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 Attorney for Plaintiffs,
 David P. Morrisette
 and Sandra S. Morrisette

David P. Morrisette and	:	SUPERIOR COURT OF NEW JERSEY
Sandra S. Morrisette,	:	LAW DIVISION - WARREN COUNTY
Plaintiffs,	:	
v.	:	DOCKET NO. WRN-L-000378-24
Town of Phillipsburg Town Council,	:	
Defendant,	:	Civil Action
and	:	
Peron Construction, LLC.	:	MOTION TO RECONSIDER
Defendant-Intervenor	:	ORDER GRANTING INTERVENTION

TO: Michael L. Collins, Esq.
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 Attorneys for Defendant, Town of Phillipsburg Town Council

and

Mark R. Peck, Esq.
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 mpeck@floriolaw.com

Attorneys for Defendant-Intervenor, Peron Construction, LLC.

PLEASE TAKE NOTICE THAT on April 28, 2025, at 9:00 a.m. or as soon as the motion may be heard, counsel for the Plaintiffs, Peter Dickson, shall move this court for an order which reconsiders the granting of intervention to Peron Construction, LLC, and which denies intervention to Peron Construction, LLC.

This motion is supported by a letter brief which encloses Town of Phillipsburg Resolution R2024-235 with Redevelopment Agreement. A proposed form of order is enclosed.

Respectfully submitted,

/s/ Peter Dickson
Peter Dickson
Attorney for Plaintiffs

Dated: April 1, 2025.
Service: by eCourts

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 ATTORNEY FOR PLAINTIFFS,
 DAVID P. MORRISETTE
 AND SANDRA S. MORRISETTE

DAVID P. MORRISETTE AND	:	SUPERIOR COURT OF NEW
SANDRA S. MORRISETTE,	:	JERSEY
	:	LAW DIVISION - WARREN
PLAINTIFFS,	:	COUNTY
V.	:	
TOWN OF PHILLIPSBURG TOWN	:	DOCKET NO. WRN-L-000378-24
COUNCIL,	:	
DEFENDANT,	:	CIVIL ACTION
AND	:	
PERON CONSTRUCTION, LLC,	:	ORDER
DEFENDANT-INTERVENOR	:	

THIS MATTER HAVING COME BEFORE THE COURT ON THE
 MOTION BY PLAINTIFFS, DAVID P. MORRISETTE AND SANDRA S.
 MORRISETTE, TO RECONSIDER THE GRANT OF INTERVENTION TO
 PERON CONSTRUCTION, LLC, AND IN CONSIDERATION OF THE BRIEFS
 AND THE SUBMISSION OF RESOLUTION R2024-235 AND THE
 REDEVELOPMENT AGREEMENT, AND IT APPEARING THAT GOOD CAUSE
 HAS BEEN SHOWN,

IT IS ON THIS _____ DAY OF _____, 2025,

ORDERED THAT THE MOTION TO RECONSIDER THE GRANT OF INTERVENTION TO PERON CONSTRUCTION, LLC, IS GRANTED, AND IT IS FURTHER

ORDERED THAT INTERVENTION BY PERON CONSTRUCTION, LLC, IN THIS PROCEEDINGS IS DENIED, AND IT IS FURTHER

ORDERED THAT A COPY OF THIS ORDER SHALL BE DEEMED SERVED ON ALL ATTORNEYS OF RECORD VIA E-FILING ON THE DATE SET FORTH HEREIN. PURSUANT TO R. 1:5-1(A), MOVANT SHALL SERVE A COPY OF THIS ORDER ON ALL PARTIES NOT SERVED ELECTRONICALLY WITHIN SEVEN (7) DAYS OF THE DATE OF THIS ORDER.

HONORABLE VERONICA ALLENDE, J.S.C.

MOTION TO DISMISS WAS
☐ UNOPPOSED
☒ OPPOSED.

PETER DICKSON
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PENNINGTON NEW JERSEY 08534

MEMBER N.J. AND D.C. BARS

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April 1, 2025

The Honorable Veronica Allende
Judge
Superior Court
Somerset County Courthouse
20 North Bridge Street, Floor 1
Somerville NJ 08876-1262

Re: Morrisette v. Town of Phillipsburg Town Council, WRN-L-000378-24
Letter Brief in Support of Motion to Reconsider

Dear Judge Allende:

This firm represents the plaintiffs in this matter. Please accept this letter brief in lieu of a more formal brief in support of the plaintiffs' motion for reconsideration of the court's grant of the motion to intervene of Peron Construction, LLC (Peron).

This interlocutory motion for reconsideration is authorized by R. 4:42-2(b). The legal standard is that this court may revisit an interlocutory order "at any time before entry of final judgment in the sound discretion of the court and in the interest of justice." We refer the court to the detailed discussion in Lombardi v. Mason, 207 N.J. 517 (2011).

1. As the court knows, plaintiffs substantially relied on the opinion in City Of Asbury Park v. Asbury Park Towers, 388 N.J. Super. 1 (App. Div. 2006), which denied intervention as of right and permissive intervention to a redeveloper in a condemnation case.. With all due respect, the court's statement of reasons (Statement) erroneously distinguished Asbury Park. The Statement erroneously recited that unlike the redeveloper and redevelopment entity in Asbury Park, Phillipsburg and Peron "do not have a joint agreement regarding the Property." 388 N.J. Super. at 9. But they certainly do, as required by law. The current 30+ page "joint agreement" is attached as an exhibit to this motion, as approved by the Council on December 18, 2024. We do not know if it has been executed but assume it has. The error in the Statement is understandable as no party had submitted the redeveloper agreement to the court, or any of its predecessor agreements.

As the extensive recitals in the preamble to that agreement demonstrate, Peron and the Town have negotiated a number of these agreements. Thus, Peron is an experienced and sophisticated negotiator of redevelopment agreements, and more to the point, has maintained its privileged position as redeveloper for this site for two decades.

This agreement is not just authorized but required by the Local Redevelopment and Housing Law, (LRHL), N.J.S.A. 40A:12A-1 et seq., which contains numerous requirements for designated redevelopers, as is appropriate

for entities who attain that privileged status. A "redeveloper" is defined as "any ... corporation ... that shall enter into or propose to enter into a contract with a municipality or redevelopment entity... ." (Emphasis added.) In Phillipsburg the Council is the designated "redevelopment entity." Section 8f of the LRHL authorizes such contracts and more or less requires them. Section 9 specifies a number of provisions that must be included in any such contract, including of relevance here, "a provision requiring the redeveloper to begin the building of improvements for the [specified] uses within a reasonable time which the ... redevelopment entity fixes as reasonable" and a provision that the redeveloper can not convey the "redevelopment area or project" without the written consent of the redevelopment entity. N.J.S.A. 40A:12A-9.

Of further relevance here is the case of Vineland Const. v. Pennsauken Twp., 395 N.J. Super. 230 (App. Div. 2007), app. dismissed, 195 N.J. 513 (2008), holding that an owner of property in a redevelopment area has no Constitutional or statutory right to be designated as the redeveloper of its own property. Among other things, that court noted the strong public interest in achieving redevelopment of the affected area and that "the private developer is really the instrumentality used to accomplish the public purpose." 395 N.J. Super. at 252, citing Levin v. Township Committee of Bridgewater, 57 N.J. 506, 543, appeal dismissed, 404 U.S. 803 (1971).

We note that the current redevelopment agreement with Peron lacks the required Section 8f provision obligating Peron to commence construction within a set time period. N.J.S.A. 40A:12A-8f. This appears to be deliberate, as Section 7.03 is entitled "Commencement Date and List Of Government Approvals," but lacks any "list" of government approvals and lacks any "commencement date." Thus the contract reflects the Town's inexcusable lassitude about accomplishing the stated goals of its redevelopment plan for this valuable property, which goes all the way back to the initial designation of a Perrucci-controlled entity in 2005. A condensed version of this sorry history is contained in the recitals of the current redevelopment agreement, which we ask the court to review. In addition, the current agreement contains a highly pertinent definition of "Uncontrollable Circumstances," which the parties agree set forth the only Uncontrollable Circumstances. Further, under section 10.02, the only Uncontrollable Circumstances that can excuse a default by Peron are those that "ha[ve] or may reasonably be expected to have a direct, material, adverse effect on the rights or obligations of the parties... ." The remedy for a default by the redeveloper is termination of the agreement and termination of the redeveloper's designation. Section 10.03. Yet after twenty years of inaction, no termination appears to have ever been considered.

In the recitals section, and in Peron's pleadings to this court, the sole reason

given for Peron's failure to do the job it was obligated to do was one event, "an historic and international economic collapse," which is not included in the allowable "Uncontrollable Circumstances" under this agreement, and presumably under prior agreements. It is plain that Peron assumes market risk (other than financing) under its redeveloper obligations. That "collapse" occurred in 2007-2008, so that accounts for fraction of the decades in which Peron failed in its responsibilities.

Thus, respectfully, the reason given in the court's Statement for distinguishing Asbury Park is incorrect. The Town and Peron (and its predecessors in interest) are in fact contractually intertwined, as required by law. As no agreement was before the court on the Peron motion to intervene, this is understandable.

2. Again, with all due respect, the Statement does not accurately describe and apply the third element, that the applicant for intervention is "so situated that disposition of the matter may as a practical matter impair or impede the ability to protect that interest." The Statement found that Peron met this test because "the disposition of this matter could impair or impede Peron's ability to defend its interest in achieving a reasonable return on its investment." Statement at 9. To phrase the issue as merely whether the disposition could impede or impair Peron's profit motive is incorrect. That renders this third factor substantively duplicative

of the second -- that Peron claims an interest relating to the transaction at issue. Intervention as of right, especially in the redevelopment context, requires much more than a mere profit interest that might be affected by the disposition of the matter, as Asbury Park demonstrates.

Peron in its motion claimed that the need for intervention was that its large warehouse proposal, the latest in a recent series of such proposals, had become a political issue, and that the Council membership might change. In fact, two of the three "yes" votes on this challenged amendment have quit the Council and been replaced by two newly appointed members; all and the Mayor are up for election this November. If so, intervention in this matter does nothing as a practical matter to assist or impede Peron's ability to protect its narrow interest. If the Council wishes to cancel or amend the proposal, that public interest must always take precedence over Peron's private interest. Peron's stated reason for intervention amounts to a confession that it seeks intervention in order to exercise a veto power over the Council's ultimate disposition. The LRHL does not allow a redeveloper to possess such a veto power to override the public's interest.

A redeveloper under the LRHL is entirely a creature of the redevelopment entity, in this case, the Council. Peron can only do what the Council allows it to do and is prohibited from doing whatever the Council says it can not do. Peron is also bound by the provisions of the LRHL, in particular, section 8, N.J.S.A. 40A:12A-8.

The Statement finds at 9 that "Peron has an interest in developing the property to achieve a reasonable return on its investment," but the LRHL is completely indifferent to this interest. Under the LRHL, the private redeveloper is merely the instrumentality for achieving the public's interest in ameliorating conditions in an area in need of redevelopment. Nothing in the law can be construed to favor that private interest, and especially as against the public interest. The proper place for Peron to protect its profit interest is in negotiations for the redeveloper agreement, and as we noted above, Peron has two decades of negotiating such agreements with the Town. The terms of the current agreement attached to this motion demonstrate that Peron has been able to negotiate a redeveloper agreement that doesn't even comply with the LRHL.

The redeveloper in Asbury Park was advocating for its pecuniary interest, and that was not relevant. That court affirmed the trial court's ruling that "the profit-making interest of the private developer in paying the lowest price for the assembled parcel may differ from the City's obligation to deal forthrightly with the property owner and pay the fair market value..." and finding that that profit making interest may not be fully protected by the City, but nonetheless not a basis for intervention. 388 N.J. Super. at 7.

3. Peron's narrow profit motive also does not mean that the Town does not adequately represent Peron's interests. We note that Peron did not attempt to

intervene in the first two challenges to the Town's approval of its previous warehouse proposals. "Although it is undisputed that Asbury Partners, as the Master redeveloper, has a significant stake in this specific acquisition as well as successful implementation of the [redevelopment plan], we are satisfied that the interest of the redeveloper is adequately represented" by the City." 388 N.J. Super. at 8.

"[T]here may be compromise or settlement at some point in the litigation. That does not mean in doing so the City is not representing Asbury Partners' interest. The parties' interests are reflected in the Redeveloper Agreement, which implicitly recognizes the inherently different nature of the roles of the private redeveloper and the public entity in the redevelopment process." Asbury Park, 288 N.J. Super. at 10. Peron has managed to retain its privileged status as the redeveloper for this valuable site notwithstanding two decades of failure to complete the redevelopment as set forth in the Master Plan and previous redevelopment plan amendments. The Statement implies that this record of sustained failure is somehow a positive factor for Peron's motion, when in fact it only proves that Peron should never have been designated as redeveloper, or at least should have been terminated long ago. No one can seriously question that Peron "as a practical matter" has exceedingly well protected its private interests as against the public interest. The essence of plaintiffs' Count Four is that Peron

has the means to continue to exercise that control over the Town Council, but the means is disqualifying conflicts of interest.

4. Finally, under both intervention as of right and permissive intervention, a key element for the court to consider is whether the applicant's intervention will result in delay and prejudice to the existing parties. Peron has filed a patently inadequate "motion to dismiss" in substance denying the allegations of the complaint's Count IV and relying on materials outside the pleadings. Plaintiffs have been forced to spend fees and costs opposing that motion and the court's time is wasted having to consider and rule on it. Even at the very outset of the case, Peron is actively interfering with the proper consideration of this prerogative writ action. No doubt this will continue unless the court reconsiders its grant of intervention.

Respectfully submitted,

The Law Offices of Peter Dickson

/s/ Peter Dickson

Peter Dickson

NJ Attorney ID # 001661979

Attorney for Plaintiffs

Enclosure: Town of Phillipsburg Resolution R2024-235, attaching Redevelopment Agreement

R2024-235

**RESOLUTION OF THE TOWN OF PHILLIPSBURG AUTHORIZING THE
EXECUTION OF THE REDEVELOPMENT AGREEMENT BY AND BETWEEN THE
TOWN OF PHILLIPSBURG AND PERON CONSTRUCTION, LLC**

WHEREAS, the Town and Peron Construction, LLC (“Redeveloper”) previously executed a certain Redeveloper’s Agreement (“Agreement”) which controlled the manner and method of the redevelopment of the property located 170 Howard Street, Block 2102, Lot 2.02 for the construction of an industrial building with approximately 328,277 square feet (“Project”); and

WHEREAS, the Project has been modified and the Town desires to execute a new agreement in order to properly reflect the nature of the Project; and

WHEREAS, the parties have negotiated the redeveloper’s agreement; and

WHEREAS, the Town Council desires to authorize the execution of same.

NOW, THEREFORE, BE IT RESOLVED by the Town Council of the Town of Phillipsburg that the Redeveloper’s Agreement between Peron Construction, LLC and the Town is hereby approved and the Mayor is authorized and directed to execute same.

CERTIFICATION

I, Susan Turner, Acting Municipal Clerk of the Town of Phillipsburg, County of Warren and State of New Jersey do hereby certify the foregoing to be true and correct copy of a Resolution adopted by Council at a meeting held on December 18, 2024.

Susan Turner
Acting Municipal Clerk

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT ("Agreement"), dated as of _____ (the "Effective Date") between TOWN OF PHILLIPSBURG, a municipal corporation of the State of New Jersey with offices at 675 Corliss Avenue, Phillipsburg, New Jersey 08865 (the "Town"), and PERON CONSTRUCTION LLC, a New Jersey limited liability company with offices at 91 Larry Holmes Drive, Suite 200, Easton, Pennsylvania 18042, (referred herein as "Peron" or the "Redeveloper"). The Town and Redeveloper herein jointly referred to as (the "Parties").

RECITALS

WHEREAS, by Resolution R:2005-77 adopted on April 19, 2005 the Town Council of the Town of Phillipsburg (the "Council"), pursuant to N.J.S.A. 40A:12A-6(a), and acting as the Town's redevelopment entity, authorized the Land Use Board of the Town (the "Land Use Board") to undertake a preliminary investigation and hearing regarding whether the Riverfront Redevelopment Study Area (the "Study Area") is an area in need of redevelopment in accordance with the criteria set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, consistent with N.J.S.A. 40A:12A-6(b)(1), the Land Use Board caused to be prepared a map showing the boundaries of the Study Area and the location of the various parcels of the Project Site (defined below) included therein, and commissioned a study to determine whether the Study Area constitutes an area in need of redevelopment, (the "Needs Study"), which was prepared by Schoor DePalma, Carolyn Neighbor, P.P.; and

WHEREAS, consistent with the requirements contained in N.J.S.A. 40A:12A-6(b)(3), the Land Use Board provided notice and conducted a public hearing on August 1, 2005, for the purpose of considering whether the areas delineated in the Needs Study constitute an area in need of redevelopment; and

WHEREAS, at the public hearing, the Land Use Board received and considered all comments regarding the Needs Study and the proposed designation of the Study Area as an area in need of redevelopment and also received and considered evidence in support of the determination that the Study Area meets the criteria for an area in need of redevelopment set forth in N.J.S.A. 40A:12A-5; and

WHEREAS, the Land Use Board by Resolution adopted on August 1, 2005, determined the Study Area to be an area in need of redevelopment pursuant to the statutory criteria set forth in Sections (a), (b), (c), (d), (e) and (g) of N.J.S.A. 40A:12A-5 and referred its findings to the Town Council for consideration, together with the Land Use Board's recommendation that the Study Area be designated as an area in need of redevelopment by the Town Council pursuant to N.J.S.A. 40A:12A-5; and

WHEREAS, by Resolution R:2005-150, adopted on August 2, 2005, the Town Council approved the Needs Study and determined that the Study Area is in an "area in need of redevelopment" pursuant to N.J.S.A. 40A:12A-5; and

WHEREAS, by Resolution R:2005-77, adopted on April 19, 2005, the Town Council, pursuant to N.J.S.A. 40A:12A-7, also authorized the Land Use Board, if it determined that the Study Area constituted an "area in need of redevelopment" (the "Redevelopment Area"), to prepare a Redevelopment Plan for the Study Area; and

WHEREAS, the Land Use Board commissioned Schoor DePalma, Carolyn Neighbor, P.P. to prepare a redevelopment plan for the Riverfront Redevelopment Area (the "Original Redevelopment Plan"); and

WHEREAS, at its meeting on August 1, 2005, the Land Use Board considered the Original Redevelopment Plan and received and considered public comments on the Original Redevelopment Plan; and

WHEREAS, by Resolution adopted on August 1, 2005, the Land Use Board approved the Original Redevelopment Plan and recommended its adoption to the Town Council; and

WHEREAS, on August 2, 2005, the Town Council conducted a public hearing concerning the Original Redevelopment Plan as recommended by the Land Use Board, and adopted the Riverfront Redevelopment Area Redevelopment Plan by Ordinance 2005-30; and

WHEREAS, the Town has previously determined to effect the redevelopment of the Redevelopment Area (including the Project Site) through the selection of a redeveloper who shall be responsible for (a) remediation of the Redevelopment Area and construction of macro-infrastructure improvements thereon, and (b) construction of mixed-use redevelopment project thereon (whether directly or through the sale of approved and improved buildable development areas to one or more development entities qualified to carry out such development); and

WHEREAS, pursuant to Resolution R:2005-75, adopted on April 19, 2005, the Town Council conditionally designated the Peron Construction Phillipsburg LLC (the "Original Redeveloper") as the redeveloper to undertake the redevelopment of the Redevelopment Area on the terms and conditions as may be set forth in an "Agreement" to be negotiated between the Parties; and

WHEREAS, on March 28, 2006, the Town and the Original Redeveloper executed an "Agreement for the Redevelopment of the Phillipsburg Riverview Redevelopment Area" as amended by the first addendum thereto (the "Original Redevelopment Agreement"); and

WHEREAS, on June 22, 2006, the Original Redeveloper received preliminary and final site plan approval with variances and subdivisions for the redevelopment of Block 2102, Lots 2 and 11 (the "Project Site"); and

WHEREAS, on December 5, 2006, the Town and Original Redeveloper executed a "Developers Agreement" (the "Developer's Agreement") and, together with the Original Redevelopment Agreement, the "Prior Agreements"; and

WHEREAS, due to certain events beyond either the Town or Original Redeveloper's control (i.e., an historic and international economic collapse) the redevelopment of the Project Site commenced but was not completed; and

WHEREAS, the Land User Board commissioned VanCleef Engineering Associates, David K. Maski, PP, AICP to prepare a revised redevelopment plan for the Riverfront Redevelopment Area (the "2013 Redevelopment Plan"); and

WHEREAS, at its meeting on June 27, 2013, the Planning Board considered the 2013 Redevelopment Plan and received and considered public comments on the 2013 Redevelopment Plan; and

WHEREAS, by Resolution adopted on December 23, 2013, the Planning Board approved the 2013 Redevelopment Plan and recommended its adoption to the Town Council; and

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WHEREAS, on November 4, 2013, the Town Council conducted a public hearing concerning the Redevelopment Plan as recommended by the Planning Board and adopted same by Ordinance 2013-19; and

WHEREAS, the Town designated the Original Redeveloper for the District 5 portion of the 2013 Redevelopment Plan; and

WHEREAS, in order to effectuate the public purposes, set forth in the 2013 Redevelopment Plan and in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to redevelopment of the Project Site, the Original Redeveloper and Town entered into a Redevelopment Agreement in 2013 (the "2013 RDA"); and

WHEREAS, the properties located at Block 2102 Lots 2.01 and 2.02 (Lot 2.02, formerly Block 2102, Lots 2 and 11) on the official tax maps of the Town (the "Riverfront RDA Properties") are located in the Riverfront Redevelopment Area pursuant to the 2013 Redevelopment Plan; and

WHEREAS, the Original Redeveloper assigned its rights and obligations under the 2013 RDA to its Affiliate (as that term is defined in the 2013 RDA), the Redeveloper, as owner of 170 Howard Street, Block 2102, Lot 2.02 (the "Property"), pursuant to Section 10.04(f) of the RDA; and

WHEREAS, due to the historic collapse of the housing market and the proximity of the Property industrial and commercial uses, Redeveloper has been unable to develop the Property as a residential or mixed-used project despite more than a decade of efforts; and

WHEREAS, because prior to 2005 the Property had been zoned for industrial uses, the Town initiated a study and determined that the 2013 Redevelopment Plan should be amended to replace the residential and mixed-use permitted uses with industrial uses; and

WHEREAS, the Town amended the 2013 Redevelopment Plan pursuant to Ordinance 2021-14 to change District 5 from Riverside Residential to Riverside Industrial, to permit industrial uses and the Project (defined below) (such amendment, the "District 5 Amendment – RRP"); and

WHEREAS, the Redeveloper remains the designated redeveloper for the Property; and

WHEREAS, relying upon the permitted uses pursuant to the District 5 Amendment – RRP, the Redeveloper received preliminary and final site plan approval from the Land Use Board pursuant to a resolution dated February 22, 2024 (the "Site Plan Approval") attached hereto as Exhibit A for the construction of an industrial building with approximately 328,277 square feet (the "Project") and the related on-site and off-site improvements described in the Resolution; and

WHEREAS, in order to set forth the terms and conditions under which the Parties shall carry out their respective obligations with respect to the construction of the Redevelopment Project, as defined hereafter, in accordance with the Redevelopment Plan, the Parties have determined to execute this Agreement.

NOW THEREFORE, for and in consideration of the premises, the mutual obligations herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties, and, further, to implement the purposes of the Redevelopment Law, the Resolutions referenced above and the Redevelopment Plan, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

1.01. Definitions.

In this Redevelopment Agreement shall have their meaning as defined herein and as follows:

"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.

"Agreement" means this Redevelopment Agreement, as the same may be amended or supplemented from time to time in accordance with its terms.

"Applicable Law" means any statute, law, constitution, charter, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority which, in any case, shall be enacted, adopted, promulgated, issued or enforced by any Governmental Authority, and/or court of competent jurisdiction that relates to or affects the Parties or either of them, the Redevelopment Area, the Project, or any portion thereof, the performance by the Parties of their respective obligations or the exercise by the Parties of their respective rights under this Redevelopment Agreement, including without limitation, the Municipal Land Use Law, the Redevelopment Law, the Long Term Tax Exemption Law and Redevelopment Area Bond Financing Law.

"Certificate of Completion" means a certificate or certificates certifying that the Redeveloper has performed its duties and obligations under this Redevelopment Agreement with respect to the Project Improvements or certifying that the Project Improvements, or any portion thereof, have been Substantially Completed.

"Certificate of Occupancy" means a permanent Certificate of Occupancy, as such term is defined in the New Jersey Administrative Code, issued with respect to all or a portion of the Project upon completion of all or a portion of the Project Improvements.

"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 Town shall not constitute a Change in Law giving rise to a suspension of any performance or other obligation of the Town under this Agreement; provided however, that the actions or inactions (including without limitation, any denial or conditional approval) of the Town Land Use 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 Town Land Use Board's 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 Town Land Use Board's action (whether approval, denial or conditional approval) is continuing.

"Claim" means any pending or threatened claim, demand, notice, allegation, order, directive, suit, action, cause of action, judgment, lien, demand for arbitration, proceeding, or investigation by any Person.

"Commencement of Construction" means the undertaking by Redeveloper of site work, grading and any actual physical construction of any Project Improvements.

"Comple[t]e, [ed] or [ion]" means with respect to the Project Improvements, that (a) all work

related to the Project Improvements, or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with this Agreement and in compliance with Applicable Laws so that (i) the Project Improvements may, in all respects, be used and operated under the applicable provisions of this 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 approvals that are required in order that a Certificate of Completion can be issued for the Project Improvements, 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 by the Redeveloper (with respect to the Project Improvements), which determination shall be deemed acceptable to the Town if it complies with the specifications and standards outlined in this Agreement.

"Control" (including the correlative meanings of the terms "controlled by" and "under common control with"), as used with respect to the Redeveloper, means 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.

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

"Event of Default" means the occurrence of any Redeveloper Event of Default or Town 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 Agreement as if set forth in full in the text hereof.

"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, including without limitation the Town and the Land Use Board, required to be obtained in order to construct the Project Improvements.

"Governmental Authority" means the federal government, the State, any 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 the Project or the Redevelopment Area, including without limitation, the Town and the Land Use Board.

"Infrastructure Improvements" means collectively, the On-Site Infrastructure Improvements and shall include all utilities including public sewer, water infrastructure, road and other infrastructure improvements as necessary to construct and operate the Project.

"Municipal Land Use Law" means N.J.S.A. 40:55D-1 *et seq.*, as amended and supplemented from time to time.

"On-Site Infrastructure Improvements" means any improvements within the Project Area, excepting the Improvements and Remediation, including, without limitation, (a) all roadways, bridges and on-site infrastructure improvements (b) grading, site drainage, drainage outfalls, walkways, subsurface excavation and other site preparatory work for the Project, lighting within on-site parking areas, landscaping, fire hydrants and interior roadways, in each case, and (c) water and sewer service lines for the Project Area, including hook-ups and service laterals from a building to the curb for water, storm and sanitary sewers, and other utilities, including electric, gas, telephone and cable services (which are to be built underground), and (d) all other improvements which are or may be required to accommodate construction, occupancy and use of the Project.

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

"Project" means collectively, the improvements as approved by the Town Land Use Board in the Site Plan Approval in accordance with the Redevelopment Plan.

"Project Area" means the area as defined in the recitals.

"Project Improvements" means the improvements described in the Site Plan Approval.

"Property" means the property defined as the "Property" in the recitals to this Agreement.

"Section" means a section or subsection of this Agreement.

"Site Plan" means one or more plans depicting those aspects of the Project Improvements required pursuant to the Town's site plan ordinance and pursuant to N.J.S.A. 40:55D-7.

"State" means the State of New Jersey.

"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 remains to be completed as long as the Redeveloper, with respect to the Project Improvements, has prepared and delivered to the Town a "punch list" of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Agreement, (b) the "punch list" items have been reasonably agreed to by the Town, and (c) such "punch list" items are capable of being completed within one hundred and eighty (180) 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 however, that all such "punch list" items shall be Completed under all circumstances within (i) one hundred and eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) one hundred and eighty (180) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings that may be subject to Certification of Completion under this Agreement.

"Term" means that period of time from the Effective Date of this Agreement until the Town issues the final Certificate of Occupancy for the Project Improvements.

"Title Company" means the title insurance company or agency selected by the Redeveloper to provide title insurance to the Redeveloper for the Town lot to be acquired pursuant to this Agreement.

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

"Town Committee" means the governing body of the Town of Phillipsburg.

"Town Indemnified Parties" means the Town and its officers, elected officials, agents, employees, contractors and consultants.

"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 sea conditions affecting delivery of materials or similar cataclysmic occurrence, nuclear catastrophe, an act of a public enemy, war, blockade, insurrection, riot, general unrest or general restraint of government and people.

(b) A Change in Law.

(c) Action or inaction by any Governmental Authority 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 grossly 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, (iii) such action, inaction, issuance, denial or suspension shall not be the result of the illegal or unlawful actions of the Party relying thereon, and/or (iv) 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 grossly 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 or failure of the Redeveloper to agree to any reasonable condition to the issuance or renewal of such Governmental Approval shall not constitute an Uncontrollable Circumstance under this paragraph (d).

(e) The presence of environmental contamination or pollution or the discharge of hazardous material within the Project Area, to the extent that the presence of such contamination or pollution or such discharge of such hazardous materials shall not have been caused by the actions or inactions of the Redeveloper, its employees, agents, consultants, contractors, or subcontractors (regardless as to whether such action or inaction was willful or intentional or the result of negligence).

(f) The intentional or unintentional damage or destruction of the Project Improvements or any portion thereof or of the Project Area by contractors, 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.

(g) Delay caused by or arising out of legal action or lawsuits filed in challenge of the issuance or grant of any Governmental Approval, including, but not limited to, local Land Use Board approval of the Redeveloper's Site Plans.

(h) Delay caused by or arising out of legal action or lawsuits filed in challenge of the actions of the Town or Town Land Use Board described in the Recitals of this Redevelopment Agreement, including the designation by the Town of the Project Area as an area in need of redevelopment pursuant to the Redevelopment Law, the preparation and adoption by the Town of the Redevelopment Plan, the designation of Redeveloper as redeveloper of the Project Area and the negotiation and execution of this Redevelopment Agreement.

(i) 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.

(j) The loss or withdrawal of any commitment for financing or loss or withdrawal of any financing that the Redeveloper requires to develop the Project except if any such loss or withdrawal results solely from Redeveloper's willful default of the terms of any such commitment or financing.

The Parties acknowledge that the acts, events or conditions set forth in paragraphs (a) through (j) 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.

"Utilities" means municipal water, sanitary sewer and storm water provisions, natural gas,

electricity, and voice and data transmission facilities.

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

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.

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.

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.

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.

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.

Each right of the Town to review or approve any actions, plans, specifications, or other obligations of the Redeveloper hereunder shall be made by the Town official(s) with legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a timely manner. Upon request of the Redeveloper, the Town shall inform the Redeveloper of all officials with the required authority.

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, unless the context dictates otherwise.

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

ARTICLE II

DESCRIPTION OF PROJECT AREA AND THE PROJECT IMPROVEMENTS

2.01. Project Area. The Project Area as defined in this Agreement shall consist of the surface, subsurface and airspace under, on and above the real property described in the definition thereof and upon which the Project Improvements will be constructed.

2.02. Proposed Development. The Project consists of the construction of the Project Improvements.

2.03. Improvements. The Improvements shall be limited to the permitted uses identified in the Redevelopment Plan, and any amendments thereto, following negotiation and agreement of the Redeveloper and Town. No Improvements shall be constructed without the prior written approval of the Town.

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2.04. Project Amendments. The Project shall be constructed in accordance with the Redevelopment Plan and the Site Plan Approval. Any modification that would trigger a "d" variance pursuant to N.J.S.A. 40:55D-70(d) shall require the Redeveloper to seek an amendment to the Redevelopment Plan. Any modification from the Redevelopment Plan or the approved site plan, that would be deemed a "design waiver", which shall be considered as the equivalent of and akin to the provisions of a "c" variance pursuant to N.J.S.A. 40:55D-70(c), shall be submitted to the Land Use Board for consideration as part of a site plan application by the Redeveloper, subject to prior review and approval of the Town.

ARTICLE II

CONDITIONS PRECEDENT

3.01. Project Costs and Financing. The Parties agree that the Redeveloper obligation to construct the Project Improvements is contingent upon the Redeveloper obtaining financing on terms and conditions that are acceptable to the Redeveloper. If the Redeveloper determines financing on terms and conditions that are acceptable to the Redeveloper in its sole and absolute discretion not available, the Redeveloper may terminate this Agreement at any time on written notice given via email to counsel for the Town.

ARTICLE IV

FINANCIAL OBLIGATIONS

4.01. Non-Residential Development Fee. Within sixty (60) days of the later of (i) the Town's issuance of a Certificate of Completion evidencing the Completion of the Project; and (ii) the Town's assessment of the land and improvement taxes on the Project, as Completed, the Redeveloper shall pay to the Town a one-time fee equal to 2.5% of the equalized assessed value of land and improvements of the Project in accordance with, and a calculated pursuant to the Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq.

4.02. Intentionally omitted.

4.03. Project Costs. Except as otherwise provided in this Agreement, all Project costs will be borne by the Redeveloper, including specifically, sewer connection charges. Sewer connection charges shall be calculated in accordance with the fee calculation scheduled established in the Town Code.

(a) The Redeveloper agrees that it will make timely payment or reimbursement to the Town of the Town Costs. The Redeveloper has established an escrow account (the "Escrow Account"), pursuant to the Escrow Agreement dated [_____] between the Redeveloper and the Town ("Escrow Agreement").

(b) If the Redeveloper's Escrow is drawn down to or below the sum of Two Thousand, Five Hundred Dollars and No Cents (\$2,500.00), then the Redeveloper shall, within ten (10) business days of Redeveloper receiving written notice by email or letter of same, replenish the Escrow Account to the sum of Five Thousand Dollars (\$5,000.00) for use in accordance with these terms.

(c) Prior to Redeveloper being responsible to pay and the Town having the right to charge against the Escrow Account, the Town shall provide the Redeveloper a copy of each contract, retainer or proposal for the provision of professional services (or any other services) with the Town that

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would qualify for reimbursement by the Redeveloper as defined in the Escrow Agreement (the "Town Professional Costs"), for review and approval by the Redeveloper. Failure by the Redeveloper to approve or provide reasons for disapproval of the contract, retainer, or proposal for the provision of such services in writing to the Town within ten (10) business days of receipt of any such contract, proposal or retainer, shall be deemed an approval of the contract, proposal, or retainer on the part of the Redeveloper. The existing professional rates charged to the Town are to be provided to the Redeveloper along with the contracts, proposal or retainers. If the Redeveloper objects to any contract, proposal or retainer in writing, the Parties agree to further negotiate the dispute pertaining to the contract, proposal or retainer.

(d) Prior to the Town's withdrawal of funds from the Escrow Account, the Town shall provide the Redeveloper with a copy of each invoice reflecting the Town Costs to be paid for the Redeveloper's review. Such invoices will include: (i) the amount of the disbursement; (ii) the name of the person, company or entity designated to receive payment; (iii) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Agreement. The Redeveloper shall have ten (10) business days from receipt of the invoices to review the invoices and notify the Town in writing of any objections to the invoices. Failure to approve or provide reasons for disapproval of an invoice(s) in writing to the Town within ten (10) business days of receipt of the invoice, shall be deemed an approval of the invoice on the part of the Redeveloper for purposes of payment from the Escrow Account. If the Redeveloper objects to an invoice in writing, the Parties agree to further negotiate the dispute pertaining to the invoice. Statements reflecting all charges and the then current balance of the Escrow Account shall be provided to the Redeveloper by the Town on a monthly basis or more upon request by the Redeveloper.

(e) Any dispute concerning payment of the Town Costs shall be resolved as mutually agreed upon by the Town and the Redeveloper. After issuance of the final Certificate of Completion of the Project or upon termination of this Redevelopment Agreement, any money remaining in the Escrow Account shall be disbursed to the Redeveloper.

4.05. Governmental Approval Fees. The Parties agree to cooperate in an effort to achieve cost savings in regard to fees associated with the Governmental Approvals and related professional and inspection fees. The Redeveloper agrees to pay all customary and reasonable escrow fees for the Town's professionals on land use applications made by the Redeveloper as permitted under the Municipal Land Use Law and such other reasonable and customary fees for permits required by the Town (in accordance with standard fees provided in the Town's ordinances) and any other Governmental Authority for the construction and development of the Project Improvements. Redeveloper shall pay all other permit fees, which include any permit fees payable by the Town or Redeveloper to all required Governmental Authorities other than the Town, or for which the Town is required to reimburse other Governmental Authorities or is required to pay other third-party contractors retained by or on behalf of the Town. Notwithstanding the foregoing, the Town agrees to work in good faith with the Redeveloper and Governmental Authorities to waive or reduce application and permit fees for permits, approvals or connections required from the Town, utility authorities or Governmental Authorities including but not limited to, application, building permits, road openings and utility connection fees.

ARTICLE V

CONSTRUCTION OF PROJECT IMPROVEMENTS

5.01. Construction of Project Improvements. The Redeveloper will construct or cause to be constructed the Project Improvements. The Redeveloper will design, permit and construct the Project Improvements, at the Redeveloper's sole cost and expense.

5.02. Cooperation. The Parties shall fully cooperate with each other as necessary to 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 Town's and the Redeveloper's respective obligations hereunder.

ARTICLE VI

GENERAL DEVELOPMENT REQUIREMENTS

6.01. Scope of Undertaking. The services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, and construction of the Project Improvements, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project Improvements, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project Improvements and all aspects of the funding of the Project Improvements (except as otherwise expressly provided in this Redevelopment Agreement), including equity funding and construction, interim and permanent financing, all at the sole cost and liability of the Redeveloper, subject to the provisions set forth in this Agreement and any other mutually agreed upon terms.

6.02. Without limitation, all work on the Project Improvements shall be performed in a good and workmanlike manner, with the materials called for under the Governmental Approvals being of such quality as is required by such Approvals and as are appropriate for a project of the character and quality of the Project Improvements. All construction shall be in accordance with the Uniform Construction Code.

6.03. The Project Improvements and all materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Applicable Laws.

ARTICLE VII

APPLICATIONS FOR GOVERNMENTAL APPROVALS

7.01. Site Plan Approval. This Site Plan Approval is incorporated into this Agreement by reference.

7.02. Town 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 Redevelopment Project), the Town shall provide support and assistance to the Redeveloper in facilitating the review of all plans, issuance of all permits, approvals, requests for inspections and the conduct of such inspections through the appropriate Town board, body or department, including the Land Use Board, as applicable.

7.03. Commencement Date and List of Government Approvals. The Redeveloper and the Town shall cooperate and use diligent efforts to secure, or cause to be secured, any and all Governmental Approvals that may be required to be obtained from any governmental agency having jurisdiction over the Project Improvements. The Town agrees, upon Town approval, which shall not be unreasonably withheld, delayed or conditioned, to fully cooperate with the Redeveloper in obtaining the Governmental Approvals, to the extent reasonably requested by the Redeveloper, including without limitation, execution (as a co-applicant) of any application relating to such Governmental Approvals.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS

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

(a) The Redeveloper has the legal 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.

(b) 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.

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

(d) 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.

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

(f) 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.

(g) 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.

(h) All materials and documentation submitted by the Redeveloper and its agents to the Town and its agents were, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall continue to inform the Town of any material 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 Town to enter into this Redevelopment Agreement.

(i) Subject to the ability to obtain commercial financing as contemplated herein, the Redeveloper is capable of developing, designing, financing and constructing the Project Improvements.

(j) The Redeveloper agrees that, except as otherwise provided herein, the cost and financing of the Redevelopment Project is the responsibility of the Redeveloper, pursuant to the

Redevelopment Plan and this Redevelopment Agreement. Except as otherwise provided herein, the Town shall not be responsible for any cost whatsoever in respect to same.

(k) The Redeveloper shall, at such times as the Towns may request, furnish the Town with a complete statement subscribed and sworn to by a managing member 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, and in the event any other parties have a beneficial interest in the Redeveloper, their names and the extent of such interest.

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

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

(b) This Redevelopment Agreement has been duly authorized, executed and delivered by the Town and is valid and legally binding upon the Town and enforceable in accordance with its terms on the basis of laws presently 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 Town is a party.

(c) To the best of the Town's knowledge and belief, there is no pending litigation that would in any way (i) contest or seek to invalidate the Redeveloper's ability to commence performance of its obligations under the Redevelopment Agreement, or (ii) prevent the Town from performing its duties and obligations hereunder.

(d) There are no suits, other proceedings or investigations pending against the Town that would have a material adverse effect on the Town's financial condition.

(e) All materials and documentation submitted by the Town and its agents were, at the time of such submission, and as of the date of this Agreement, materially accurate, and the Town shall continue to inform the Redeveloper of any material and adverse changes in the documentation submitted.

(f) To the best of the Town's knowledge and belief, the Redevelopment Plan has been adopted in accordance with all Applicable Laws at the time of its adoption.

8.03. Mutual Representations. The Town and the Redeveloper agree that the Redevelopment Project will be governed by this Redevelopment Agreement. In the event that any contractual provisions that are required by the Applicable Law have been omitted, then the Town 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 of one of the parties, the Town and the Redeveloper agree to act in good faith to mitigate such changes in position.

(a) The Redeveloper shall construct, improve, operate and maintain the Project Improvements in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto 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 under applicable laws.

(b) The Redeveloper shall make all reasonable efforts (i) to obtain financing of the Redevelopment Project and (ii) to construct and develop the Project Improvements with due diligence. 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, 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, the Town's prior written approval, which shall not be unreasonably withheld, must be secured prior to proceeding with any activities relating to such proposed modifications. Provided, however, that de minimis or administrative type changes can be approved by the Town engineer in writing without further formal Town approval.

(d) The Redeveloper shall fulfill its material obligations under any and all agreements it enters into with third parties with respect to the acquisition, construction, leasing, sale, financing and other matters relating to the Project Improvements; provided however, that this covenant is not intended to prevent the Redeveloper from contesting the scope or nature of such obligations as and to the extent provided in such agreements.

(e) The Redeveloper shall use commercially reasonable efforts to complete the Project Improvements at its sole cost and expense; provided however, that the Parties acknowledge that financing will be required to complete the Project Improvements and the Redeveloper's obligation to complete the Project Improvements is conditioned upon and subject to Redeveloper obtaining all financing as contemplated by this Agreement.

(f) 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.

(g) The Redeveloper will not transfer or assign this Agreement or the redevelopment rights to the Redevelopment Area to a third party without the Town's prior written consent, which consent may not be unreasonably withheld, conditioned or delayed.

8.04 Town Covenants. The Town hereby covenants and agrees to the following:

(a) In accordance with all Applicable Laws, the Town shall make all commercially reasonable efforts to assist the Redeveloper in making application for and pursuing all Government Approvals necessary for the construction and development of the Project Improvements.

(b) Take such action as is deemed necessary and appropriate to accomplish the Redevelopment Plan amendments in a diligent manner in accordance with Applicable Law.

8.05 Effect and Duration of the Covenants. It is intended and agreed that the agreements and covenants set forth in this Redevelopment Agreement shall be effective until the Project Improvements, or portion thereof, shall be Completed as evidenced by the issuance of a Certificate of Completion for the Project, and such agreements and 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 Town, 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. Such agreements and covenants, however, shall be binding on the Redeveloper itself, each successor in interest to the Redeveloper and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall be in possession or occupancy of the Project Area, the buildings and structures thereon, or any part thereof. Once the Project Improvements shall be completed as evidenced by the issuance of a Certificate of Completion, the Town shall execute within thirty (30) days of any written request from Redeveloper any reasonably necessary documentation, including, without limitation, a certificate of completion in recordable form, manifesting that the applicable agreements, covenants, and/or restrictions contained herein shall cease upon the issuance of a Certificate of Completion, are no longer applicable to the Project Area.

8.06 Enforcement of Covenants by the Town. Upon the issuance of a Certificate of Completion, or portion thereof, the conditions that were found and determined to exist at the time the Project Area 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.

ARTICLE IX

CERTIFICATES OF OCCUPANCY AND COMPLETION

9.01. Certificate of Occupancy. Upon Substantial Completion of the construction of the Project Improvements, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for the Building. The Redeveloper shall take all actions required for issuance of a Certificate of Occupancy and the Town shall promptly process any applications for same.

9.02. Intentionally omitted.

9.03. Certificate of Completion. The Substantial Completion of the Project Improvements shall be evidenced by a certificate of the Town in recordable form ("Certificate of Completion") accepting the terms of a certificate of the Redeveloper stating that: (a) the Project Improvements have been Substantially Completed (excluding any normal and customary tenant improvements) in accordance with the Site Plan Approval; (b) other facilities necessary to achieve Substantial Completion and commence occupancy of the Project Improvements has been acquired, constructed or improved in accordance with the Final Site Plan and subdivision approval and all 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, of governmental authorities or agencies for the occupancy and use of all portions of the Project Improvements for the purposes contemplated by this Redevelopment Agreement and the Redevelopment Plan, have been obtained. The Town shall not unreasonably withhold or delay the delivery of a Certificate of Completion. If the Town determines that the Redeveloper is not entitled to a Certificate of Completion, the Town shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the Town refused or failed to furnish a Certificate of Completion. If the reason for the refusal is confined to punch list type items, the Town will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by the Redeveloper with the Town in an amount representing 125% of the value 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 Town.

Upon issuance of a Certificate of Completion, the Project Area, and Project Improvements, or the portion thereof to which such Certificate relates, shall no longer be subject to the provisions of this Redevelopment Agreement. The Redeveloper may request that the Parties execute such written acknowledgment as may be reasonably requested by the Redeveloper or required to be executed and filed so as to release the Project Area, or the portion thereof from the covenants, provisions, and controls of this Redevelopment Agreement.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

10.01. 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 Town to observe and perform any covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of ninety (90) 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 ninety (90) 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 but in no event later than one hundred eighty (180) days after such written notice.

(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; or (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; 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 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) There is a Transfer in violation of this Agreement.

10.02. Uncontrollable Circumstances. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of an Uncontrollable Circumstance that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the parties to this Redevelopment 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 an obligation or complying with any condition required of such party under the terms of this Redevelopment Agreement.

10.03. Remedies upon Events of default by Redeveloper. If an Event of default by Redeveloper occurs, but subject to any notice and cure provisions afforded Redeveloper, the sole remedy of the Town shall be the termination of this Redevelopment Agreement and termination of the redeveloper designation to Redeveloper. In no event shall Redeveloper have any personal liability of any kind or nature.

10.04. Remedies upon Events of Default of the Town. If an Event of default by the Town occurs, but subject to any notice and cure provisions afforded the Town, the Redeveloper shall have the right to terminate this Redevelopment Agreement or to bring an action as to specific performance to compel the Town's performance under this Redeveloper Agreement.

ARTICLE XI

MISCELLANEOUS

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

If to the Town:

with copy to:
Richard W. Wenner, Esq.
Lavery, Selvaggi, & Cohen, P.C.
1001 Route 517
Hackettstown, NJ 07840
Facsimile No.: (908) 852-8225

If to the Redeveloper:
Peron Construction LLC
Rob Debeer
91 Larry Holmes Drive, Suite 200
Easton, PA 18042
rdebeer@perongroup.com

With a copy to:
Florio Perrucci Steinhardt Cappelli & Tipton LLC
Seth R. Tipton, Esq.
91 Larry Holmes Drive, Suite 200
Easton PA 18042
stipton@floriolaw.com

11.02. Conflict of Interest. No member, official or employee of the Town 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.

11.03. 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 Town, any money or other consideration for or in connection with this Redevelopment Agreement. Lender Changes. If the Redeveloper's lender requires a change in the terms of this Redevelopment Agreement, the Town shall reasonably cooperate with the Redeveloper in approving such change, so long as such change, if any, does not modify or change the substantial rights or obligations of the Parties as set forth in this Redevelopment Agreement. In addition, the Town agrees to enter into such agreements as the Redeveloper's lender (or its equity participants) may reasonably require provided that such agreement shall not be

inconsistent with the terms of this Redevelopment Agreement (i.e., shall not increase the Town's responsibilities or decrease its benefits hereunder).

11.05. Non-Liability of Officials and Employees of the Town. No member, official or employee of the Town shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Town, 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.

11.06. 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 Town, 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 Town, or their successors, on any obligation under the terms of this Redevelopment Agreement unless such liability is separately assumed under a separate document.

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

11.08. 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 Area 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.

11.09. 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, and their heirs, executors, and administrators.

11.010. 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.

11.011. 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.

11.012. 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.

11.013. 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.

11.014. 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.

11.015. 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 Town and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Town and the Redeveloper.

11.016. 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.

11.017. 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 Town may bring any action or proceeding to enforce or arising out of this Agreement in any court of competent jurisdiction. If the Town commences such an action in a court located in the County of Warren, 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 Warren, 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 follow on next page]

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

REDEVELOPER:

By: _____

Name: Michael J. Perrucci

Title: Member

TOWN OF PHILLIPSBURG

By: _____

Name: Randy Piazza Jr.

Title: Mayor

STATE OF NEW JERSEY :

: SS.

COUNTY OF WARREN :

BE IT REMEMBERED, that on this _____ day of _____, 2024, before me the subscriber, personally appeared MICHAEL J. PERRUCCI, a Member of PERON CONSTRUCTION LLC, a New Jersey limited liability company, who I am satisfied is the person who signed, sealed and delivered the foregoing Declaration as such officer, and that the within instrument is his/her voluntary act and deed on behalf of the entity as such officer and that he/she desires that it be recorded as such.

Notary Public

My commission expires

STATE OF NEW JERSEY :

: SS.

COUNTY OF WARREN :

BE IT REMEMBERED, that on this _____ day of _____, 2024, before me the subscriber, personally appeared MAYOR RANDY PIAZZA JR, the Authorized Representative for the TOWN OF PHILLIPSBURG, a New Jersey municipal corporation, who I am satisfied is the person who signed, sealed and delivered the foregoing Declaration as such officer, and that the within instrument is his/her voluntary act and deed on behalf of the entity as such officer and that he/she desires that it be recorded as such.

Notary Public

My commission expires:

REDEVELOPMENT AGREEMENT – SCHEDULE OF EXHIBITS

EXHIBIT A Site Plan Resolution

{00920681-1}

Exhibit A

Site Plan Resolution