

**TOWNSHIP OF LONG HILL  
RESOLUTION 22-291  
AUTHORIZING AND APPROVING A REDEVELOPMENT AGREEMENT BY AND BETWEEN THE  
TOWNSHIP OF LONG HILL ("TOWNSHIP") AND STIRLING SL URBAN RENEWAL LLC  
("REDEVELOPER")**

**WHEREAS**, on June 9, 2021, the Township Committee of the Township of Long Hill (the "Committee" or "Township Committee") adopted Resolution 21-166, authorizing the Township Planning Board ("Planning Board") to undertake a preliminary investigation of the Property (defined hereafter) to determine whether it was an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-1 et. seq ("LRHL"); and

**WHEREAS**, on December 14, 2021, following a duly noticed public hearing held on November 23, 2021, the Planning Board adopted Resolution 2021-12-PB memorializing its determination to accept and adopt the findings of the investigative report entitled "Area in Need of Redevelopment Study for Block 11401, Lot 7" prepared by Jessica Caldwell, PP, AICP of J. Caldwell & Associates, LLC and recommending that the Property be designated as a non-condemnation redevelopment area; and

**WHEREAS**, on January 19, 2022, the Township Committee adopted resolution 2022-043 designating the Property as a non-condemnation redevelopment area in accordance with the LRHL; and

**WHEREAS**, on August 10, 2022, the Township Committee introduced on first reading Ordinance 498-22, "Adopting 1106-1122 Valley Road Redevelopment Plan, Block 11401, Lot 7 (A/K/A the Former Carwash Site)," a redevelopment plan to govern the redevelopment of the Property pursuant to the LRHL (the "Redevelopment Plan"); and

**WHEREAS**, on September 28, 2022, after complying with all procedural requirements required under the LRHL and MLUL (defined hereafter), the Township Committee held a public hearing concerning the Redevelopment Plan, and following same adopted the Redevelopment Plan; and

**WHEREAS**, the Redeveloper is under contract ("Purchase Agreement") to purchase the Property from the current title owner for the purpose of constructing the Project (defined herein) as described more fully within this Agreement, and the Township is also willing to make certain statutorily authorized tax exemptions or incentives available to Redeveloper in connection with the Project; and

**WHEREAS**, the Township has determined that the redevelopment of the Property in accordance with the applicable provisions of the Redevelopment Plan and this Agreement will contribute to the reinvigoration of the Township, as well as to further the social and economic improvement of the Township in accordance with the legislative intent, goals and objectives of the LRHL; and

**WHEREAS**, the Township has determined that the Redeveloper possesses the proper qualifications, financial resources and capacity to implement and complete the Project in accordance with the Redevelopment Plan and all other applicable laws, ordinances and regulations; and

**WHEREAS**, the Township believes the Project to be in the vital and best interests of the Township of Long Hill, and that it promotes the health, safety, morals and welfare of the Township's residents; and

**WHEREAS**, to effectuate the purposes of the Act, the Township and Redeveloper agree to enter into a Redevelopment Agreement attached hereto as Exhibit "A" in order to further the Project.

**NOW, THEREFORE, BE IT RESOLVED** by the Township Committee of the Township of Long Hill, County of Morris, State of New Jersey that it does hereby authorize and approves the Redevelopment Agreement between Stirling SL Urban Renewal LLC ("Redeveloper"), and the Township of Long Hill, attached hereto as Exhibit "A;" and

**BE IT FURTHER RESOLVED** that the Mayor and Clerk are hereby authorized to execute the Redevelopment Agreement on behalf of the Township and the appropriate Township officials are hereby authorized to take the necessary action in furtherance of the Redevelopment Agreement

INTRODUCED	SECONDED	COMMITTEE	AYE	NAY	ABSTAIN	ABSENT
		DORSI			x	
		LAVENDER	x			
		PISERCHIA	x			
x		RAE	x			
	x	VERLEZZA	x			

I, Megan Phillips, Township Clerk of the Township of Long Hill, County of Morris, State of New Jersey, hereby certify this to be a true copy of a resolution adopted by the Township Committee December 14, 2022.

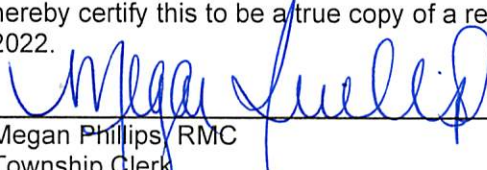
  
 \_\_\_\_\_  
 Megan Phillips, RMC  
 Township Clerk

EXHIBIT A

**REDEVELOPMENT AGREEMENT**

**By and Between**

**THE TOWNSHIP OF LONG HILL**

**as Redevelopment Entity**

**and**

**STIRLING SL URBAN RENEWAL LLC**

**as Redeveloper**

**Dated as of December \_\_\_, 2022**

## REDEVELOPMENT AGREEMENT

**THIS REDEVELOPMENT AGREEMENT** (the “**Agreement**” or “**Redevelopment Agreement**”) dated this \_\_\_\_ day of December, 2022 entered into by and between **THE TOWNSHIP OF LONG HILL** (the “**Township**”), a public body corporate and politic of the State of New Jersey having its offices at Town Hall Municipal Building, 915 Valley Road, Gillette, New Jersey 07933, in its capacity as redevelopment entity pursuant to N.J.S.A. 40A:12A-4(c), and **STIRLING SL URBAN RENEWAL LLC**, a limited liability company of the State of New Jersey having an office at 31 Springbrook Road, Morristown, New Jersey 07960 (the “**Redeveloper**”) (collectively, the “**Parties**”).

### WITNESSETH

**WHEREAS**, on June 9, 2021, the Township Committee of the Township of Long Hill (the “**Committee**” or “**Township Committee**”) adopted Resolution 21-166, authorizing the Township of Long Hill Planning Board (“**Planning Board**”) to undertake a preliminary investigation of the Property (defined hereafter) to determine whether it was an area in need of redevelopment pursuant to N.J.S.A. 40A:12A-1 et. seq (“**LRHL**”); and

**WHEREAS**, on December 14, 2021, following a duly held public hearing conducted by the Planning Board on November 23, 2021, the Planning Board adopted Resolution 2021-12-PB memorializing its determination to accept and adopt the findings of the investigative report entitled “Area in Need of Redevelopment Study for Block 11401, Lot 7” prepared by Jessica Caldwell, PP, AICP of J. Caldwell & Associates, LLC and recommending that the Property be designated as a non-condemnation redevelopment area; and

**WHEREAS**, on January 19, 2022, the Township Committee adopted resolution 2022-043 designating the Property as a non-condemnation redevelopment area in accordance with the LRHL; and

**WHEREAS**, on August 10, 2022, the Township Committee introduced on first reading Ordinance 498-22, “Adopting 1106-1122 Valley Road Redevelopment Plan, Block 11401, Lot 7 (A/K/A the Former Carwash Site),” a redevelopment plan to govern the redevelopment of the Property pursuant to the LRHL (the “**Redevelopment Plan**”); and

**WHEREAS**, on September 28, 2022, after complying with all procedural requirements required under the LRHL and MLUL (defined hereafter), the Township Committee held a public hearing concerning the Redevelopment Plan, and following same adopted the Redevelopment Plan; and

**WHEREAS**, the Redeveloper of is or will be the owner of certain parcels of real property commonly known as 1106-1122 Valley Road, Stirling (Long Hill Township), New Jersey 07980 and identified on the tax maps of the Township of Long Hill as Block 11401, Lot 7, together with all of the improvements thereon, and this entire property is located within the boundaries of the area governed by the Redevelopment Plan; and

**WHEREAS**, the Township has determined that the redevelopment of the Property in accordance with the applicable provisions of the Redevelopment Plan and this Agreement will

contribute to the reinvigoration of the Township, as well as to further the social and economic improvement of the Township in accordance with the legislative intent, goals and objectives of the LRHL; and

**WHEREAS**, the Redeveloper is under contract (“**Purchase Agreement**”) to purchase the Property from the current title owner for the purpose of constructing the Project (defined herein) as described more fully within this Agreement, and the Township is also willing to make certain statutorily authorized tax exemptions or incentives available to Redeveloper in connection with the Project; and

**WHEREAS**, the Township has determined that the Redeveloper possesses the proper qualifications, financial resources and capacity to implement and complete the Project in accordance with the Redevelopment Plan and all other applicable laws, ordinances and regulations; and

**WHEREAS**, the Township believes the Project to be in the vital and best interests of the Township of Long Hill, and that it promotes the health, safety, morals and welfare of the Township of Long Hill’s residents;

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

## ARTICLE 1

### DEFINITIONS

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

“**Affiliate**” shall mean a person or entity which, directly or indirectly, controls, is controlled by, or is under direct or indirect common control with, the relevant person or entity.

“**Applicable Laws**” shall mean all federal, state and local laws, ordinances, approvals, rules, regulations statutes, permits, resolutions, judgments, orders, decrees, directives, interpretations, standards, licenses and other similar requirements applicable thereto, including but not limited to, the LRHL; the Municipal Land Use Law, N.J.S.A. 40:55D -1 et seq.; the Eminent Domain Act, N.J.S.A. 20:3-1 et. seq.; the Zoning Ordinances of the Township of Long Hill, as and to the extent applicable pursuant to the terms of the Redevelopment Plan; relevant construction codes including construction codes governing access for people with disabilities; and all other applicable federal, state or local zoning, land use, environmental, health and safety laws, ordinances, rules and regulations, and federal and state labor standards or regulations, if any.

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

**“Certificate of Completion”** means written acknowledgment by the Township in recordable form that the Redeveloper has completed construction of the Project in accordance with the requirements of this Redevelopment Agreement.

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

**“Township”** means the Township of Long Hill, New Jersey.

**“Closing”** means the conveyance of title to the Property to Redeveloper in accordance with the Purchase Agreement.

**“Closing Date”** means the date on which title to the Property is conveyed to the Redeveloper in accordance with the Purchase Agreement.

**“Commence Construction”, “Commencement of Construction”, or “Commencement Date”** shall mean the date on which the construction force and machinery is mobilized for construction of the Project in accordance with Governmental Approvals.

**“Completion of Construction”, “Complete Construction” or “Completion Date”** means the date on which the Redeveloper has substantially completed construction of the Project and obtained all Certificates of Occupancy required therefor.

**“Completion Notice” or “Notice of Completion”** means a written notification of Completion of Construction and request by the Redeveloper for the issuance by the Township a Certificate of Completion.

**“Days”** shall mean calendar days.

**“Declaration of Covenants and Restrictions” or “Declaration of Restrictions”** means a written instrument intended to be executed by Redeveloper, to be recorded in the Office of the Morris County Clerk and to encumber the Property and run with the land, setting forth certain undertakings of and restrictions applicable to Redeveloper and its permitted successors and assigns in connection with the ownership, redevelopment or rehabilitation of the Property, all as more particularly described in Article 6 of this Agreement.

**“Default”** means a condition or event which constitutes or would constitute, after notice and a right to cure or lapse of time or both, an Event of Default as more particularly defined in Article 9 of this Agreement.

**“Effective Date”** means the date this Redevelopment Agreement is fully executed.

**“Eminent Domain”** means the utilization of condemnation by the Township pursuant to the Eminent Domain Act, N.J.S.A. 20:3-1 et. seq.

**“Event of Default”** shall have the meaning set forth within Section 9.1 of this Agreement.

**“Existing Members”** means the person(s) or entity(ies) owning membership interests in the Redeveloper as of the date of this Agreement, as identified in Exhibit B annexed hereto.

**“Force Majeure Event”** means any event or condition beyond the reasonable control of Redeveloper, including but not limited to delay caused by governmental action, or lack thereof (including, without limitation, any delay in the issuance of required permits or in the scheduling or performance of required inspections, or any Legal Requirement relating to any pandemic, epidemic or other public health emergency (including COVID-19)); shortages or unavailability of materials; general labor disputes (including, but not limited to, strikes, slowdowns, job actions, picketing and/or secondary boycotts); fire, explosion or other casualty; delays in transportation; delays due to adverse weather conditions; acts of God; acts of declared or undeclared war, acts of terrorism, public disorder, riot or civil commotion; any epidemic, pandemic, or other public health emergency other than COVID-19; or by any other similar cause beyond the reasonable control of Redeveloper, including delays caused directly or indirectly by an act or a failure to act by the Township or its employees, agents, contractors, or consultants.

**“Governmental Approvals”** means all (or such elements as Redeveloper deems sufficient) final, unappealed and unappealable local, state and federal governmental approvals necessary or appropriate for implementation and completion of the Project in accordance with the terms of this Agreement, including without limitation preliminary and final site plan approval from the Township of Long Hill Planning Board; environmental and other permits, including but not limited to flood hazard permits, waterfront development permits and wetlands permits from the New Jersey Department of Environmental Protection; storm water drainage permits and approvals, including but not limited to approval from the Morris County Planning Board; site access permits or approvals, including but not limited to permits from the New Jersey Department of Transportation; if and as applicable, the vacation of all or a portion of paper streets, by the Township; utilities-related permits, including permits related to water supply and sewer service; and all other necessary permits, licenses, consents, permissions or approvals from or required by governmental agencies.

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

**“Notice of Violation”** shall have the meaning set forth in Section 9.2 of this Agreement.

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

**“Permitted Transfer”** shall have the meaning ascribed to such term in Section 7.2 of this Agreement.

**“Plans and Specifications”** mean all plans, drawings, specifications and related documents needed to implement and to Complete Construction of the Project in accordance with this Agreement and all applicable Governmental Approvals.



“**Project**” shall mean the development of the Property under this Agreement and as specifically described within Section 2.4 of this Agreement.

“**Project Schedule**” means the agreed upon timetable and performance milestones for fulfillment of the Conditions Precedent, design, obtaining Governmental Approvals, site preparation, and Completion of Construction the Project as set forth on **Exhibit A** attached hereto, as may be modified or adjusted from time to time in accordance with the provisions of this Agreement.

“**Property**” means the parcel of real property currently owned or soon to be owned by the Redeveloper, commonly known as commonly known as 1106-1122 Valley Road, Stirling (Long Hill Township), New Jersey 07980 and identified on the tax maps of the Township of Long Hill as Block 11401, Lot 7, together with all of (i) the improvements thereon, and (ii) all easements, licenses, rights and appurtenances relating to any of the foregoing.

“**Redevelopment Entity**” means the Township of Long Hill, New Jersey or its successors or assigns acting in the capacity of “redevelopment entity” for purposes of the LHRL.

“**Redeveloper**” means Stirling SL Urban Renewal LLC.

“**Termination Notice**” shall have the meaning set forth within Section 9.2 of this Agreement.

“**Transfer**” shall mean, pursuant to N.J.S.A. 40A:12A-9, any sale, lease or other transfer of the Property, Project, or any part thereof, and as otherwise set forth in Section 7.1, without the written consent of the Township. Notwithstanding any provision that may be construed to the contrary in this Agreement, a Permitted Transfer shall not be deemed a Transfer. The entering into of a contract or other agreement to perform any action that, if consummated, would constitute a Transfer shall not constitute a Transfer unless and until so consummated.

## ARTICLE 2

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

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

**2.2 Redeveloper’s Scope of Undertaking.** The services and responsibilities undertaken by the Redeveloper, as more particularly set forth in this Agreement, shall include all aspects of the acquisition, design, development, site preparation, construction and operation of the Project, including, without limitation, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all construction required in connection with the Project, arrangement for interim and final inspections and any other actions required to satisfy the requirements of all Governmental Approvals necessary to develop and use the Project, marketing, sales and the administration, operation and management of the Project; and all aspects

of the funding of the Project, including equity funding and construction, interim and permanent financing.

**2.3 Term of Agreement.** This Agreement shall commence on the Effective Date and, unless extended by the parties in writing or as otherwise permitted by the terms of this Agreement, shall expire upon the date that is the earlier to occur of: (i) issuance of a Certificate of Completion for the Project (as hereinafter defined); and (ii) the first business day occurring after the five (5) year anniversary of the Effective Date (the “**Initial Term**”). Redeveloper shall have the right to extend the Initial Term for an additional period of two (2) years (the “**Extended Term**”), by sending written notice of such election to the Township prior to expiration of the Initial Term. The Initial Term, including as may be extended by the Extended Term, is sometime referred to herein as the “**Term.**”

**2.4 The Project.** The Project is presently expected to consist of residential housing for senior citizens comprised of approximately one hundred and six (106) senior units, together with resident amenity space, office space, and other similar uses and supportive and ancillary spaces in accordance with the Redevelopment Plan.

### **ARTICLE 3** **CONDITIONS.**

**3.1 Conditions Precedent.** In addition to any other conditions contained within this Agreement, and notwithstanding any contrary provision of this Agreement, satisfaction of the following, during the Term of this Agreement, shall be conditions precedent to the Redeveloper’s obligation to perform in accordance with this Agreement, including but not limited to developing or redeveloping the Property in accordance with the Project Schedule (collectively, the “**Conditions Precedent**”):

(i) **Closing of Title to the Property:** Closing of title to the Property, vesting fee simple title in Redeveloper pursuant to a Bargain and Sale Deed with Covenant’s Against Grantor’s Acts in accordance with the terms and conditions of the contract with the owner of the Property.

(ii) **Site Plan Approval:** The Redeveloper applying for and obtaining preliminary and final site plan approval from the Township of Long Hill Planning Board for the development of the Project (“**Site Plan Approval**”), with such Site Plan Approval being in final, unappealed and unappealable form.

(iii) **Outside Agency Approvals:** The Redeveloper applying for and obtaining all applicable Governmental Approvals, with such Governmental Approvals being in final, unappealed and unappealable form, including but not limited to all applicable Government Approvals from NJDEP (“**DEP Approvals**”), including but not limited to: (a) flood hazard permit in accordance with N.J.S.A. 58:16A-50, et seq.; and (c) wetlands permit in accordance with N.J.S.A. 13:9B-1, et seq., if required for the Project.

(iv) **PILOT:** The Redeveloper applying for, and the Township approving and executing, a Financial Agreement providing for, a tax abatement and payment in lieu of taxes pursuant to N.J.S.A. 40A:20-1 et seq. pursuant to the Long Term Tax Exemption Law (a

“**Financial Agreement**” or “**PILOT**”), which PILOT governs the Property for a term of no less than thirty (30) years from the date of completion on terms acceptable to Redeveloper in its sole discretion, with such PILOT being in final, unappealed and unappealable form. The Township agrees to consider the Redeveloper’s application for PILOT approval in good faith and in accordance with the applicable criteria set forth in the Applicable Laws and to make a determination on the application within ninety (90) days of its submission by Redeveloper.

Redeveloper, in its sole and absolute discretion, may expressly waive any or all of the Conditions Precedent set forth above in this Section 3.1 by delivering written notice of any such waiver to the Township. If Redeveloper elects to proceed with prior to the fulfillment of all, or any, Conditions Precedent, then the Township shall continue to work diligently to accomplish all Conditions Precedent which it has control over.

#### **ARTICLE 4** **IMPLEMENTATION OF PROJECT**

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

**4.2 [Deleted]**

**4.3 Governmental Approvals.**

**4.3(a) Diligent Pursuant of Governmental Approvals.** Redeveloper shall pursue in good faith all Government Approvals in final, unappealed, unappealable and unconditional form (or subject to conditions acceptable to Redeveloper in its sole discretion), with any appeal being finally adjudicated in the court of appropriate jurisdiction on terms and conditions acceptable to Redeveloper in its sole discretion, and otherwise substantially as requested by Redeveloper. If all governmental approvals are not received within three (3) years and six (6) months of execution, this agreement shall be deemed to be terminated unless the parties have agreed in writing to extend this deadline.

**4.3(b) Appeals.** If (i) one of more of Redeveloper’s applications for Governmental Approvals is denied, or approved with conditions that Redeveloper in its sole judgment deems unacceptable, or (ii) anyone contests or challenges the grant of such Governmental Approval to Redeveloper, Redeveloper may, but shall have no obligation to, appeal or defend against such action. Should Redeveloper elect to appeal or defend such action, the timeframes on the Project Schedule shall be tolled until the litigation is finally concluded with no further right of appeal by any party.

**4.4 Commencement and Completion of Construction.** The Redeveloper shall Commence Construction of this Project on or before the Outside Date set forth in the Project Schedule, but in

no event any later than twenty-four (24) months after the later to occur of (i) the Closing, or (ii) the satisfaction of all Conditions Precedent. The Redeveloper shall Complete Construction of this Project within thirty-six (36) months of Commencement of Construction.

**4.5 Work to be Performed by Redeveloper; Progress Reports.** The Redeveloper at its sole cost and expense shall perform all demolition, site preparation, construction, operation, administration and management of the Project. From the Commencement of Construction until the date that the Certificate of Completion is issued for this Project, the Redeveloper shall make periodic reports, in such detail and at such times as may reasonably be requested in writing by the Township, as to the actual progress of the Redeveloper with respect to such construction. In addition, if so requested in writing by the Township, Redeveloper shall attend and participate in periodic progress meetings as called by the Township based on reasonable need therefore (as determined by the Township in its sole discretion) to report on the status of the Project and to review the progress under the Project Schedule.

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

**4.7 Estoppel Certificates (Prior to Issuance of Certificate of Completion).** At any time and from time to time prior to the issuance of a Certificate of Completion, the Township shall, within thirty (30) Days of its receipt of a written request by the Redeveloper, execute and deliver to (a) the Redeveloper, or (b) a third party (e.g., a prospective lender, purchaser, investor, tenant, etc.) designated by the Redeveloper, an instrument in which the Township (i) certifies that this Agreement is unmodified and in full force and effect as to the Project (excepting only

modifications which shall be set forth), (ii) states whether to the best knowledge of the Township the Redeveloper is in Default under this Agreement, and, if so, specifying each such Default of which the Township shall have knowledge; and (iii) confirms such other factual matters within the Township's knowledge or control pertinent to this Agreement, as the same relate to, or might affect, the Project or the Property

#### **4.8 Reimbursable Township Costs.**

**4.8(a) Reimbursable Costs.** The Redeveloper shall reimburse the Township for the Reimbursable Township Costs (defined hereafter) in accordance with this Section 4.8. As used in this Agreement, the term "**Reimbursable Township Costs**" shall mean the reasonable, out-of-pocket outside professional and consultant fees, costs or expenses actually and reasonably incurred by the Township in connection with the Project, including the reasonable out-of-pocket costs of any third-party attorney, engineer, traffic consultant, architect, planner, financial advisor or other consultant(s), retained by the Township in connection with the preparation and drafting of the Redevelopment Plan and all amendments thereto and this Agreement and professional fees associated with compliance and review of the implementation of this Redevelopment Agreement and any amendments thereto, but shall not include: (i) the costs of wages, salaries and benefits paid to employees of the Township providing services in furtherance of the Project or otherwise performed in the ordinary course; or (ii) fees, costs and expenses incurred in connection with any litigation or action instituted by the Township, the Redeveloper, or any other third party arising from or relating to the subject matter of this Agreement, the Redevelopment Plan, or Financial Agreement (or any amendments to any of the foregoing), or otherwise relating to the Project or the Property.

**4.8(b) Payment of Reimbursable Township Costs.** Upon the Effective Date of this Agreement, the Redeveloper agrees to establish with the Township's chief financial officer an escrow account (the "**Escrow Account**") having an initial balance of Fifteen Thousand Dollars (\$15,000.00) from which the Reimbursable Township Costs shall be paid. Prior to the Township's withdrawal of funds from the Escrow Account for the payment of any Reimbursable Township Costs, the Township shall provide the Redeveloper with a copy of each and every invoice reflecting the Township Costs to be paid. Unless the Redeveloper provides a written objection within twenty (20) calendar days after its receipt of any such copy of an invoice stating that any invoiced item is not a valid Reimbursable Township Cost pursuant to the terms of this Agreement, the Township shall be free to withdraw funds from the Escrow Account for the payment of such invoiced services; provided, however, that the Redeveloper's failure to object within such twenty (20) calendar days shall not be a waiver of Redeveloper's rights to dispute such payment pursuant to the provisions of N.J.S.A. 40:55D-53.2 et seq. If, when and as often as may occur that the Escrow Account is drawn down to or below five Thousand (\$5,000.00) Dollars, the Township shall so notify the Redeveloper and the Redeveloper shall, not later than thirty (30) days after receipt of such written notice from the Township, provide to the Township an amount sufficient to replenish the Escrow Account to Ten Thousand (\$10,000.00) Dollars for use in accordance with the terms of this Redevelopment Agreement. The Redeveloper shall also have the right to request a decrease in the balance required on the Escrow Account as the Project progresses, which request shall not be unreasonably denied by the Township. The Redeveloper agrees that upon execution of this Agreement and deposit of the escrow that the Township shall be reimbursed a maximum of \$10,000.00 for costs related to the Project incurred by the Township to date.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and Warranties by the Redeveloper.** The Redeveloper makes the following representations and warranties to induce the Township to enter into this Agreement and consummate the transactions contemplated hereby:

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

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

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

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

(5) To the best of the Redeveloper's knowledge and belief after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefore, known or believed to exist which (i) questions the validity of this Redevelopment Agreement, Redeveloper's execution hereof, or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's (or any Affiliate's) property, assets, liabilities or condition which will materially and substantially impair the Redeveloper's ability to perform the Project under this Agreement.

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

(7) Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating and maintaining the Project.

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

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

**5.2 Representations, Warranties and Covenants by the Township.** The Township hereby makes the following representations, warranties and covenants, to induce the Township to enter into this Agreement and consummate the transactions contemplated hereby:

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

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

(3) There is no action, proceeding or investigation now pending nor any basis therefore, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by the Township pursuant to this Agreement;

(4) There is no pending litigation which affects the Redevelopment Area designation or the Redevelopment Plan;

(5) The Township shall use its diligent, good faith efforts, and shall cause its agents, employees, professionals and subcontractors to use their diligent, good faith efforts, in complying, performing and observing all of the terms, covenants, obligations and conditions contained in this Agreement.

(6) The Township shall fully cooperate with Redeveloper to ensure that all Governmental Approvals necessary for the Project are obtained. Furthermore, the Township agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan and this Agreement, and to execute and delivery any documents required to obtain such Governmental Approvals; provided that nothing contained in this section shall be deemed to constitute an approval of all or any part of the Project for which applications have been submitted or are required; or a waiver of the ability of any governmental authority to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. Without limiting the generality of the foregoing, the Township shall: (i) request that all agencies of the Township having any jurisdiction over any of the Governmental Approvals act in good faith and with continuity of purposes to expedite the processing of all applications for such Governmental Approvals; (ii) schedule, convene and conclude all required public hearings in an expeditious manner consistent with Applicable Laws; and (iii) cause all of the planners, engineers, and other consultants engaged by the Township, or any of its agencies, to

review and comment on all submittals by the Redeveloper in a reasonably expeditious manner; and

(7) The Township shall not amend or cause the amendment of the Redevelopment Plan without the prior written consent of the Redeveloper.

## **ARTICLE 6** **COVENANTS AND RESTRICTIONS**

**6.1 Description of Redeveloper Covenants.** The Redeveloper hereby covenants:

(1) Pursuant to N.J.S.A. 40A:12A-9, Redeveloper shall construct only the uses established in the Redevelopment Plan;

(2) Pursuant to N.J.S.A. 40A:12A-9, Redeveloper shall Commence Construction of the Project within the times established herein;

(3) Pursuant to N.J.S.A. 40A:12A-9, except as otherwise authorized by this Agreement, the Redeveloper shall not sell, lease or otherwise transfer the Property without the Township's written consent, which consent shall not be unreasonably withheld; and

(4) In connection with its use or occupancy of the Project, Redeveloper shall not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Property or the Project is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and the Redeveloper, its successors and assigns, shall comply with all applicable laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status, it being understood and agreed, however, that the Project may consist of senior housing constructed and operated in accordance with applicable law.

The covenants and restrictions listed in this Section 6.1 shall be binding upon the Redeveloper, its successors and assigns and shall be recorded in the form of a Declaration of Covenants and Restrictions within ninety (90) Days of the satisfaction of all Conditions Precedent. These covenants and restrictions shall remain in effect for the period set forth in Section 6.2 below.

**6.2 Effect and Duration of Redeveloper Covenants.** It is intended and agreed that the agreements and covenants set forth in Section 6.1 hereof shall be covenants running with the land until the date that the Project, in its entirety, 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 Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, their successors and assigns, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Project or any part thereof. Upon Completion of the Project, the Property and Project shall cease to be governed by the terms of this Agreement or the Declaration of Covenants, and the Township shall issue a Certificate of Completion which shall be recorded amongst the land records maintained by the Morris County Clerk.



**ARTICLE 7**  
**PROHIBITION AGAINST TRANSFER**

**7.1 Transfers, Generally.** Redeveloper recognizes that it is because of such qualifications and identity that the Township is entering into this Agreement with Redeveloper, and, in so doing, the Township is relying on the obligations of Redeveloper and not some other person or entity for the faithful performance of all undertakings and covenants to be performed by Redeveloper hereunder. As a result, prior to completion of the Project as evidenced by the issuance of a Certificate of Completion, and without the prior written approval of the Township, which approval shall not be unreasonably withheld, conditioned, or delayed, Redeveloper agrees for itself and all successors in interest that there shall be no Transfer of the Property.

**7.2 Permitted Transfers.** Notwithstanding the foregoing, the Township hereby consents, without the necessity of further approvals from any entity to the following Transfers of interest in Redeveloper, the Property, or the Project ("**Permitted Transfers**"):

(1) After Government Approvals have been obtained, Transfer of fee title of the Property and the Project or a significant interest therein and assignment by the Redeveloper of its rights under this Redevelopment Agreement, but only upon the following conditions: (i) such lease or assignment must be to an entity controlling, controlled by, or under common control of the Redeveloper, including but not limited to an urban renewal entity formed by Redeveloper pursuant to N.J.S.A. 40A:20-4; (ii) the successor and assignee of the Redeveloper shall assume all of the obligations of the Redeveloper hereunder, but the Redeveloper shall remain primarily liable for the performance of the Redeveloper's obligations; (iii) a copy of the fully executed written instrument of lease and assignment and assumption of this Redevelopment Agreement shall be promptly delivered to the Authority; and (iv) such conveyance or assignment does not violate any of the Government Approvals;

(2) Execution of any mortgage or the Transfer to the holder of any mortgage or mortgages and other liens, security interests and encumbrances;

(3) Transfer to any institutional purchaser (such as JPMorgan Chase, John Hancock, Morgan Stanley, Goldman Sachs, Prudential Life Insurance Company, CALPERS, or other entities having similar stature, and any Affiliate thereof) of any portion of the Project or Property;

(4) After the Commencement of Construction, Transfer to any end user of any portion of the Project, whether as tenant, sub-tenant or purchaser;

(5) Transfer to another urban renewal entity, as that term is defined in the LTTEL;

(6) A Transfer to an Affiliate of the Redeveloper or to one of the Existing Members or to an Affiliate of one of the Existing Members;

(7) Transfer to any third party to which easements would conventionally be granted in connection with services, including without limitation, municipal service providers, utility authorities, and cable, media and phone companies; and

(8) Transfer to any third party to which easements would conventionally be granted for the use of amenities in the nature of public amenities, including without limitation, over roads and sidewalks for ingress and egress.

In addition, Permitted Transfers shall include the Transfer to any transferee that has been duly approved by the Township, at the request of Redeveloper, and which has entered into or assumed a redevelopment agreement with the Authority or designated redevelopment entity.

**7.3 Information as to Redeveloper.** The Redeveloper represents that the certificate attached to this Agreement as **Exhibit B** is a certificate of the Redeveloper, as of the Effective Date, subscribed and sworn to by a manager of the Redeveloper, setting forth the name(s) and address(es) of the Existing Members.

**7.4 Conditions of Transfer.** Except as otherwise provided in this Agreement, and except with respect to Permitted Transfers, the Township shall be entitled to require, as a condition(s) to its approval of any Transfer that:

(i) The proposed transferee will have qualifications and financial capability necessary and adequate to fulfill the obligations undertaken in this Agreement with respect to the transferred portion of the Project and other obligations that may pertain to the transferred interest or the transferred portion of the Project.

(ii) Any proposed transferee, by instrument in writing reasonably acceptable to the Township, will, for itself and its transferees, and expressly for the benefit of the Township, have expressly assumed all of the relevant obligations of the Redeveloper under this Agreement and agrees to be subject to all the Covenants and Restrictions to which the Redeveloper is subject.

Notwithstanding anything to the contrary contained herein, the Township's consent to any Transfer shall not be unreasonably withheld, conditioned or delayed; on the specific condition that the Township determines that such proposed Transfer to a transferee satisfies the requirements of (i) and (ii) of Section 7.4 herein. The Township shall notify the Redeveloper whether the Township consents to a Transfer within sixty (60) days after Redeveloper's request to the Township for such consent. If the Township does not deliver a written response to the Redeveloper's request within said sixty (60) day period, the Township shall be deemed to have consented to such transfer.

## **ARTICLE 8** **MORTGAGE FINANCING**

**8.1 Mortgages, Liens, or Other Encumbrances.** The Township hereby consents to each mortgage and security interest encumbering the Project, or any portion of the Property, and each assignment of rights under this Agreement that the Redeveloper grants and delivers in connection with the development, construction and marketing of the Project, including, but not limited to, pledges by the owners of the ownership interests in the Redeveloper. Any such mortgage, security interest or assignment shall be made on any terms and conditions that Redeveloper (in the exercise of its sole but reasonable discretion) determines to be necessary. If any mortgagee shall require any changes or modifications to the terms of this Agreement, the Township shall reasonably

cooperate with Redeveloper and such mortgagee in reviewing and approving such modifications, provided such changes shall not materially diminish or materially and adversely affect the rights and obligations of either Party. In order to facilitate a mortgage as well as other financing by Redeveloper for trade fixtures and equipment, the Township hereby waives and releases any statutory, constitutional and contractual liens against the assets or property of Redeveloper. In the event that the Redeveloper is unable to obtain financing for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, or if Redeveloper determines that financing for the Project cannot be obtained on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Agreement upon at least thirty (30) days' notice to the Township.

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

**8.3 Rights of Mortgagee.**

(i) The Redeveloper irrevocably directs that the Township accept, and the Township agrees to accept, performance and compliance by a mortgagee of and with any term, covenant, agreement, provision, condition or limitation on the Redeveloper's part to be kept, observed or performed under this Agreement with the same force and effect as though kept, observed or performed by the Redeveloper.

(ii) If this Agreement is terminated for any reason or is extinguished for any reason (including without limitation a rejection of this Agreement in a bankruptcy or other insolvency proceeding), any mortgagee may elect to demand a new redeveloper agreement with respect to the Property covered by its mortgage by written notice to the Township within thirty (30) days after such termination. The Township agrees, if there are outstanding obligations of the Redeveloper to the mortgagee with respect to the Property covered by its mortgage, to enter into a new agreement regarding the Property with the mortgagee (or its designee or nominee) for the remainder of the term of this Agreement upon all of the covenants, agreements, terms, provisions and limitations of this Agreement effective as of the date of such termination. The provisions of this Section 8.3 shall survive the expiration or earlier termination of this Redevelopment Agreement.

(iii) Notwithstanding anything to the contrary contained herein, if a mortgagee determines to foreclose or cause its designee to foreclose the mortgage or to acquire or cause its

designee to acquire the Redeveloper's interest in any portion of the Property or to succeed or cause its designee to succeed to the Redeveloper's possessory rights with respect to any portion of the Property or to appoint a receiver before it effectuates the cure of any Default, the cure periods set forth herein shall be extended by any period during which foreclosure proceedings, or legal proceedings to succeed to the Redeveloper's possessory rights, or proceedings to appoint the receiver are conducted, as the case may be. Any such proceedings shall be commenced promptly after the notice of Default is delivered to mortgagee and shall be diligently prosecuted. If such proceedings are pursued, promptly after mortgagee or a designee of mortgagee acquires the Property, or any portion thereof, pursuant to foreclosure proceedings and elects to succeed to Redeveloper's possessory rights or promptly after a receiver is appointed, as the case may be, such cure periods shall commence to run.

(iv) The Township hereby consents to the following rights of each mortgagee, and agrees that each mortgage may contain provisions for any or all of the following: (a) an assignment of the Redeveloper's right, if any, to terminate, cancel, modify, change, supplement, alter, renew, or amend this Redevelopment Agreement; and (b) the following rights and remedies (among others) to be available each mortgagee upon the default under its mortgage:

(a) The foreclosure of the mortgage pursuant to a power of sale, by judicial proceedings or other lawful means and the sale of the Redeveloper's interest in the Property to the purchaser at the foreclosure sale and a subsequent sale or transfer of the Redeveloper's interest in the Property by such purchaser if the purchaser is a mortgagee or its nominee or designee;

(b) The appointment of a receiver, irrespective of whether a mortgagee accelerates the maturity of all indebtedness secured by the mortgage;

(c) The right of a mortgagee or the receiver appointed under subparagraph (a) above to enter and take possession of the Property, to manage and operate the Project, to collect the income generated by the Project or the operation thereof and to cure any default under the mortgage or any Default by Redeveloper under this Agreement; and

(d) An assignment of the Redeveloper's right, title and interest under this Agreement.

**8.4 Notice of Default to Mortgagee and Right to Cure.** Whenever the Township shall deliver any notice or demand to the Redeveloper with respect to any breach or Default by the Redeveloper under this Redevelopment Agreement, the Township shall at the same time deliver to each lender (or equity participant in Redeveloper) a copy of such notice or demand, provided that the Redeveloper has delivered to the Township a written notice of the name and address of such lender and equity participant. Each such lender shall (insofar as the rights of the Township are concerned) have the right at its option within ninety (90) Days after the receipt of such notice, to cure or remedy, or to commence to cure or remedy, any such Default with respect to that portion of the Project which is being financed by such lender and which is subject to being cured and to add the

cost thereof to the debt and the lien which it holds, or to the obligations of the lessees under any lease-back or of the guarantor under any other conveyance for financing.

**8.5 Estoppel Certificate.** Within thirty (30) Days of the Township's receipt of a written request by the Redeveloper, or of any mortgagee, lender, purchaser, tenant or other party having an interest in the Project, the Township shall issue a signed estoppel certificate either stating this Agreement is in full force and effect and that there is no Default or breach under this Agreement, or stating the nature of the Default or breach or event, if any. In the event the estoppel certificate discloses such a Default, breach or event, it shall also state the manner in which such Default, breach or event may be cured.

## **ARTICLE 9** **EVENTS OF DEFAULT**

### **9.1 Events of Default.**

**9.1(a) Notice of Violation; Default.** Any one or more of the following shall constitute a Default, subject to a Force Majeure Event and tolling as provided elsewhere in this Agreement:

(1) Failure of the Redeveloper or the Township to observe or perform any covenant, condition, restriction, representation, warranty or agreement hereunder, and any act or omission of the Redeveloper characterized elsewhere in this Agreement as a Default, and the continuance of such failure, act or omission 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, act or omission be remedied (a "**Notice of Violation**"); provided, however, that if the Default is one that cannot be completely cured within sixty (60) Days after receipt of the Notice of Violation, it shall not be a Default as long as the defaulting party promptly began to take actions to correct the violation upon its receipt of notice thereof and is proceeding with due diligence to remedy the violation as soon as practicable; or

(2) (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) 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) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive Days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper, under the Bankruptcy Code; or (viii) an Order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive Days; or

(3) Redeveloper (i) fails to perform its obligations with respect to the implementation of the Project in accordance with this Agreement, the Redevelopment Plan, Governmental Approvals or Applicable Laws, including but not limited to failure to Commence Construction or Complete Construction in accordance with the Project Schedule, or (ii) abandons the Project or substantially suspends construction work without the prior knowledge and consent of the Township (unless such suspension arises out of a Force Majeure Event), and any such failure, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) Days after receipt by the Redeveloper of a Notice of Violation; provided, however, that if the violation is one that cannot be completely cured within ninety (90) Days after receipt of the Notice of Violation, it shall not be a Default as long as the Redeveloper promptly began to take actions to correct the violation upon its receipt of notice thereof and is proceeding with due diligence to remedy the violation as soon as practicable; or

(4) There is a prohibited Transfer that is not unwound, or otherwise brought into compliance with the terms of this Agreement, within ninety (90) Days after receipt by the Redeveloper of a Notice of Violation.

**9.1(b) Notice of Default.** Provided a Default has occurred and is continuing (as set forth in Section 9.1(a) above or elsewhere in this Agreement), subject to a Force Majeure Event and tolling as provided elsewhere in this Agreement, the Default shall be deemed to be an “**Event of Default**” if the non-defaulting party provides written notice to the defaulting party specifying the nature of such Default (a “**Notice of Default**”) and the non-defaulting party does not cure or remedy the Default to the reasonable satisfaction of the non-defaulting party within thirty (30) Days from receipt of the Notice of Default.

**9.2 Remedies upon Event of Default.** Whenever any Event of Default of Redeveloper shall have occurred, the Township may, on written notice to Redeveloper (a “**Termination Notice**”), terminate this Agreement and the Redeveloper’s designation as the exclusive redeveloper for the Property thereunder and take whatever other action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper under this Agreement. Whenever any Event of Default of the Township shall have occurred, the Redeveloper, after issuance of a Termination Notice to the Township, 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 under this Agreement.

**9.3 Force Majeure Extension.** For the purposes of this Agreement, neither the Township nor the Redeveloper shall be considered in breach or in Default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event. It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of the obligations of the Township or the Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. To invoke the tolling provisions hereunder, the party invoking the provisions hereof must give written notice to the other party of the occurrence of a Force Majeure Event as soon as practicable.

**9.4 No Waiver.** Except as otherwise expressly provided in this Agreement, any failure or delay by the either party in asserting any of its rights or remedies as to any Default by the other party shall not operate as a waiver of such Default, or of any such rights or remedies, or to deprive the non-defaulting 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.

**9.5 Remedies Cumulative.** No remedy conferred by any of the provisions of this 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.

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

## **ARTICLE 10** **MISCELLANEOUS**

**10.1 Cooperation.** The Parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions hereof and the terms and conditions of this Agreement. The Township further agrees to cooperate as may be reasonably requested by any mortgagee of the Redeveloper in connection with obtaining financing for the Project. The Township further agrees to take all actions reasonably requested by Redeveloper to expedite the Project, including without limitation designating Township staff liaisons to assist the Redeveloper in interacting with Township departments, commissions, boards, authorities and the like and granting of special meetings and other expedited processing of Redeveloper's applications, submissions and the like to the extent authorized under Applicable Law.

**10.2 Non-Liability of Officials and Employees of the Redeveloper.** Unless otherwise obligated hereunder as a Guarantor, no member, officer, shareholders, director, partner or employee of the Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of the Redeveloper or the members of the Redeveloper shall be personally liable to the Township, or any successor in interest, in the event of any Default or breach by the Redeveloper or for any amount which may become due to the Township, or their successors, on any obligation under the terms of this Redevelopment Agreement.

**10.3 COAH Obligations; Non-Residential Development Fees.**

**10.3(a) COAH Obligations.** Redeveloper covenants and agrees that ten (10%) percent of the occupied beds within the senior living component of the Project to be developed by Redeveloper shall be Medicaid eligible. Other than the foregoing, Redeveloper shall not have any obligation to provide low or moderate income housing, or to make any payments or contributions

in lieu of such affordable housing, due to or arising from or through the Project. This Section 10.3 shall survive the termination of this Agreement.

**10.3(b) Non-Residential Development Fees.** To the extent any non-residential development fees may be assessed against, or in connection with, the Project pursuant to the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq. (the “**Development Fee Act**”), it is understood and agreed that any such fees shall be off-set by the fair market value of any units required to be reserved for Medicaid beds.

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

**10.5 Agreement Not to Condemn.** The Township shall not exercise its power of eminent domain, and waives and releases its right, to condemn all or any portion of the Property or the rights of the Redeveloper contained in this Agreement directly, indirectly, by the Township’s own actions or by or through any governmental agency or governmental authority, and the Township shall not enter into any agreement contemplating, providing for or authorizing the exercise of a power of eminent domain, condemnation or by any other method or means. The Township acknowledges that an inducement for the Redeveloper entering into this Agreement is the Township’s covenant set forth in this section. The provisions of this section shall survive the termination or expiration of this Agreement

**10.6 Notices and Demands.** Any notice or communication which may be given or is required to be given pursuant to the terms of this Agreement shall be in writing and shall be personally delivered, mailed by certified or registered mail, return receipt requested, delivered by a nationally recognized overnight courier or sent by email (and, in the case of email, an original notice or demand shall be delivered by next day overnight delivery service), to the other party as follows:

If to Township: Nancy Malool, Administrator  
Township of Long Hill  
915 Valley Road  
Gillette, NJ 07933  
[administrator@longhillnj.gov](mailto:administrator@longhillnj.gov)



With a copy to: John R. Pidgeon  
Pidgeon & Pidgeon, P.C.  
Five Vaughn Drive  
Suite 309  
Princeton, NJ 08540  
jpidgeon@pidgeonlaw.com

If to Redeveloper: March Development LLC  
31 Springbrook Rd.  
Morristown, New Jersey 07960  
Attn: Anthony Marchigiano  
Email: anthony@marchdevelops.com

With copies to: Gibbons P.C.  
One Gateway Center  
Newark, NJ 07102-5310  
Attn: Andrew Camelotto, Esq.  
Email: acamelotto@gibbonslaw.com

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

**10.7 Titles of Articles and Sections; Construction.** The titles of the several Articles and Sections of this Redevelopment Agreement, as set forth at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. Each of the Parties acknowledges that this Agreement has been extensively negotiated with the assistance of competent counsel for each Party and agree that no provision of this Agreement shall be construed in favor of or against either Party by virtue of the fact that such Party or its counsel has provided an initial or any subsequent draft of this Agreement or of any portion of this Agreement.

**10.8 Further Assurances; Cooperation.** The Parties shall cooperate with each other as reasonably necessary to effectuate the development of the Project. From time to time, at the request of either the Redeveloper or the Township, the other party shall execute, acknowledge and deliver such other and further documents as the requesting party may reasonably request in furtherance of the Project or the provisions or purposes of this Agreement.

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

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

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

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

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

**10.14 Entire Agreement.** This Redevelopment Agreement constitutes the entire agreement between the Parties and supersedes all prior oral and written agreements between the Parties with respect to the subject matter hereof.

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

**10.16 No Consideration.** 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 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 Township any money or other consideration for or in connection with this Redevelopment Agreement.

**10.17 Relationship of the Parties.** Nothing contained in this Agreement shall be deemed or construed by the Parties hereto or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between the Redeveloper and the Township, their relationship being solely as contracting parties under this Agreement.

**10.18 Counting Days; Saturday, Sunday, or Holiday.** The word “days” as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a day other than a business day, then the time of such period shall be deemed extended to the next business day. The term “business day” shall mean any day other than a Saturday, a Sunday, or a day on which banks generally and public offices are not open under the laws of the State of New Jersey.

[SIGNATURE PAGE FOLLOWS]

**INTENDING TO BE LEGALLY BOUND**, the Parties have caused this Agreement to be properly executed as of the date written on this first page of this Agreement.

**ATTEST:**

**TOWNSHIP OF LONG HILL**

\_\_\_\_\_  
Megan Phillips, Clerk

By: \_\_\_\_\_  
Name: Guy Piserchia  
Title: Deputy Mayor

**WITNESS:**

**STIRLING SL URBAN RENEWAL LLC**

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title: Authorized Representative

**EXHIBIT A**  
**PROJECT SCHEDULE**

<b><u>REDEVELOPER CONSTRUCTION ACTIONS</u></b>	
<b>Action Item</b>	<b>Outside Date</b>
Commence Construction	2 years from the later of (i) execution of the Redevelopment Agreement, or (ii) the satisfaction of all Conditions Precedent
Complete Construction	3 years from Commencement of Construction, which in no event shall be more than 5 years from the date of execution of the Redevelopment Agreement (unless Redeveloper exercises its right in Section 2.3 to extend for the Extended Term)

**\*\*All dates in this Project Schedule are subject to automatic extension for any Force Majeure Event.**

**EXHIBIT B**

**EXISTING MEMBERS**