tax maps of the Borough of Somerville. The Redevelopment Area is further defined in the Redevelopment Plan.

"Redevelopment Agreement Term" means the period of time from the Effective Date until the Borough issues the Certificate of Completion for the Expanded Project.

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

"Redevelopment Plan" means the Redevelopment Plan for the West Main Street Redevelopment Area in the Borough of Somerville, New Jersey, a copy of which is on file with the Borough Clerk.

"Site Plan" means both the Preliminary Site Plan or Final Site Plan, as applicable, depicting those aspects of the Project Site and Project Improvements required pursuant to the Borough's site plan ordinance and pursuant to N.J.S.A. 40:55D-7.

“Substantial Completion” means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of “Completion” have been satisfied, with the exception of certain immaterial portions of the work relating to the Project Improvements that have not been Completed, or such other work which remains to be Completed, as long as the Redeveloper, with respect to the Project Improvements, has prepared and delivered to the Borough (a) a “punch list” of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Agreement; and (b) the “punch list” items have been reasonably agreed to by the Borough; and (c) such “punch list” items are capable of being Completed within ninety (90) days of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion; and provided further, that all such “punch list” items shall be Completed under all circumstances within (i) one hundred eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) three hundred sixty-five (365) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings. “Substantial Completion” shall be evidenced by issuance of a Temporary Certificate of Occupancy for the Project Improvements, or any portion thereof that has been Substantially Completed.

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

"Transfer" is defined in Article X.

"Transferee" is defined in Article X.

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

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

(b) a “Change in Law”.

(c) Action or inaction by any Governmental Body which precludes or delays the Party relying thereon from performing its obligations under this Agreement, provided however, that (i) such action or failure to act shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon, (ii) neither the contesting of any action or failure act, in good faith, nor the reasonable failure to so contest shall constitute or be constructed as a willful, intentional or negligent action or inaction by such Party, and/or (iii) decisions interpreting Federal, State and local tax laws that are generally applicable to all business taxpayers shall not constitute an Uncontrollable Circumstance under this paragraph (c).

(d) The suspension, termination, interruption, denial, failure of or delay in the renewal or issuance of any Governmental Approval, provided however, that such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption,

denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest (up to thirty (30) days following such suspension, termination, interruption or failure of renewal or issuance) shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party. The Redeveloper's failure to timely and substantially complete submission for a Governmental Approval shall not constitute an Uncontrollable Circumstance under this paragraph (d).

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

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

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

(h) Market Conditions.

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

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

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

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

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

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

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

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

(g) All notices to be given hereunder and responses thereto shall be given, unless a certain number of

days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, otherwise expressly provided in the Redevelopment Agreement, or unless the context dictates otherwise.

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

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

ARTICLE II

IMPLEMENTATION OF REDEVELOPMENT PROJECT

Section 2.01 Purpose. It is the intention of the Parties, and the purpose of this Agreement, to set forth the rights, duties and obligations of the Parties to provide for the implementation of the Redevelopment Plan.

Section 2.02 The Project Site. The Project Site consists of the Property within the Redevelopment Area and as further identified in the Redevelopment Plan.

Section 2.03 Designation of Redeveloper. Somerville Urban Renewal Phase III, LLC, successor in interest to JSM at Somerville, LLC and/or its affiliates, successors or assigns remain as the designated Redeveloper by the Borough for the Property and shall have the exclusive right to redevelop and implement the Expanded Project in accordance with the terms and conditions of the Redevelopment Plan and this Agreement.

Section 2.04 The Expanded Project.

(a) The Expanded Project shall be a residential development consisting of approximately One Hundred and Fifty-Three (153) residential units, 41,407 square feet of retail space, 9,152 square foot restaurant, 40,400 square foot fitness center, 6,325 square foot pool / deck space and an approximately Five Hundred and Twenty-One (521+/-) space parking structure on the Project Site. The Parties recognize that the Expanded Project may be modified during the Governmental Approvals process.

(b) Attached hereto as Exhibit 2 is the approved overall site plan of the Expanded Project, which if changed, may require amended Governmental Approvals.

(c) The Borough agrees that the Expanded Project will not include any affordable housing requirements including the requirement to include affordable housing units within the Expanded Project or to otherwise require the Redeveloper to build or contribute towards the development of affordable housing. The Redeveloper shall not be required to make any monetary contribution towards affordable housing as a result of the Expanded Project.

Section 2.05 The Parking Structure.

(a) The Redeveloper shall construct a 521+/- space parking deck (the "Parking Structure") as currently reflected on the approved Site Plan for the Expanded Project.

(b) The Redeveloper shall be the owner and operator of the Parking Structure, as well as shall be responsible for all maintenance, repairs and capital improvements for the Parking Structure. The Redeveloper shall be entitled to set and collect any fees generated by use of the Parking Structure by its tenants as well as those generated by members of the public. The Redeveloper shall advise the Borough regarding the cost of any fees to be charged for parking in the Parking Structure and any changes to such fees, though the Borough shall have no right to approve such fees. The fees for use of the spaces available for use by members of the public shall be commercially reasonable, however should the Borough and the Redeveloper disagree as to what is commercially reasonable, the parties reserve their respective rights to pursue legal action to determine same.

Notwithstanding any such legal action, the Redeveloper may continue to charge the fees it sets as provided for herein.

(c) The Redeveloper shall have exclusive use of 294 spaces. The remaining spaces (227 based on the approved Site Plan) shall be available by the general public for a fee or no fee determined at the discretion of the Redeveloper. The spaces for use by the general public in the Parking Structure shall remain so in perpetuity. The requirement for the use of spaces in the Parking Structure by the general public shall survive the termination of this Agreement.

(d) If the Redeveloper charges a fee for the Parking Structure public spaces, the income shall be included in the annual gross revenue reported to the Borough pursuant to the financial agreement for the PILOT, dated October 22, 2012 (the "2012 PILOT Agreement").

(e) The Borough will contribute to the Redeveloper up to and not more than \$6,500,000, on a dollar for dollar basis as described in (g) below, for the 274 spaces reserved for exclusive use of the Redeveloper's residential tenants. The Borough's contribution of \$6,500,000 will be raised through a form of public financing such as general obligation bonds or notes, which would be for the intended purpose of contributing to the construction of the Parking Structure, shall not be used for any other purpose and such bond or note shall not be issued earlier than the Redeveloper provides the following:

- i. All permits for construction of the Parking Structure;
- ii. Estimated construction budget for the Parking Structure; and
- iii. Adequate evidence of funding for Redeveloper's share of the cost of construction of the Parking Structure, which may take the form of a loan commitment or payments made for the Parking Structure.

If the Redeveloper decides to commence construction of the Parking Structure prior to providing the Borough with the information in i-iv above (which Redeveloper may elect to do in its sole discretion), the Borough is not obligated to issue any general obligation bonds or notes until the information in i.-iv. above is provided to the Borough by the Redeveloper.

The Borough shall make its contribution on a dollar for dollar payment basis; i.e., for each dollar the Redeveloper spends on the Parking Structure, the Borough shall reimburse the Redeveloper a dollar until the Borough has paid the full amount of \$6,500,000. The Borough shall adopt a bond ordinance authorizing the issuance of a RAB, general obligation bonds or notes for its \$6,500,000 contribution to the construction of the Parking Structure within sixty (60) days of execution of this Agreement. The Borough may issue the entire \$6,500,000 upon satisfaction of the conditions i. through iv. above by the Redeveloper or at any time thereafter. If the Borough fails to reimburse the Redeveloper as provided herein, Redeveloper shall be entitled to default interest at ten percent (10%) per annum on the unpaid amount, which default interest shall accrue until paid by Borough and may pursue all other remedies at law or equity. If the parking structure is not constructed or completed by the Redeveloper in accordance hereto and the Borough is required to repay the unused notes/bonds issued, the Borough shall be entitled to recover any additional interest costs that accrue in excess of what would otherwise have accrued if the Borough had issued notes/bonds in three tranches of \$2,500,000 initially, \$2,000,000 upon 50% completion and \$2,000,000 upon 75% completion, as a result of the failure of the Redeveloper to construct or complete construction of the Parking Structure by deducting those additional interest costs from the tax appeal credit as set forth in 2(h) below.

(f) The Borough shall contribute no more than \$6,500,000 and the Redeveloper shall pay all remaining costs for the construction of the Parking Structure. This contribution is based on the construction cost for 274 spaces at a cost per space of \$23,500. If the cost per space exceeds \$23,500, the Redeveloper shall be responsible for paying such additional costs. This number has been provided by Tim Haahs and Associates,

parking design engineers and consultants. If the actual cost per space is less than \$23,500, the Borough's contribution will be reduced accordingly. The actual total construction cost for the Parking Structure shall be certified after the completion of construction of the Parking Structure by an architect or engineer employed by EP Design. At this time, the estimated cost of construction of the parking deck is \$13,680,327.00 as depicted on AIA Document G703 Subcontractor Applicant for Payment, attached hereto as Exhibit 6 ("G703"). The estimated construction schedule is attached hereto as Exhibit 7 (hereinafter referred to as the "Schedule"). The Schedule also has payment amounts tied to G703, which Schedule will be used as the required payment schedule and amounts by the Borough for its contribution to the construction of the Parking Structure (G703 and the Schedule are hereinafter collectively referred to as the "Drawdown Schedule").

(g) The Parties acknowledge and agree that the funds raised through the public financing utilized by the Borough shall be held by the Borough's Chief Financial Officer ("CFO") who shall reimburse the Redeveloper in accordance with the Drawdown Schedule as follows:

- i. The Parties agree to the Drawdown Schedule.
- ii. The Redeveloper shall submit a notice to the Borough Director of Economic Development (the "Director") that the work described under each item for which reimbursement is being requested has been completed in accordance with the Drawdown Schedule and within ten (10) days the Director shall confirm that the work has been performed in accordance with the Drawdown Schedule or identify work to be completed.
- iii. Upon confirmation by the Director that the work described under each item for which reimbursement is being requested has been completed in accordance with the Drawdown Schedule, the CFO shall have ten (10) business days to pay the amount of the item as set forth on the Drawdown Schedule.

(h) Pursuant to the Stipulation of Settlement between JSM at Somerville, LLC and the Borough of Somerville dated on or about January 27, 2012 for the property then known as Block 117, Lot 1 (the "Stipulation"), the parties agreed that \$632,303.28 in tax overpayments were to be applied towards the debt service for a Borough constructed parking deck. However, if a separate agreement with respect to the construction and financing of the parking deck was not executed and delivered by the parties within 180 days of the date of the Stipulation, then and in that event JSM at Somerville, LLC agreed to accept credits towards future taxes in lieu of refunds which credits would be evenly applied against the next forty (40) tax bills payable over a period of ten (10) years. The parties agree that the \$632,303.28 shall be credited over a period of ten (10) years against future payments in lieu of taxes generated from the Expanded Project upon its completion. Such credits shall be reflected on the quarterly bills issued by the Borough pursuant to the Financial Agreement. This credit obligation shall survive termination of this Redevelopment Agreement.

Section 2.06 Project Improvements.

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

(b) The Redeveloper shall undertake such technical and other studies and shall prepare and file (after review by and in consultation with the Borough) any applications required for the receipt of the Governmental Approvals needed for the Project Improvements.

(c) Redeveloper shall implement the Project Improvements in order to complete the Project according to the Project Schedule, shall coordinate all Project Improvements and shall consult with and coordinate such activities with the Borough. Redeveloper shall cooperate with the Borough in all respects to ensure that the implementation of the Project Improvements does not unreasonably interfere with the operation of the existing utilities. Redeveloper agrees to provide all performance and maintenance bonds as required by the Governmental Approvals. The Borough shall require that, in accordance with Applicable Law, other developers whose projects are located outside the Redevelopment Area who benefit from the Project Improvements, if any, shall reimburse or pay to Redeveloper their fair share of infrastructure improvements constructed by Redeveloper at its cost and expense.

(d) If the cost of the Project Improvements is economically not feasible, as determined by the Redeveloper in its discretion, the Redeveloper shall notify the Borough in writing that it has determined same and the Parties agree to work together to determine a viable solution to make the Expanded Project economically feasible and address the cost of such Project Improvements. However, if within ninety (90) days, which can be mutually extended by the parties, of receipt by the Borough of the notice required herein, the Parties are unable to determine a viable solution to address the cost of such Project Improvements, the Redeveloper may terminate this Agreement and the Redeveloper, and the Borough shall have no further obligation hereunder except as expressly otherwise provided herein.

(e) The construction of the Parking Structure shall be considered a Project Improvement.

Section 2.07 Project Costs and Financing

(a) Redeveloper agrees that all costs associated with the development and financing for the Expanded Project (other than the Borough's \$6,500,000 contribution towards the Parking Structure pursuant to Section 2.05) is the sole responsibility of Redeveloper. The Redeveloper will use commercially reasonable efforts to obtain financing for the Expanded Project, which financing may be a combination of debt financing and an equity contribution of the Redeveloper. The Redeveloper represents that it has the financial ability to contribute equity in an amount equal to at least 10% of the Project Costs. It is expressly understood that land equity shall be acceptable as equity for the purposes of this Paragraph. The Redeveloper shall submit to the Borough evidence of both firm commitments for mortgage financing and/or any equity capital necessary to Commence Construction of the Expanded Project prior to the Borough issuing the RAB or other form of public financing since repayment of the RAB or other form of public financing is contingent on and expected to be repaid from the future PILOT revenues to be generated by the Expanded Project. The Borough agrees to accept a letter, in substance acceptable to the Borough, from one or more Financial Institution(s), which evidences a firm commitment to provide financing for the construction of the Expanded Project and/or evidence of sufficient equity.

(b) The cost of construction of the Parking Structure shall be a Project Cost, subject to the Borough's contribution as set forth in Section 2.05.

Section 2.08 Project Schedule

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

(b) If Redeveloper fails to meet a Completion Date set forth on the Project Schedule, or in Article

XIII, or determines that it will fail to meet a Project Completion Date, Redeveloper shall promptly provide notice to the Borough stating: (i) the reason for the failure to complete the applicable task, (ii) Redeveloper's schedule for completing such task, and (iii) a request that the Borough extend such Completion Date, which request shall not unreasonably be denied.

Section 2.09 Estoppel Certificates. Within fourteen (14) days (or as soon as reasonably practical) following written request therefore by a Party hereto, or of any Holder, purchaser, tenant or other party having an interest in the Project Site, the other Party shall issue a signed certificate (“Estoppel Certificate”) either stating that this Redevelopment Agreement is in full force and effect and that there is no Event of Default under this Redevelopment Agreement, or stating the nature of the Event of Default. In the event the Estoppel Certificate discloses an Event of Default, it shall also state the manner in which Event of Default may be cured. No more than a reasonable number of Estoppel Certificates may be requested per year.

Section 2.10. Cooperation. The Parties shall fully cooperate with each other as necessary to process and obtain the Governmental Approvals and effectuate the Project Improvements, including entering into additional agreements that may be required, provided however, that such actions and/or agreements shall not result in a material increase or decrease in the Borough’s and the Redeveloper’s respective obligations hereunder.

Section 2.11. Parking Behind ShopRite Site. As of the Effective Date, the Borough shall give up the use of the Redeveloper’s affiliate-owned parking spaces on the property designated as Block 118, Lot 21.01, located behind Shoprite, and remove any parking meters and parking signage.

ARTICLE III **REDEVELOPER OBLIGATIONS**

Section 3.01 Ownership of Project Site. The Redeveloper owns the Property. The Project Site shall only be developed pursuant to the Redevelopment Plan and this Agreement.

Section 3.02 Redeveloper’s Financial Commitment. Redeveloper represents that it will use good faith efforts to obtain all requisite debt and equity financing in an amount sufficient to complete the Project Improvements in all respects.

Section 3.03 Project Costs. All costs of implementing and completing the Expanded Project including but not limited to the cost of obtaining Governmental Approvals, the cost of designing and constructing all Project Improvements, all financing costs, all leasing costs for the Project Improvements, and all Borough Costs shall be borne by the Redeveloper (“Project Costs”), unless otherwise agreed to herein. The Borough shall not be responsible for any costs associated with the Expanded Project, unless otherwise agreed to herein.

Section 3.04 Borough Costs. Pursuant to the RDA and MOU, the Redeveloper agreed to fund and pay for certain commercially reasonable costs including, among others, outside professional consultants such as attorneys, technical consultants, planners, engineers, financial consultants and appraisers, among others, and any other costs incurred by the Borough and which the Borough deemed are related to the Expanded Project (the “Borough Costs”). Upon execution of this Agreement, the Redeveloper’s obligation to fund Borough Costs shall continue until the issuance of a Certificate of Completion for the Expanded Project or unless otherwise agreed to by the Parties. The Borough shall diligently review the Borough Costs incurred by its professionals and determine eligibility for payment of such costs from the escrow. The Redeveloper shall receive a copy of all Borough Costs from the Borough on a monthly basis. The Redeveloper shall have the right to review and comment on the Borough Costs. The Redeveloper’s comments on the Borough Costs shall be in writing and shall not prevent the Borough from paying Borough Costs. However, if the Parties disagree on the Borough Costs, the Parties shall work diligently and in good faith to resolve any such disagreement, while maintaining the minimum

balance in the escrow account. The Redeveloper obligation to pay the Borough for the Borough Costs shall apply to all such costs incurred prior to the termination of this Agreement. The Redeveloper's obligations pursuant to this Section shall survive the termination of this Agreement.

Section 3.05. Sewer and Water Connection Fees. The Redeveloper may be required to pay connection fees for sewer and water service for the Expanded Project. The Redeveloper should review Chapter 141 Sewer Service Charges of the Borough Code and contact the Somerset Raritan Valley Sewerage Authority regarding sewer connection fees. New Jersey American Water provides water service for the Borough and should be contacted regarding any water connection fees. To the best of the Borough's information and knowledge, there are no administrative consent orders or capacity issues with the utilities required for the Expanded Project.

Section 3.06. Long Term Tax Exemption. The Redeveloper and the Borough entered into a financial agreement for the Property dated October 22, 2012 (the "Financial Agreement") for a payment in lieu of taxes ("PILOT") pursuant to the Long-Term Tax Exemption Law necessary to finance the Expanded Project and to make the Expanded Project economically feasible for the Redeveloper. The Parties acknowledge that the Financial Agreement shall remain in full force and effect for the Expanded Project.

ARTICLE IV **APPLICATIONS FOR GOVERNMENTAL APPROVALS**

Section 4.01. Approval of Site Plan.

(a) On December 12, 2018, the Redeveloper received approval from the Borough Planning for its preliminary and final site plan for the Expanded Project (the "Site Plans"), which have been prepared by in accordance with Applicable Laws and are consistent with the Redevelopment Plan.

Section 4.02. Other Governmental Approvals, Construction Plan Review and Commencement of Construction.

(a) After the Planning Board grants approval of the Site Plans, the Redeveloper shall proceed to obtain all remaining Governmental Approvals required for the Expanded Project from any Governmental Agency having jurisdiction over the Expanded Project. Nothing contained in this Agreement shall be construed to prohibit Redeveloper from (i) pursuing preliminary and final site plan approval for the Expanded Project simultaneously or (ii) pursuing any Governmental Approvals prior to Site Plan Approval.

(b) Upon receipt of all Governmental Approvals, except for building permits, for the Expanded Project, the Redeveloper will prepare Construction Plans for the Expanded Project 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 Schedule in Exhibit 1.

(c) To expedite the Commencement of Construction of the Expanded Project, the Borough will use best efforts to have the Borough's Engineering, Building and Construction Department's 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 Expanded Project until such time as the Redeveloper has satisfied all pre-construction requirements prescribed by the Applicable Laws.

Section 4.03. Inability to Obtain Governmental Approval(s) for Site Plan.

(a) The Redeveloper hereby acknowledges and agrees that any changes to the Site Plans which require Planning Board approval must be submitted to the Borough and its professionals for review and approval prior to Redeveloper's re-submission of such changes to the Planning Board, which review, and approval shall not be unreasonably withheld, conditioned or delayed and shall be provided within Thirty (30) Days of receipt of such changes by the Borough. Notwithstanding anything to the contrary above, in the event that the Borough shall fail

to notify the Redeveloper of its approval within thirty (30) Days of its receipt of any changes to the Site Plans, such changes shall be deemed approved.

(b) Any failure to obtain approval(s) for the Site Plans which (i) is caused by the advent of an Uncontrollable Circumstance or Tolling Event, (ii) involves the Redeveloper's or other appeals from any denial or approval of or conditions to any approvals or denials by the Planning Board or other Governmental Agency with jurisdiction over the Project Site (other than the Borough), or (iii) 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 (iv) is required due to actions, decisions or other requirements of any other Governmental Agency maintaining jurisdiction over the Project Site, will not be deemed to be an Event of Default. With respect to clauses (i) through (iv) above, the Redeveloper's time constraints for obtaining approvals for the Site Plans, as set forth hereof shall be extended on a day-to-day basis during the period of the delay or until such time as a final and unappealable judgment is entered by a court of competent jurisdiction, but only if the application then under consideration is consistent with the requirements of the Redevelopment Plan and with the Applicable Law(s). This provision shall not be deemed to limit the rights of either Party pursuant to Section 15.01 hereof.

Section 4.04. Project Modifications. The development and construction of the Expanded Project shall be in accordance with the Redevelopment Plan. The Redeveloper may not modify, alter or amend the approved Site Plans at any time in such a manner that requires Planning Board approval without the express prior written approval of the Planning Board, which respective approvals shall not be unreasonably withheld, conditioned or delayed, subject to the provisions of the Applicable Laws; provided, however, that the Redeveloper may make those modifications, alterations and amendments to the Site Plans and/or Construction Plans, as the case may be, that are "minor" in nature. "Minor" changes shall be deemed to include changes that are consistent with the Redevelopment Plan and any field changes approved by the Borough Engineer or construction code official or applicable sub code official.

Section 4.05. Dedication of Public Improvements and ROWs. The Site Plans must show the dedication and conveyance of any public rights of way and any improvements that are to be dedicated to the Borough or other Governmental Entity(ies), if applicable. If applicable, the Redeveloper is obligated to dedicate and convey to the Borough or other Governmental Agency such rights of way and improvements, and this Agreement shall serve as the Borough's consent to such dedications and conveyances, unless otherwise required by Applicable Law.

Section 4.06. Submission of Construction Plans. Within One Hundred and Eighty (180) days of receiving Site Plan approval from the Planning Board, the Redeveloper shall, at its own cost, cause to be prepared and submitted to the Construction Official of the Borough construction plans for the Expanded Project, which shall be in compliance with the Site Plan, in a form sufficient for the Construction Official to issue a building permit or other permit necessary to Commence Construction.

Section 4.07. Borough Cooperation. To the extent reasonably requested by the Redeveloper and, to the extent permitted by Applicable Law (and without violating its obligations as a governmental entity or regulatory body having competent jurisdiction over the Expanded Project), the Borough shall provide support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, request for inspections and the conduct of such inspections through the appropriate Borough board, body or department, including the Planning Board, as applicable.

ARTICLE V

GENERAL CONSTRUCTION REQUIREMENTS

Section 5.01 Scope of Undertaking. The Redeveloper shall, at its sole cost and expense, undertake the services and responsibilities required to be undertaken or performed with respect to the Expanded Project, except for the Borough's contribution to the Parking Structure provided in Section 2.05(c). Such services and

responsibilities include, without limitation, all aspects of the design, development, construction and operation of the Expanded Project including (a) all design, engineering, permitting and administrative aspects, and (b) the performance of or contracting for and administration and supervision of all physical work required in connection with the Expanded Project, and (c) arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals (all of the foregoing undertakings and the work product thereof being referred to collectively herein as "Work"), (d) the administration, operation and management, or contracting for the administration, operation and management of the Expanded Project, and (e) all aspects of the funding of the Expanded Project, including equity funding and construction, interim and permanent financing.

Section 5.02 Standards of Construction. Without limitation, all work on the Expanded Project shall be performed in a good and workmanlike manner. All construction shall be in accordance with the International Building Code, N.J.A.C. 5:23-1 et seq., based on height and area, unless another class is specifically approved in writing by the Planning Board.

Section 5.03 Neighborhood Impacts. The Redeveloper acknowledges that the construction of the Expanded Project will have certain impacts on the neighborhoods in the vicinity of the Expanded Project. The Redeveloper shall take all commercially reasonable steps to minimize any potential negative effects that construction of the Expanded Project may produce, including, without limitation, dust, debris and noise.

Section 5.04 Existence of Utilities. The Redeveloper acknowledges that utility providers may have certain rights with respect to the Project Site and may own certain facilities located therein. Redeveloper agrees that it will undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and improvements and easements therefore, in order to complete the Expanded Project as provided by this Agreement, provided that the Borough shall provide any appropriate order to accomplish such relocation, consistent with the provisions of N.J.S.A. 40A:12A-10, and that any costs incurred by the Borough in connection with same shall be deemed a Borough Cost. The Redeveloper shall use the services of "Call Before You Dig" and take all other precautions to prevent personal injury, Property damage and other liabilities related to utilities above, at or under the Project Site.

Section 5.05 No Warranty of Suitability. The Redeveloper specifically acknowledges that the Borough makes no representation or warranty, expressed or implied or otherwise, as to the Expanded Project or Project Improvement or the Project Site's fitness for use for any particular purpose, condition or durability thereof, or that it will be suitable for the Redeveloper's purposes.

Section 5.06 Compliance with Governmental Approvals. The Expanded Project shall be constructed substantially in the manner and at the locations shown and described (a) in the Site Plan; (b) the Governmental Approvals, and (c) all other approved plans and specifications related to the development of the Expanded Project (subject to immaterial changes necessitated by field conditions and technical considerations permitted under the Redevelopment Agreement).

Section 5.07. Maintenance, Safety and Security of Project Site. Upon commencement of any activities on the Project Site by the Redeveloper, it shall be required to maintain, secure and address public safety for all areas of the Project Site including any buildings, structures, parking areas, landscaping, streetscaping, sidewalks, including curbing and traffic calming devices, trash collection and receptacles, and all such issues identified in the Borough Property Maintenance Code.

ARTICLE VI **PROJECT OVERSIGHT**

Section 6.01. Progress Meetings. The Parties agree to attend and participate in quarterly progress meetings, as requested by the Borough or Redeveloper, ("Progress Meetings") to report on the status of the

Project Improvements and to review the progress under the Project Schedule. The Progress Meetings shall be held at a time and place to be agreed upon by the Borough and Redeveloper. Prior to the meeting, representatives of the Borough may visit the Project Site to inspect the progress of the work on the Expanded Project and Project Improvements. The Borough acknowledges that the Project Site will be an active construction site and that the Redeveloper shall not be liable or responsible to the Borough, and the Borough hereby indemnifies and hold the Redeveloper harmless for injury to person or Property sustained in connection with such inspection except to the extent that the Redeveloper violates the standard of due care owed to invitees or the Borough's employee or agent is the state mandated inspectors pursuant to the Uniform Construction Code (N.J.A.C. 5:23-1 et seq.) and the Uniform Fire Code (N.J.A.C. 5:70-1 et seq.).

Section 6.02. General Access to the Project Site. The Borough and its authorized representatives shall, subject to compliance with Redeveloper's health and safety requirement, generally have the right to enter the Project Site to inspect the Project Improvements and any and all work in progress. In no event shall the Borough's inspection of the Project Improvements (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement. The Borough acknowledges that the Project Site will be an active construction site and that the Redeveloper shall not be liable or responsible to the Borough, and the Borough shall indemnify the Redeveloper for injury to person or Property sustained in connection with any such inspection, except to the extent that the Redeveloper violates the standard of due care owed to invitees or the Borough's employee or agent is the state mandated inspectors pursuant to the Uniform Construction Code (N.J.A.C. 5:23-1 et seq.) and the Uniform Fire Code (N.J.A.C. 5:70-1 et seq.).

Section 6.03. Planning Board Committee for Field Changes. To facilitate a quick and timely response to day-to-day construction, site and finish issues, any proposed change (field change) to the Site Plan as approved by the Borough Planning Board may be reviewed by a committee established by the Planning Board for this purpose as soon as practicable.

ARTICLE VII

CERTIFICATES OF OCCUPANCY AND COMPLETION

Section 7.01 Certificate of Occupancy. Upon completion of the construction of any building(s) that is included as part of the Project Improvements, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for that building. The Redeveloper shall take all actions required for issuance of a Certificate of Occupancy and the Borough shall promptly process any applications for same. Upon satisfaction of the requirements set forth in the definition of "Substantial Completion," the Redeveloper may apply to the appropriate governmental officer or body for issuance of a Temporary Certificate of Occupancy which shall be effective until such time as a permanent Certificate of Occupancy is received. Notwithstanding the issuance of the Temporary Certificate of Occupancy, the Redeveloper shall not be deemed to have completed the Project Improvements, or portion thereof, as applicable, until the permanent Certificate of Occupancy is issued. As such, until such permanent Certificate is issued, the provisions of this Redevelopment Agreement remain in full force and effect.

Section 7.02. Certificate of Completion. The completion of the Project Improvements shall be evidenced by a certificate of the Borough in recordable form ("Certificate of Completion") accepting the terms of a certification of the Redeveloper stating that: (a) the Project Improvements have been Completed (excluding any normal and customary tenant improvements) in accordance with the Site Plan and Plans; (b) other facilities necessary to achieve Substantial Completion and commence occupancy of a particular portion of the Project Improvements has been acquired, constructed or improved in accordance with the Site Plan and Plans and all Borough review and/or inspection costs and expenses incurred in connection therewith have been paid or adequate security otherwise posted; and (c) a Certificate of Occupancy, if required, and any other permissions required, if any, by Governmental Agencies for the occupancy and use of all or portions of the Project Improvements for the purposes contemplated by this Redevelopment Agreement have been obtained. The Borough shall not unreasonably withhold or delay the delivery of a Certificate of Completion. If the Borough

determines that the Redeveloper is not entitled to a Certificate of Completion, the Borough shall provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate of Completion. If the reason for the refusal is confined to the immediate availability of specific minor finish items, the Borough will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by the Redeveloper with the Borough in an amount representing 125% of the cost of the work not yet completed unless Completion of such work is covered by and secured by Performance Security reasonably acceptable in form and content by the Borough.

Section 7.03 Effect of Certificate of Completion. The Certificate of Completion shall constitute a recordable determination of the satisfaction and termination of the conditions, terms and the Covenants and Restrictions contained in this Agreement, the Redevelopment Law and in the Redevelopment Plan. Upon issuance of a Certificate of Completion for the Expanded Project, or a portion thereof, the conditions determined to exist at the time the Project Site, or portion thereof, was determined to be "an area in need of redevelopment" shall be deemed to no longer exist, and the land and the Project Improvements constructed upon the Project Site shall no longer be subject to eminent domain. If a Certificate of Completion is issued for less than all of the Project Site or Project Improvements, then the balance of the Project Site shall continue to be within the Redevelopment Area and subject to the Redevelopment Plan. Granting of the Certificate of Completion releases all parties of their rights and obligations under this Agreement as to the Expanded Project or part thereof for which the Certificate of Completion is issued.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS

Section 8.01. Representations and Warranties by the Redeveloper. In addition to, but not limited by, any and all other representations and warranties of the Redeveloper contained in this Agreement, the Redeveloper hereby represents and warrants the following to the Borough, all of which shall be true as of the Effective Date (such representations and warranties to survive the termination or expiration of the Term of this Agreement):

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

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

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

(d) No receiver, liquidator, custodian or trustee of the Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper shall have been filed as of the Effective Date.

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

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

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

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

(i) All materials and documentation submitted by the Redeveloper and its agents to the Borough 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 Borough of any material and adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(j) The Redeveloper has the experience and access to the financial resources to develop, design, finance and construct the Project Improvements.

(k) The Redeveloper agrees that the cost and financing of the Expanded Project is the responsibility of the Redeveloper, except for the Borough's contribution to the Parking Structure provided in Section 2.05(c). The Borough shall not be responsible for any additional cost whatsoever in respect to same.

(l) The Redeveloper shall, at such times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by a partner, member or officer of the Redeveloper, setting forth all of the ownership interests of the Redeveloper, or other owners of equity interests of the Redeveloper, and the extent of their respective holdings in the Redeveloper, and in the event any other parties have a beneficial interest in the Redeveloper, their names and the extent of such interest.

(m) Except as expressly set forth by the Borough in this Agreement, neither the Borough nor any of its agents, representatives, employees or officers have made any representations or warranties, expressed or implied, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Redeveloper has not relied on any representations or warranties (except those representations, if any, expressly set forth in this Agreement) as to (i) the current or future real estate tax liability, assessment or valuation of any of its Property, including without limitation, the Project Site or the Project Improvements; (ii) the potential qualification of any of its Property, including without limitation, the Project Site or the Project Improvements for any and all benefits conferred by federal, state or municipal laws; (iii) the current or future use of any of its Property, including without limitation, the Project Site or the Project Improvements, including but not limited to the use of any such Property for any commercial or residential purpose; (iv) the physical condition, including, but not limited to, the environmental condition, of any of its Property, including without limitation, the Project Site or the Project Improvements; and (v) the ability to obtain federal, state, county or municipal approvals for construction or alteration of any improvement on any of its Property, including without limitation, the Project Site or the Project Improvements.

(n) The Redeveloper is entering into this Agreement and shall perform all of its obligations hereunder and consummate the transaction(s) contemplated by this Agreement solely in reliance on and as a result of Redeveloper's own investigations and efforts and at Redeveloper's sole risk, except as expressly set forth by the

Borough in this Agreement. Redeveloper acknowledges that this paragraph was a negotiated part of this Agreement and serves as an essential component of consideration for the same.

Section 8.02. Mutual Representations.

(a) The Borough and the Redeveloper agree that the Expanded Project shall be governed by this Redevelopment Agreement.

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

Section 8.03. Redeveloper Covenants. In addition to, but not limited by, any and all other covenants and agreements of the Redeveloper contained in this Redevelopment Agreement, the Redeveloper hereby covenants and agrees to the following for the purpose of inducing the Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, “Redeveloper Covenants”):

(a) The Redeveloper shall use diligent efforts to obtain all Government Approvals necessary for the construction and development of the Project Improvements. The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and Applicable Law including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper.

(b) The Redeveloper shall (i) seek financing of the Expanded Project that is acceptable to the Redeveloper, in its sole discretion, and (ii) shall begin and Complete construction of each item in the Project Schedule and Article XI hereof, on or prior to the applicable date set forth therein (and for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period). All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project Improvements.

(c) The Redeveloper shall construct the Project Improvements in accordance with this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, the Site Plan, the Plans and all other Applicable Law and, in the event that the Redeveloper wishes to change or modify the Project Improvements, notwithstanding the fact that such change or modification is authorized by the Redevelopment Plan, such changes or modifications must, in all circumstances, comply with this Agreement. The Redeveloper acknowledges that the Borough has relied on the proposed Project Schedule and Article XI hereof, along with its rights to review and approve of the Site Plan and the Plans, in entering into its obligations under this Redevelopment Agreement.

(d) The Redeveloper shall complete the Project Improvements or cause same to be completed, on or prior to the date set forth in the Project Schedule and Article XI hereof at its sole cost and expense, except for the Borough’s contribution to the Parking Structure provided in Section 2.05(c) and subject to Uncontrollable Circumstances and Tolling Event, except as otherwise agreed to herein.

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

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

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

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

(i) The Redeveloper shall promptly pay and discharge all taxes, assessments and other levies imposed upon it, the Project Site and/or the Project Improvements, or any other of its Property located within the Borough, before the same shall become in default subject to reasonable oversight.

(j) In consideration for the rights, benefits and protections afforded the Redeveloper pursuant to this Agreement, the Redeveloper hereby expressly, knowingly, voluntarily and irrevocably waives and relinquishes, to the fullest extent permitted by law, any and all statutory, contractual, common law or other claim, right or claim of right, action, or cause of action it may otherwise have, at law, in equity, or otherwise, to challenge, assert, pursue, institute, enforce, bring suit or any other legal action, or cause of action, dispute, contest, object, appeal or otherwise use as a defense, in any and all legal, administrative, judicial or other proceedings, suits, actions or cause of action, at law, in equity, or otherwise, in any court, tribunal or administrative hearing, or otherwise, including without limitation, any condemnation proceeding, or before any Governmental Agency, or arbitration board or panel, or otherwise, with respect to any and all of the following: (i) the determination, decision, finding, conclusion or action, official or otherwise, by the Borough that the Project Site is an area in need of redevelopment pursuant to, and in accordance with, the Redevelopment Law, (ii) that the Project Site is properly, appropriately, and for all purposes, legally, included within the Redevelopment Area, or (iii) the constitutionality, legal authority, preemption or precedent, in accordance with Federal, State or any other law, or otherwise, of the Redevelopment Law, including any provision contained therein, and its application, by the Borough or any of the Borough's instrumentalities, authorities, agencies, boards, bodies or departments, including without limitation, the Planning Board, or otherwise, to the Project Site, the Redevelopment Area, the Redevelopment Plan, the redevelopment process, or otherwise.

Section 8.04. Borough Covenants.

In addition to, but not limited by, any and all other covenants and agreements of the Borough contained in this Agreement, the Borough hereby covenants and agrees to the following for the purpose of inducing the Redeveloper to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby (collectively, the "Borough Covenants"):

(a) Upon the Completion of the Project Improvements in accordance with the terms hereof, the conditions that were found and determined to exist at the time the Project Site was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project Improvements.

(b) The Borough acknowledges that the Redeveloper has relied on the proposed Project Schedule and the Borough's obligations hereunder and thereunder in entering into its obligations under this Redevelopment Agreement.

(c) Upon Substantial Completion of all or any portion of the Project Improvements, the Borough shall use diligent efforts to issue all permits or approvals to authorize the occupancy and uses of the Project Improvements for the purposes contemplated hereby.

(d) The Borough shall timely review all of the Redeveloper applications and submissions to expedite the issuance of permits and approvals for the development of the Project Improvements.

Section 8.05. Recording of Agreement. Upon the execution of this Agreement, a Memorandum of this Agreement shall be filed and recorded with the Somerset County Clerk, at the Redeveloper's expense. A form of the Memorandum of this Agreement is attached hereto as Exhibit 5.

Section 8.06. Effect and Duration of the Covenants. Except as otherwise set forth herein, it is intended and agreed that the agreements and covenants set forth in this Article VIII and those elsewhere in this Redevelopment Agreement shall be covenants running with the Project Site until the Project Improvements shall be Completed, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Project Improvements, or any part thereof, the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project Improvements, or any part thereof. It is further intended and agreed that the agreements and covenants herein that expressly state shall survive termination of this Redevelopment Agreement shall be covenants running with the Project Site and shall remain in effect without limitation as to time.

Section 8.07. Enforcement of Covenants by the Borough. In amplification, and not in restriction of the provisions of this Article VIII, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, including all other rights as more specifically set forth in Article XI. This Section is not intended to confer standing to sue on any party other than the Borough.

Section 8.08. Enforcement of Covenants by the Redeveloper. In amplification, and not in restriction of the provisions of this Article VIII, it is intended and agreed that the Redeveloper and its permitted successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement. The Redeveloper shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled, including all other rights as more specifically set forth in Article XI.

ARTICLE IX
INDEMNIFICATION; INSURANCE

Section 9.01. Redeveloper Indemnification.

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

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

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

to the Borough's refusal to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

(c) The Redeveloper's indemnity provided under this Section 9.01 shall survive the termination of this Redevelopment Agreement and shall run with the land.

Section 9.02. Insurance Required.

(a) Prior to the commencement of construction of the Parking Structure, the Redeveloper shall maintain and shall cause to be furnished to the Borough, duplicate originals of commercial general liability insurance, insuring the Borough as an additional insured on the policy against losses, costs, liabilities, claims, causes of action and damages for bodily injury and property damage on the Parking Structure or related to the construction of the Parking Structure, in a commercially reasonable amount as required by the Redeveloper or its construction lender for the Parking Structure, if any. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, Property damage, personal injury and other covered loss, including, but not limited to, claims of subcontractors, however occasioned, occurring during the policy term, shall be endorsed to add the Borough as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough.

(b) All insurance policies required by this section shall be obtained from insurance companies licensed in the State of New Jersey and rated at least A in Best's Insurance Guide.

(c) All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by the Borough, (ii) the policies cannot be canceled or materially changed except after thirty (30) days written notice by the insurer to the Redeveloper and Borough, and (iii) the Borough shall not be liable for any premiums or assessments. The Redeveloper's obligation to maintain insurance pursuant to, and in accordance with, this Section 9.02 shall terminate upon issuance of a Certificate of Completion with respect to the Parking Structure.

ARTICLE X
TRANSFERS

Section 10.01. Prohibition Against Speculative Development. The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Project Site and not for speculation in redevelopment.

Section 10.02. Prohibition Against Transfers.

(a) The Redeveloper recognizes that, in view of (i) the importance the redevelopment to the general welfare of the community; (ii) the public assistance to be made available by law and by the Borough on the conditions stated herein, for the purpose of making such redevelopment possible; and (iii) the fact that a change in ownership or control of the Redeveloper, or any other act or transaction involving or resulting in a change in ownership or control of the Redeveloper to the degree thereof, is for practical purposes a transfer or disposition of the property interest then owned by the Redeveloper, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Borough, no voluntary or involuntary successor in interest of the Redeveloper shall acquire any interest in or rights or powers under this Redevelopment Agreement except as expressly set forth herein.

(b) Attached hereto as Exhibit 4 is the ownership structure, including members and interest in the Redeveloper.

(c) In order to assist in the effectuation of the purpose of this Article, the Redeveloper agrees that during the period between the execution of this Agreement and the Completion of the Expanded Project as evidenced by the issuance of a Certificate of Completion, the Redeveloper shall, at such time or times as the Borough may request, furnish the Borough with a complete statement subscribed and sworn to by the managing partner, managing member or other executive officer or member of the Redeveloper, setting forth all of the members, both general and limited, managing members, shareholders, or other owners of equity interests of the Redeveloper or Affiliates, and the extent of their respective holdings, and in the event any other Parties have a beneficial interest in the Redeveloper and/or Affiliates, their names and the extent of such interests.

Section 10.03. Retention of Title to Property; Redeveloper to Maintain its Existence. Except where expressly permitted hereunder, during the Term of this Redevelopment Agreement, the Redeveloper shall not, prior to the issuance of the final Certificate of Completion for the Project Improvements: (a) effect or permit any change, directly or indirectly, in the ownership or control of the Project Site, Project Improvements, or any portion thereof, (b) assign or attempt to assign or convey any interest in this Redevelopment Agreement or any rights herein, or (c) make any total or partial sale, transfer, or conveyance of the whole or any part of its interest in the Project Site or Project Improvements (individually and collectively, a “Transfer”).

Section 10.04. Permitted Transfers.

(a) The Redeveloper, without violating the provisions of Section 10.02 or Section 10.03 hereof, may affect the following Transfers, to which the Borough hereby consents without the necessity of further action by the Borough (“Permitted Transfers”):

(i) security for, and only for, the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement with respect to completing the Project Improvements and any other purpose authorized by this Redevelopment Agreement;

(ii) a mortgage or mortgages and other liens and encumbrances (including mechanic’s liens) for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project Improvements;

(iii) utility and other development easements;

(iv) environmental covenants and restrictions imposed by a regulatory Borough as a condition of any permit or approval;

(v) any lease, option agreement or contract of sale for all or any portion of the Project Improvements provided that the conveyance contemplated thereby occurs following the issuance of a Temporary Certificate of Occupancy or Certificate of Completion as to the Project Improvements;

(vi) transfer of any interest in the Project Site or the Improvements to any partner/member of the Redeveloper or to an Affiliate of the Redeveloper, subject to disclosure by written notification to the Borough of the same;

(vii) a lease of the Project Site to one or more qualified lessees, provided however, that nothing contained herein shall waive, relinquish, release or otherwise relieve the Redeveloper of its obligation to Complete the Project Improvements in accordance with the terms of the Redevelopment Agreement, and provided further that any violation, breach or contravention of this Redevelopment Agreement caused by or on behalf of, or attributable to, a qualified lessee, or any of its agents, servants, employees, officials, contractors or subcontractors, that would cause or result in an Event of Default hereunder shall be deemed a Redeveloper Event of Default;

(viii) any contract or agreement with respect to any of the foregoing exceptions;

(ix) any transfers done for estate planning purposes of the members of the Redeveloper provided that the current managing member of the Redeveloper does not change; and

Section 10.05. Notice of Permitted Transfers. With respect to any Permitted Transfers, the Redeveloper shall endeavor to provide to the Borough written notice within thirty (30) days prior to the Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. The failure to provide notice shall not invalidate any Permitted Transfer. If applicable, the Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Borough in order to assure that the transferee has assumed all of the Redeveloper's obligations under this Redevelopment Agreement as to the Project Improvements (if the Redeveloper's right, title and interest in the Project Improvements is being transferred) or any portion thereof (if the Redeveloper's right, title and interest in a portion of the Project Improvements is being transferred). The Redeveloper shall exercise commercially reasonable efforts with respect to the provisions of any documentation relating to the Permitted Transfer as the Borough may reasonably request.

Section 10.06. Transfers Void. Any transfer of the Redeveloper's interest in violation of this Redevelopment Agreement shall be null and void *ab initio*. Borough shall provide Redeveloper with written notice if Borough believes that there has been a non-Permitted Transfer and Redeveloper shall have thirty (30) days thereafter to cure or dispute such notice in writing. The Redeveloper's failure to cure or dispute such notice within such period shall constitute an Event of Default that shall entitle the Borough to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by the Borough, no such sale, transfer, conveyance or assignment of the Expanded Project, or Project Site, or any part thereof, or approval thereof by the Borough, shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. In the event of any attempted transfer in violation of the restrictions in this Article, the Borough shall be entitled to seek an injunction restraining such transfer, and the award of legal fees and related expenses of the Borough in connection with any such legal action.

Section 10.07. Permitted Mortgages. Notwithstanding the foregoing, the Redeveloper may grant first and second mortgages and security interests (but not mortgages of lower priority) in accordance with the terms of this Redevelopment Agreement.

Section 10.08. Termination of Restrictions. Without limiting any provisions of the Redeveloper's Representations and Warranties, the provisions of this Article shall terminate and be of no further force and effect after the issuance of a Certificate of Completion for the Expanded Project.

ARTICLE XI ADDITIONAL TERMINATION RIGHTS

Section 11.01. Additional Termination Rights of Borough. This Redevelopment Agreement shall terminate upon notice by the Borough to the Redeveloper of its decision to so terminate, notwithstanding whether or not an Event of Default by the Redeveloper has occurred, subject to Market Conditions, if:

(a) On or before twenty-four (24) months from the Effective Date, the Redeveloper has not received all Governmental Approvals necessary to build the Expanded Project, including all outside Governmental Agencies (the "Approval Date");

(b) On or before eighteen (18) months from the Approval Date and securing financing acceptable to Redeveloper, the Redeveloper has not Commenced Construction on the Project Improvements; or

Nothing in this Section 11.01 shall prevent the Borough from declaring that a Redeveloper Event of Default has occurred or from pursuing any of its other remedies hereunder.

ARTICLE XII MORTGAGE FINANCING; NOTICE OF DEFAULT TO MORTGAGEE; RIGHT TO CURE

Section 12.01. Mortgage Financing.

(a) Neither the Redeveloper nor any successor in interest to the Expanded Project, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project Site or the Project Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to the Project Site or the Project Improvements, except for the purpose of obtaining funds in connection with the construction of the Project Improvements, provided however, that upon the issuance of a Certificate of Completion for the Project Improvements, or any portion thereof, such prohibition shall no longer apply with respect to the corresponding parcel of land and improvements. To the extent reasonably requested by the Redeveloper, the Borough shall execute such other agreements and/or documents (in form and content reasonably acceptable to the Borough) as may be requested or required by any Holder (or any equity participant of the Redeveloper), provided however, that any such agreement or document shall not materially and adversely alter any of the rights or obligations of the Redeveloper or the Borough under this Redevelopment Agreement. If the Redeveloper's lender reasonably requires a change in the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Redeveloper in approving such change, so long as the change does not modify or change the substantial rights or obligations of the Parties as set forth in this Redevelopment Agreement.

Section 12.02. Notice of Default to the Redeveloper and Right to Cure.

(a) To the extent that any Holder is required to foreclose against any lien it has with respect to the Project Improvements (as a result of a default by the Redeveloper under any agreements executed by the Redeveloper and its Expanded Project Lenders), the Borough agrees to forebear from the enforcement of any remedies provided under this Redevelopment Agreement that it may have against the Redeveloper in order to permit such Holder to assume the obligations of the Redeveloper under this Redevelopment Agreement, provided however, that the Borough shall not be obligated to forebear from the exercise of any remedies available to it hereunder if such forbearance will result (or may result, in the reasonable judgment of the Borough) in a waiver of the Borough's rights under this Redevelopment Agreement or a material and adverse effect on the Borough's rights or performance obligations hereunder or any material increase in the Borough's financial obligations hereunder.

Section 12.03. No Guarantee of Construction or Completion by Holder.

(a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project Improvements, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project Improvements (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made) without the Holder or Affiliate of Holder first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project Improvements by written agreement reasonably satisfactory to the Borough.

(b) If a Holder forecloses its mortgage secured by the Project Site or Project Improvements, or takes title (in its name or the name of an Affiliate) to the Project Site or Project Improvements by deed-in-lieu of foreclosure or similar transaction (collectively a "Foreclosure"), the Holder or its Affiliate shall have the option to either (i) sell the Project Site or Project Improvements, as applicable, to a responsible Person reasonably acceptable to the Borough, which Person shall expressly assume the obligations of the Redeveloper under this Redevelopment Agreement, and/or (ii) itself, or its Affiliate, expressly assume the obligations of the Redeveloper under this Redevelopment Agreement. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the

entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, must agree to complete the Project Improvements in the manner provided in this Redevelopment Agreement, but subject to reasonable extensions of the applicable Completion Date, and shall submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder or other entity assuming such obligations of the Redeveloper, properly completing the Project Improvements shall be entitled, upon written request made to the Borough, to Certificates of Completion. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of the Redeveloper, to devote the Project Site, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses, or improvements provided for or authorized by this Redevelopment Agreement. The Holder or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Project Site or Project Improvements in accordance herewith.

ARTICLE XIII **EVENTS OF DEFAULT AND REMEDIES**

Section 13.01. Events of Default. Any one or more of the following shall constitute an Event of Default hereunder (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition, obligation or agreement under this Redevelopment Agreement, and continuance of such failure for a period of sixty (60) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied, provided however, if the failure is one which cannot be remedied within the sixty (60) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable.

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

(c) The Redeveloper shall be in default of or violate its obligations with respect to the design, development and/or construction of the Expanded Project in accordance with this Redevelopment Agreement (including, but not limited to, the Project Schedule), the Site Plan or the Plans, or shall abandon or substantially suspend construction work (unless such suspension arises out of an Uncontrollable Circumstance), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so, provided however, that if the default or violation is one which cannot be completely remedied within the ninety days after such written notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding in good faith and with due diligence to remedy the same as soon as practicable .

(d) The filing of a complaint in Foreclosure against the Redeveloper or the issuance of a deed in lieu of Foreclosure for any financing in connection with the Expanded Project.

Section 13.02. Uncontrollable Circumstance. Performance by either party hereunder shall not be deemed to be an Event of Default where delays or failure to perform are the result of an Uncontrollable Circumstance.

Section 13.03. Remedies Upon Events of Default by the Redeveloper.

(a) If an Event of Default by the Redeveloper occurs, then the Borough may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper, as applicable, under this Redevelopment Agreement, including the seeking of damages (including reasonable attorneys' fees and costs). Further, but subject to any cure provisions afforded the Redeveloper hereunder, the Borough shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Redeveloper and any Holder, to terminate this Redevelopment Agreement and the Redeveloper's designation as the redeveloper of the Project Improvements. Termination of this Redeveloper Agreement and payment of any outstanding Borough Costs shall be the Borough's sole remedy in case of Redeveloper default.

(b) In the event that this Redevelopment Agreement is terminated by the Borough pursuant to this Section 13.03, the Redeveloper shall pay over to the Borough all of the costs (including reasonable counsel fees) for any outstanding Borough Costs. The Borough shall have the right to apply to the aforementioned costs incurred by the Borough as aforesaid, any funds of the Redeveloper in the hands of the Borough at the time of such default and termination.

Section 13.04. Remedies Upon Events of Default by the Borough. In the event that an Event of Default by the Borough occurs, then the Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Borough, as applicable, under this Redevelopment Agreement, including the seeking of damages (including reasonable counsel fees and costs). Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Borough, to terminate this Redevelopment Agreement.

Section 13.05. Specific Performance. Unless otherwise provided for in this Agreement, if an Event of Default occurs, or a party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) party shall have the right and remedy, without posting bond or other security, to have the provisions of this Redevelopment Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Borough or the Redeveloper and that money damages may not provide an adequate remedy thereto.

Section 13.06. Failure or Delay. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

Section 13.07. Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies. In no event, however, shall a party be entitled to recover more than its actual damages.

Section 13.08. Continuance of Obligations. The occurrence of an Event of Default shall not relieve the defaulting party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

Section 13.09. Litigation Costs. In the event that a party to this Redevelopment Agreement successfully pursues an action to enforce any remedy provided in this Article, that party shall be entitled to payment by the other party of all reasonable legal and professional fees, and other costs and expenses incurred in connection with such action.

Section 13.10. Mitigation. The parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder.

ARTICLE XIV **MISCELLANEOUS**

Section 14.01. Notices. Formal notices, demands and communications between the Borough and the Redeveloper shall be deemed given three (3) business days after being dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, or on the next business day if by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

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

If to the Borough:

Borough of Somerville
25 West End Avenue
Somerville, New Jersey 08876
Attn: Borough Clerk

with a copy to:

Francis X. Regan, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
61 South Paramus Road
Paramus, New Jersey 07652
Fax: (201) 928-0588
Email: fregan@decotiislaw.com

If to the Redeveloper:

Somerville Urban Renewal Phase III, LLC
1260 Stelton Road,
Piscataway, New Jersey 08854

with a copy to:

Sheryl Weingarten, Esq.
The Weingarten Law Firm
1260 Stelton Road
Piscataway, New Jersey 08854

Section 14.02. Conflict of Interest. No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to this Redevelopment Agreement which is prohibited by law.

Section 14.03. No Consideration for Redevelopment Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or

other consideration for or in connection with this Redevelopment Agreement.

Section 14.04. Non-Liability of Officials and Employees of the Borough. No member, official, employee agent or consultant of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any Event of Default by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

Section 14.05. Non-Liability of Officials and Employee of Redeveloper. No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any Event of Default by the Redeveloper or for any amount which may become due to the Borough, or their successors, on any obligation under the terms of this Redevelopment Agreement unless such liability is separately assumed under a separate document.

Section 14.06. No Brokerage Commissions. The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

Section 14.07. Provisions Not Merged with Deeds. To the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Project Site from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

Section 14.08. Successors and Assigns. This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the parties hereto.

Section 14.09. Titles of Articles and Sections. The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 14.10. Severability. If any term or provision of this Redevelopment Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

Section 14.11. Modification of Redevelopment Agreement. No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

Section 14.12. Execution of Counterparts. This Redevelopment Agreement may be executed in one or more counterparts and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

Section 14.13. Prior Agreements Superseded. This Redevelopment Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes any prior agreement and all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 14.14. Waivers and Amendments in Writing. All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper.

Section 14.15. Drafting Ambiguities; Interpretation. In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

Section 14.16. Political Contributions. The Redeveloper shall comply with the requirements of Borough Ordinance #2304 with regards to political contributions, a copy of which is incorporated herein by reference.

Section 14.17. Governing Law. This Redevelopment Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of New Jersey without regard to conflict of laws principles thereunder and no defense given or allowed by the laws of any other state shall be interposed in any action or proceeding hereon unless such defense is also given or allowed by the laws of the State of New Jersey. The Borough may bring any action or proceeding to enforce or arising out of this Agreement in any court of competent jurisdiction. If the Borough commences such an action in a court located in the County of Somerset, State of New Jersey, or any United States District Court in New Jersey, the Redeveloper hereby agrees that it will submit to the personal jurisdiction of such courts and will not attempt to have such action dismissed, abated or transferred on the ground of *forum non conveniens*, and in furtherance of such agreement, the Redeveloper hereby agrees and consents that without limiting other method of obtaining jurisdiction, personal jurisdiction over it in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New Jersey and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the Redeveloper by registered mail to or by personal service at the last known address of the Redeveloper pursuant to the notice section set forth in this Redevelopment Agreement. Any action or proceeding brought by the Redeveloper arising out of this Redevelopment Agreement shall be brought solely in a court of competent jurisdiction located in the County of Somerset, State of New Jersey, or in a United States District Court in New Jersey. The Redeveloper hereby waives any right to seek removal of any action or proceeding.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE].

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

ATTEST:

**SOMERVILLE URBAN RENEWAL PHASE III,
LLC**

By: _____
Jack Morris, Managing Member

ATTEST:

BOROUGH OF SOMERVILLE

Kevin Sluka, Borough Clerk

By: _____
Dennis Sullivan, Mayor

[SEAL]

STATE OF NEW JERSEY)

)

COUNTY OF MIDDLESEX)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Jack Morris, a Managing Member of SOMERVILLE URBAN RENEWAL PHASE III, LLC, (the “Redeveloper”) on behalf of the Redeveloper.

Notary Public

Commission Expiration: _____

STATE OF NEW JERSEY)

COUNTY OF SOMERSET

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by the Borough of Somerville (the "Borough"), a duly created Borough of the State of New Jersey, by, its Mayor, Dennis Sullivan, on behalf of the Borough.

Notary Public

Commission Expiration: _____

EXHIBIT 1
REDEVELOPMENT PROJECT SCHEDULE

	<i>Task</i>	<i>Completion Date</i>
1	Redeveloper and Borough execute Redevelopment Agreement.	Effective Date
2	Redeveloper submits Governmental Applications for Expanded Project	Completed
3	Redeveloper Submits for all Governmental Approvals Necessary to Build the Expanded Project Including All Outside Governmental Agencies (the "Approval Date")	No later than six (6) months from the Effective Date
4	Redeveloper receives Construction Loan Commitment for Expanded Project	Prior to RAB or other form of debt issuance by the Borough
5	Submission of Application for Building Permits	Three (3) months from receipt of all Governmental Approvals
6	Commencement of Construction	Two (2) months from Issuance of Building Permits, acceptance of construction financing and RAB funding.
7	Completion of Construction	Thirty-six (36) months from Commencement of Construction

EXHIBIT 2
OVERALL SITE PLAN

EXHIBIT 3
PLANNING BOARD RESOLUTION

EXHIBIT 4
Ownership Structure of Redeveloper

- | | |
|------------------------------------|------------------------|
| 1. The Morris Family Spray Trust - | 10% ownership interest |
| 2. Jack Morris | 45% ownership interest |
| 3. Sheryl Weingarten | 45% ownership interest |

EXHIBIT 5

MEMORANDUM OF AMENDED AND RESTATED REDEVELOPMENT AGREEMENT

THIS MEMORANDUM OF AMENDED AND RESTATED REDEVELOPMENT AGREEMENT, made on _____, 2020, (hereinafter referred to as the "Agreement") by and between the **BOROUGH OF SOMERVILLE** (the "Borough"), a body corporate and politic of the State of New Jersey with offices at 25 West End Avenue, Somerville, New Jersey 08876, acting in the capacity of a Redevelopment Entity pursuant to the provisions of the "Local Redevelopment and Housing Law", N.J.S.A. 40A:12A-1 et seq. (the "Redevelopment Law" or "LRHL") and **SOMERVILLE URBAN RENEWAL PHASE III, LLC (successor in interest to JSM AT SOMERVILLE, LLC)**, and/or its affiliates (the "Redeveloper") with offices at 1260 Stelton Road, Piscataway, New Jersey 08854, (singularly, a "Party", collectively referred to as the "Parties").

WITNESSETH:

WHEREAS, the Borough and the Redeveloper entered into an agreement for the redevelopment of the Tax Block 117.01; Lot 1.03 ("Property"), which agreement sets forth all of the terms, covenants, conditions, representations and agreements of the parties and is entitled "Amended and Restated Redevelopment Agreement by and between the Borough of Somerville and Somerville Urban Renewal Phase III, LLC (Successor In Interest To JSM at Somerville, LLC), and/or its affiliates" dated as of _____, 2020 (the "Redevelopment Agreement").

NOW, THEREFORE, for good and valuable consideration, it is agreed as of the date set forth above by and between the Borough and the Redeveloper, as follows:

1. The Redevelopment Agreement contains covenants which Redeveloper and/or Borough shall comply with, including, but not limited to, each of the covenants set forth in N.J.S.A. 40A:12A-9, and including Section 2.05(c) of the Redevelopment Agreement. Upon the termination of the Redevelopment Agreement by the filing of a Certificate of Completion or otherwise, certain obligations shall survive, namely:
 - a. The Redeveloper shall not discriminate against or segregate any person, or group of persons, on account of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Improvements, nor shall the Redeveloper itself, or any Person claiming under or through the Redeveloper, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessees, or vendees of the Project Improvements.
 - b. The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project Improvements on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference or gender of any person.
 - c. The Redeveloper shall have exclusive use of 294 spaces in the Parking Structure. The remaining spaces (227+/- based on the approved Site Plan) shall be available by the general public for a fee or no fee determined at the discretion of the Redeveloper. The spaces for use by the general public in the Parking Structure shall remain so in perpetuity. The requirement for the use of spaces in the Parking Structure by the general public shall survive the termination of the Redevelopment Agreement.

- d. Upon the Expanded Project's completion, Redeveloper property tax overpayments of \$632,303.28 shall be evenly credited in the amount of \$15,807.58 against the first forty (40) quarterly tax bills payable under the Financial Agreement. Such credits shall be reflected on the quarterly bills issued by the Borough pursuant to the Financial Agreement.
2. This Memorandum of the Redevelopment Agreement is executed for the purpose of giving notice of the existence of the Redevelopment Agreement and the terms thereof. Reference is made to the Redevelopment Agreement for the full description of the rights and duties of the Borough and the Redeveloper, and this Agreement shall in no way affect or modify any of the terms and conditions of the Redevelopment Agreement, all of which remain in full force and effect until the termination of the Redevelopment Agreement by the filing of a Certificate of Completion or otherwise, unless otherwise stated herein, or the interpretation of rights and duties of the Borough and Redeveloper thereunder. A complete copy of the Redevelopment Agreement is on file with the Borough Clerk of the Borough of Somerville at Borough Hall, 25 West End Avenue, Somerville, New Jersey 08876.

IN WITNESS WHEREOF, the Borough and the Redeveloper have caused this Memorandum of the Amended and Restated Redevelopment Agreement to be duly executed on this _____ day of _____, 2020.

ATTEST: **SOMERVILLE URBAN RENEWAL PHASE III, LLC**

_____ By: _____
Jack Morris, Managing Member

ATTEST: **BOROUGH OF SOMERVILLE**

_____ By: _____
Kevin Sluka, Borough Clerk Dennis Sullivan, Mayor

[SEAL]

STATE OF NEW JERSEY)

)

COUNTY OF MIDDLESEX)

The foregoing instrument was acknowledged before me this _____ day of _____, 2020, by Jack Morris, a Managing Member of SOMERVILLE URBAN RENEWAL PHASE III, LLC, (the “Redeveloper”) on behalf of the Redeveloper.

Notary Public

Commission Expiration: _____

STATE OF NEW JERSEY)

COUNTY OF SOMERSET

The foregoing instrument was acknowledged before me this ____ day of _____, 2020, by the Borough of Somerville (the "Borough"), a duly created Borough of the State of New Jersey, by, its Mayor, Dennis Sullivan, on behalf of the Borough.

Notary Public

Commission Expiration: _____

EXHIBIT 6

AIA DOCUMENT G703 – SUBCONTRACTOR APPLICATION FOR PAYMENT

EXHIBIT 7

ESTIMATED CONSTRUCTION SCHEDULE