

FOR EXECUTION

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

THE BOROUGH OF METUCHEN

AND

METUCHEN III, LLC

Redeveloper

Date: 11/9, 2021

FOR EXECUTION

THIS REDEVELOPMENT AGREEMENT (this “**Redevelopment Agreement**” or “**Agreement**”), dated as of November 9, 2021 by and between **METUCHEN III, LLC**, a New Jersey Corporation having offices at 4905 Del Ray Avenue, Suite 200, Bethesda, Maryland 20814, and/or its assignee, as provided herein, (the “**Redeveloper**”), and the **BOROUGH OF METUCHEN**, a Municipal Corporation of the State of New Jersey, having offices at 500 Main Street, Metuchen, New Jersey 08840 (the “**Borough**”) (the Borough and Redeveloper being collectively referred to herein as the “**Parties**”).

WITNESSETH

WHEREAS, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1, et seq.*, as amended and/or supplemented (the “**Redevelopment Law**”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of redevelopment or rehabilitation; and

WHEREAS, by way of Resolution No. 2015-147 adopted on June 15, 2015, the Mayor and Council of the Borough of Metuchen (the “**Borough Council**”) designated certain parcels identified on the Borough’s Official Tax Map as Block 71, Lot 37.01 (the “**Oakite Redevelopment Area**”) as a Non-Condensation Redevelopment Area pursuant to the criterion set forth in the Redevelopment Law; and

WHEREAS, by way of Ordinance No. 2018-24 adopted on October 15, 2018, the Borough adopted a redevelopment plan for the Oakite Redevelopment Area entitled “Oakite Site Redevelopment Plan, Borough of Metuchen, New Jersey, Block 71, Lot 37.01,” dated September 2018 (the “**Original Redevelopment Plan**”), which sets forth, inter alia, the plans for the development, revitalization, rehabilitation, and redevelopment of the Borough and, specifically, the Oakite Redevelopment Area, a copy of which is on file with the Borough Clerk’s Office; and

WHEREAS, by way of Ordinance No.2021-15, adopted on September 13, 2021, the Borough adopted an amendment to the Original Redevelopment Plan entitled “Amended Oakite Site Redevelopment Plan,” dated August 18, 2021 (“**Redevelopment Plan**”), which supersedes the Original Redevelopment Plan and sets forth the plans for the development, revitalization, rehabilitation, and redevelopment of both Block 71, Lot 37.01 and Lot 37.02 (“**Redevelopment Plan Area**”), a copy of which is on file with the Borough Clerk’s Office; and

WHEREAS, the Redevelopment Law, *N.J.S.A. 40A:12A-8(f)*, authorizes the Borough to arrange or contract with a redeveloper for the planning, construction, or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment or rehabilitation, including contracting or arranging for the performance of part of any such work; and

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WHEREAS, the Borough and Redeveloper have engaged in such negotiations and the Borough Council has determined that it is in the best interests of the Borough to enter into this Agreement with Redeveloper to undertake preliminary site preparation work, remediation, and the development of improvements, as more particularly described herein below, to the portions of the Redevelopment Plan Area identified as the “Mid-Block Connector Roadway,” “Parcel C” and “Parcel E” in the Redevelopment Plan, and as depicted in Exhibit “A” attached hereto; and

WHEREAS, by way of a Developer Agreement entered into between the Borough and Metuchen I, LLC, an affiliate of Redeveloper, dated January 19, 2010 (“**Developer’s Agreement**”), Metuchen I, LLC agreed to construct a public roadway across Block 71, Lot 37.01 and Lot 37.02, connecting Middlesex Avenue and Durham Avenue (“**Roadway**”); and

WHEREAS, Metuchen I, LLC constructed the portion of the Roadway over Block 71, Lot 37.02, and remains obligated to complete construction of the Roadway over Lot 37.01 (“**Extended Roadway**”) in accordance with an Amendment to the Developer’s Agreement, attached hereto as Exhibit “B2” (“**Amended Developer’s Agreement**”); and

WHEREAS, pursuant to the Redevelopment Plan, it calls for the construction and completion of, and payment for, the Extended Roadway, which is identified in the Redevelopment Plan as the “Mid-Block Connector Roadway”; and

WHEREAS, the Redeveloper further agrees to undertake certain site preparation, infrastructure and environmental remediation work to the portions of the Redevelopment Plan Area to identified as the “Mid-Block Connector Roadway,” “Parcel C” and “Parcel E” in the Redevelopment Plan, which shall consist of the obtaining of governmental approvals, completion of site preparation and certain off-site improvements, the financing and completion of remediation,; the financing, construction and completion of certain site improvements, in coordination with Metuchen I, LLC, including the financing, construction and completion of the Extended Roadway, which is identified in the Redevelopment Plan as the “Mid-Block Connector Roadway”; the construction of a coffee shop with a drive-thru on Parcel C and the construction of a daycare center on Parcel E, all as more particularly described in Exhibit “B,” Exhibit “B1,” Exhibit “B2,” Exhibit “B3” and Exhibit “B4” attached hereto (all collectively referred to herein as the “**Project**”); and

WHEREAS, the Redevelopment Plan calls for, among other things, site preparation and construction of new improvements on the Redevelopment Plan Area and the Borough intends to enter into redevelopment agreements for the construction of additional improvements on Parcel A, Parcel B and Parcel D of the Redevelopment Plan Area in order to complete the redevelopment of the Redevelopment Plan Area; and

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WHEREAS, in accordance with the Redevelopment Law, the Parties desire to set forth their mutual representations and obligations relating to the redevelopment of the Redevelopment Plan Area.

NOW, THEREFORE, for and in consideration of the premises and of the mutual representations, covenants, and agreements herein set forth, and to implement the purposes of the Redevelopment Law and the Redevelopment Plan, the Parties hereto, each binding itself, its successors and assigns, do mutually promise, covenant, and agree as follows:

**ARTICLE I
DEFINITIONS AND INTERPRETATIONS**

SECTION 1.1. Incorporation of Recitals. The statements that are set forth in the Recitals above are true and accurate. All Recitals are repeated and are incorporated herein by this reference thereto and are made a part hereof as if each and every statement were set forth fully herein.

SECTION 1.2. Definitions. Except as expressly provided herein to the contrary, all capitalized terms used in this Redevelopment Agreement and its exhibits shall have the following meanings:

“**2016 SRA Permit**” shall have the meaning set forth in Section 5.2(e).

“**2016 RAO**” shall have the meaning set forth in Section 5.2(f).

“**Amended Developer’s Agreement**” shall mean the Amendment to the Developer’s Agreement by and between Metuchen I, LLC and the Borough of Metuchen, executed by Metuchen I, LLC and the Borough of Metuchen on September 10, 2021, a copy of which is attached hereto as Exhibit “B2”.

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

“**Applicable Law**” means all Federal, State and local laws, ordinances, approvals, rules, regulations and requirements of any Governmental Body, now or hereafter in effect, and, in each case, as amended from time to time, including, but not limited to, the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, the Redevelopment Area Bond Financing Law *N.J.S.A.*

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40A:12A-64 et seq., the Long-Term Tax Exemption Law *N.J.S.A.* 40A:20-1 et seq., relevant construction codes including construction codes governing access for persons with disabilities, and such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder, including all applicable environmental laws, applicable Federal and State labor standards and all applicable laws or regulations with respect to the payment of prevailing wages.

“Borough” means the Borough of Metuchen, in the County of Middlesex, State of New Jersey, a Municipal Corporation of the State.

“Borough Costs” as defined in Section 10.7(a).

“Borough Council” refers to the Council of the Borough of Metuchen, County of Middlesex, State of New Jersey.

“Borough Engineer” shall mean the professional engineer appointed each year by the Borough Council at its annual reorganization meeting.

“Borough Indemnified Parties” means the Borough and its officials, officers, agents, employees, attorneys, contractors, and consultants.

“Certificate of Completion” means a certificate issued by the Borough in accordance with the Redevelopment Law, which acknowledges that the obligations for the applicable Phase or Parcel have been Completed in accordance with this Redevelopment Agreement. A Certificate of Completion will not be issued for the Road Construction Phase, which shall be deemed Completed on the date of the dedication of and the Borough’s acceptance of the Connector Road and Connector Road Site Improvements, after issuance of the Road Completion Certificate.

In addition, a Certificate of Completion will not be issued to the Redeveloper under this Redevelopment Agreement for Parcel B because that Parcel will be redeveloped by a different redeveloper pursuant to separate redevelopment agreement and a Certificate of Completion will be issued to the redeveloper of Parcel B in accordance with the redevelopment agreement for Parcel B upon completion of the project contemplated therein. As to Parcel A and Parcel D, no Certificate of Completion shall be issued to Redeveloper under this Agreement, it being understood that Parcel A and Parcel D are not currently subject to this Redevelopment Agreement nor are part of the Project. If redevelopment is proposed in the future, however, such proposed redevelopment for Parcel A and/or Parcel D shall be addressed either by amendment to this Redevelopment Agreement to include redevelopment of Parcel A and/or Parcel D, as applicable, as part of the Project or, by execution of new redevelopment agreement.

“Certificate of Occupancy” shall mean a temporary or permanent “certificate of occupancy,” as such terms are defined in the Regulations for the New Jersey Uniform Construction

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Code at *N.J.A.C. 5:23-1.4* and as provided for at *N.J.A.C. 5:23-1.4, et. seq.*, including without limitation *N.J.A.C. 5:23-2.23* and *N.J.A.C. 5:23-2.23A*, as may be amended and/or supplemented, issued with respect to all or a portion of the Project upon completion of all or a portion of the Project.

“Certificate of Termination” shall mean a certificate issued by the Borough in accordance with this Agreement, which evidences that all obligations hereunder have been fully satisfied by the Redeveloper and that this Agreement has been terminated in accordance with the provision contained herein.

“Claim” or **“Claims”** shall mean any claim, action, notice, notification, demand, directive, citation, summons, order, complaint or assessment.

“Cleanout” as defined in Section 4.2(b)(i).

“Cleanout Completion Certificate” as defined in Section 4.2(b)(v).

“Coffee Shop Phase” shall mean the phase of the Project in which the Redeveloper designs, obtains all Governmental Approvals for, constructs and Completes the Coffee Shop Improvements and all necessary Site Preparation for the same, in accordance with the requirements set forth in Section 4.1(b) below.

“Coffee Shop Improvements” shall mean the construction of an approximately 2,200 s.f. coffee shop with a drive-thru, along with associated parking spaces, and related amenities to be constructed on Parcel C, as more particularly described in Exhibit “B,” and as depicted in Exhibit “B1” and Exhibit “B3” and all other improvements required to be constructed under any Governmental Approvals issued for Parcel C and in accordance with this Redevelopment Agreement.

“Commence Construction” or **“Commencement of Construction”** means: (1) for the Road Construction Phase, the undertaking by Redeveloper of any actual physical construction of the Connector Road, including Site Preparation, construction of new structures or construction or upgrading of infrastructure after obtaining any and all necessary Governmental Approvals for the Connector Road; (2) for the Coffee Shop Phase, the undertaking by Redeveloper of any actual physical construction of the Coffee Shop Improvements on Parcel C, including Site Preparation, construction of new structures or construction or upgrading of infrastructure after obtaining any and all necessary Governmental Approvals; (3) the Daycare Phase, the undertaking by Redeveloper of any actual physical construction of the Daycare Improvements on Parcel E, including Site Preparation, construction of new structures or construction or upgrading of infrastructure after obtaining any and all necessary Governmental Approvals.

“Completion”, “Complete” or **“Completed”** mean, as applicable:

(ii) As to the Road Construction Phase: (a) that all permits, licenses and other Governmental Approvals required for the Connector Road and all Connector Road Site Improvements have been obtained; (b) construction of the Connector Road has been completed, acquired and installed in accordance with the terms of the Amended Developer's Agreement and in compliance with all Applicable Laws and Governmental Approvals, as evidenced by the issuance of the Road Completion Certification and the dedication and acceptance of the Connector Road by the Borough; (c) the Connector Road Parcel has been Remediated to the applicable Remediation Standard for the Parcel's Intended Use in accordance with all applicable Remediation Standards for the Parcel's Intended Use, in compliance with all Remediation Documents, in accordance with the terms of this Redevelopment Agreement and the Redevelopment Plan, and in compliance with all Environmental Laws and other Applicable Laws and Governmental Approvals, as evidenced by the issuance of a Remediation Completion Document; and (d) all Connector Road Site Improvements have been completed in accordance with the terms of this Agreement, the Redevelopment Plan, and in compliance with all Applicable Laws and Governmental Approvals, as evidenced by the issuance of the Road Completion Certificate and dedication and acceptance of the Road Connector and the Connector Road Site Improvements by the Borough; and

(iii) As to the Coffee Shop Phase: (a) all permits, licenses and other Governmental Approvals required for the Project Improvements have been obtained; (b) construction of the Project Improvements has been completed, acquired and installed in accordance with the terms of this Agreement, the Redevelopment Plan, and in compliance with all Applicable Laws and Governmental Approvals; (c) Parcel C has been Remediated to the applicable Remediation Standard for the Parcel's Intended Use in accordance with all applicable Remediation Standards for the Parcel's Intended Use, in compliance with all Remediation Documents, in accordance with the terms of this Redevelopment Agreement and the Redevelopment Plan, and in compliance with all Environmental Laws and other Applicable Laws and Governmental Approvals, as evidenced by the issuance of a Remediation Completion Document; and (d) payment of the required Open Space Contribution set forth in Section 10.8 has been paid.

(iv) As to the Daycare Phase: (a) all permits, licenses and other Governmental Approvals required for the Project Improvements have been obtained; (b) Parcel E has been Remediated to the applicable Remediation Standard for the Parcel's Intended Use in accordance with all applicable Remediation Standards for the Parcel's Intended Use, in compliance with all Remediation Documents, in accordance with the terms of this Redevelopment Agreement and the Redevelopment Plan, and in compliance with all Environmental Laws and other Applicable Laws and Governmental Approvals, as evidenced by the issuance of a Remediation Completion Document; (c) construction of the Project Improvements has been completed, acquired and installed in accordance with the terms of this Agreement, the Redevelopment Plan, and in compliance with all Applicable Laws and Governmental Approvals; and (d) payment of the

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required Open Space Contribution set forth in Section 10.8 has been paid. With respect to the further construction of the Daycare Improvements on Parcel E, no existing parking spaces shall be removed until replacement parking spaces are provided elsewhere on Parcel E. Replacement parking spaces shall be in addition to any parking spaces required for the Daycare Improvements.

“**Connector Road**” shall mean the Extended Roadway to be constructed by Metuchen I, LLC on the Connector Road Parcel, in accordance with the Amended Developer’s Agreement, as more particularly described in Exhibit “B,” Exhibit “B1” and Exhibit “B2” attached hereto, which connects the existing internal roadway on Block 71, Lot 37.02 with the existing stub street on Middlesex Avenue.

“**Connector Road Parcel**” shall mean the portion of Block 71, Lot 37.01 identified in the Redevelopment Plan as the “Mid-Block Connector Roadway,” and as depicted on Exhibit A.

“**Connector Road Site Improvements**” is defined in Section 4.1(a)(ii).

“**Construction Permit**” shall have the meaning set forth in *N.J.A.C. 5:23-1.4*

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

“**County**” meaning the County of Middlesex, State of New Jersey.

“**Daycare Phase**” shall mean the phase of the Project in which the Redeveloper designs, obtains all Governmental Approvals for, constructs and Completes the Daycare Improvements and all necessary Site Preparation for the same, in accordance with the requirements set forth in Section 4.1(c) below.

“**Daycare Improvements**” shall mean an approximately 12,870 s.f. commercial daycare facility, with an approximately 2,430 s.f. tot lot, an approximately 12,981 s.f. outdoor space, associated parking and related amenities to be constructed on the Parcel E, as more particularly described in Exhibit “B” and as depicted in Exhibit “B1” and Exhibit “B4” and all other improvements required to be constructed under any Governmental Approvals issued for Parcel E and in accordance with this Redevelopment Agreement.

“**Declaration**” is defined in Section 3.2.

“**Developer’s Agreement**” shall mean the Developer’s Agreement entered into between the Borough of Metuchen and Metuchen I, LLC, dated January 19, 2010, along with the First Addendum to the same entered into on June 21, 2010.

“Effective Date” shall mean the date upon which the last Party executes this Agreement.

“Environment” shall mean ambient air, surface soil, subsurface soil, surface water, groundwater, sediment and land, and all flora and fauna therein or thereon.

“Environmental Agencies” shall mean the EPA, the NJDEP and all other federal, state, county or local Governmental Bodies authorized or having jurisdiction to enforce Environmental Laws, together with all successors to such Governmental Bodies.

“Environmental Conditions” shall mean any pollution or contamination or threatened pollution or contamination of, or the Release or threatened Release of Hazardous Substances into the Environment, whether known or unknown.

“Environmental Indemnity” is defined in Section 5.7.

“Environmental Laws” shall mean all federal, regional, state, county or local laws, statutes, ordinances, decisional law, rules, regulations, codes, orders, decrees, directives and judgments relating to (i) public health or safety; (ii) pollution, damage to or protection of the Environment, (iii) Environmental Conditions, Releases or threatened Releases of Hazardous Substances into the Environment; (iv) the use, manufacture, processing, distribution, treatment, storage, generation, disposal, transport or handling of Hazardous Substances; and/or (v) Remediation, Remediation Activities, Remediation standards and/or the issuance of a Final Remediation Document; as the same are in effect on the date this Redevelopment Agreement is executed, together with any amendments or modifications to the same and new enactments adopted, promulgated or enacted thereafter, including but not limited to, the Federal Water Pollution Control Act, 33 U.S.C. §§ 1231-1387; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6991; the Clean Air Act, 42 U.S.C. §§ 7401-7642; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601-9675; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629; the New Jersey Spill Compensation and Control Act, *N.J.S.A.* 58:10-23.11 et seq.; the New Jersey Water Pollution Control Act, *N.J.S.A.* 58:10A-1 et seq.; the New Jersey Air Pollution Control Act, *N.J.S.A.* 26:2C-1 et seq.; Industrial Site Recovery Act, *N.J.S.A.* 13:1K-6 et seq.; and the New Jersey Environmental Rights Act, *N.J.S.A.* 2A:35A-1 et seq.; and any and all rules and regulations promulgated thereunder.

“Environmental Medium” shall mean soil (including soil vapor pore spaces), sediment, surface water, ground water, air, flora, fauna, or any other parts of the Environment that can contain Hazardous Substances or other contaminants.

“Environmental Obligation” shall mean any Remediation, Remedial Action or other site clean-up activity required by any Environmental Law, any Environmental Agency or this

Redevelopment Agreement to be undertaken by the Redeveloper due to the existence of a Hazardous Substance on, in, under, originating from or affecting the Property.

“EPA” shall mean the United States Environmental Protection Agency.

“Event of Default” is defined in Section 13.1.

“EV Law” is defined in Section 4.11(b).

“Final Remediation Document” shall have the meaning set forth in *N.J.A.C. 7:26C-1.3*, as may be amended or supplemented. Final Remediation Document shall not mean the 2016 RAO unless the Project LSRP has also issued a written determination, determined in accordance with *N.J.A.C. 7:26C-6.4(a)* and (b) and issued within thirty (30) days prior to the application for a Certificate of Occupancy, that rescission and/or amendment of the 2016 RAO issued for the Property is not necessary despite completion of the applicable Phase.

“Force Majeure” is defined in Section 13.2.

“Foreclosure” means that event in which a Holder forecloses its Mortgage secured by the Property, any Parcel, or the Project Improvements, or any part thereof, or takes title to the Property, any Parcel or the Project Improvements, or any part thereof, by Deed in Lieu of Foreclosure or similar transaction.

“Governmental Approvals” means all necessary reviews, consents, permits or other approvals of any kind legally required by any Governmental Body in order to construct or Complete the Project Improvements.

“Governmental Body” means any Federal, State, county or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government, including, without limitation, the Borough, the County, the State and any Environmental Agency.

“Hazardous Substance” means any substance, chemical or waste that is listed as hazardous, toxic, a pollutant or contaminant, or dangerous under any applicable Federal, State, county or local statute, rule, regulation, ordinance or order and any substances defined, listed or included in the Federal Water Pollution Control Act, 33 U.S.C. §§1231-1387; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6991 (“RCRA”); the Clean Air Act, 42 U.S.C. §§7401-7642; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601-9675; the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629; the Industrial Site Remediation Act, *N.J.S.A. 13:1K-6* et seq.; the New Jersey Spill Compensation and Control Act, *N.J.S.A. 58:10-23.11* et seq.; the New Jersey Water Pollution Control Act, *N.J.S.A. 58:10A-1* et seq. or any other applicable Environmental Law.

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“**Holder**” means person, company, entity or its known or identified affiliates having or controlling a transferable or non-transferable security or financial interest in the Property, any Parcel, any Phase or any Project Improvements of record, such as a mortgagee, bond holder, lender in possession of a negotiable document with rights being secured in a written document setting forth the rights and responsibilities of such person, company, entity or its known or identified affiliates of those said interests.

“**Holder Failure**” is defined in Section 14.4(a).

“**LSRP**” means a “Licensed Site Remediation Professional” as defined in *N.J.S.A. 58:10B-1 et seq.*

“**Mortgage**” means a Mortgage or Deed of Trust given by Redeveloper encumbering its interest(s) in and to the Property, any Parcel and/or Project Improvements.

“**Municipal Land Use Law**” shall refer to *N.J.S.A. 40:55D-1 et seq.*

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

“**Parcel**” shall mean individually Parcel A, Parcel B, Parcel C, Parcel D, Parcel E and the Connector Road Parcel.

“**Parcel A**” shall mean the portion of Block 71, Lot 37.01 that is labeled as “Parcel A” in the Redevelopment Plan.

“**Parcel B**” shall mean the portion of Block 71, Lot 37.01 that is labeled as “Parcel B” in the Redevelopment Plan.

“**Parcel C**” shall mean the portion of Block 71, Lot 37.01 that is labeled as “Parcel C” in the Redevelopment Plan.

“**Parcel D**” shall mean the portion of Block 71, Lot 37.01 that is labeled as “Parcel D” in the Redevelopment Plan.

“**Parcel E**” shall mean the portion of Block 71, Lot 37.01 and the portion of Block 71, Lot 37.02 that is labeled as “Parcel E” in the Redevelopment Plan.

“**Parcel’s Intended Use**” shall mean the following for each applicable Parcel, unless the Parties mutually agree, in writing, to a different intended use for a particular Parcel which is permitted under the Redevelopment Plan:

Parcel C – to allow a commercial coffee shop use;
Parcel E – to allow a child daycare use; and
Connector Road Parcel – to allow use as a public roadway.

“**Party**” or “**Parties**” means either the Borough and/or the Redeveloper, individually or collectively as the context requires.

“**Passable Road**” shall mean construction of the Connector Road in accordance with the Amended Developer’s Agreement, to a level which traffic can safely utilize the same (as determined in writing by the Borough Engineer), which at a minimum shall include paving of the Connector Road with a base coat to a smooth finish, the recording of temporary access easement to ensure appropriate access to the Project Site is provided, and all necessary agreements have been executed to ensure the provision of permanent access easements (where necessary) upon Completion of the Connector Road in accordance with Section 4.1(a)(iii)(B).

“**Performance and Payment Bond**” is defined in Article 11.

“**Permitted Transfer**” means a Pre-Remediation Permitted Transfer and/or a Post-Remediation Permitted Transfer.

“**Person**” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or Governmental Body, or any other entity.

“**Phase**” shall mean any one of the three (3) phases identified in this Agreement, specifically the Road Construction Phase, the Daycare Phase and the Coffee Shop Phase.

“**Planning Board**” means the Planning Board for the Borough of Metuchen.

“**Plans and Specifications**” shall mean plans and/or specifications that depict, specify, guide, govern or otherwise control the design criteria, location, construction requirements and/or quality/material standards for construction and installation of the Project Improvements and all components thereof, including without limitation all technical, architectural and/or engineering plans and/or requirements necessary to Complete the Public Site Improvements and the Project Improvements in accordance with all Governmental Approvals, the Redevelopment Plan and this Redevelopment Agreement.

“**Post-Remediation Permitted Transfer**” is defined in Section 9.2(c).

“**Preliminary Assessment**” shall have the meaning set forth in *N.J.S.A. 58:10B-1*.

“**Pre-Remediation Permitted Transfer**” is defined in Section 9.2(c).

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“Progress Reports” shall mean the Quarterly Progress Report as defined in Section 8.2 and the Monthly Progress Report defined in Section 8.2.

“Project” is defined in the Recitals hereto and shall include the Road Construction Phase, Coffee Shop Phase and Daycare Phase.

“Project Site” shall mean: (i) as it relates to the Road Connector Phase, the Connector Road Parcel, Parcel A, Parcel C and Parcel E; (ii) as it relates to the Daycare Phase, Parcel E; and (iii) as it relates to the Coffee Shop Phase, Parcel C.

“Project Budget” is defined in Section 4.5(c).

“Project Costs” is defined in Section 10.2.

“Project Improvements” shall mean all improvements required to be constructed under this Agreement, which shall include, but are not limited to all Public Site Improvements, the Daycare Improvements, and the Coffee Shop Improvements.

“Project LSRP” shall mean the LSRP that has been retained by the Redeveloper to approve the Remedial Action Workplan, oversee the Remediation, and issue the Response Action Outcome upon Completion of Remediation.

“Project Schedule” shall mean the schedule for completion of construction of the Project Improvements attached hereto as Exhibit “C.”

“Project Team” is defined in Section 4.18 and more specifically described on Exhibit “D.”

“Property” shall mean all portions of Block 71, Lot(s) 37.01 and 37.02 as identified on the Official Tax Map of the Borough of Metuchen.

“Public Site Improvements” means any road, utility and/or infrastructure improvements that the Borough and Redeveloper hereafter agree to classify as Public Site Improvements under this Redevelopment Agreement per Section 4.8, which Public Site Improvements shall be dedicated to the Borough for public use and which shall be accepted for public use upon the Borough Engineer’s acceptance of the same. The Parties hereby agree that the Connector Road and the Connector Road Site Improvements are each a Public Site Improvement.

“Qualified Entity” means a Person: (i) who has the financial ability to perform the Redeveloper’s obligations hereunder as evidenced by financial statements evidencing sufficient access equity and/or access to financing in an amount sufficient to cover all Project Costs, as set forth in the Project Budget; and (ii) development experience to perform the Redeveloper’s obligations hereunder as evidenced by the successful completion of a project of similar size and

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scope as the Project, and (iii) is qualified to do business in the State of New Jersey and has a New Jersey Business Registration Certificate; and (iv) is in good standing in the State of New Jersey.

“Redevelopment Agreement” or **“Agreement”** means this Redevelopment Agreement between the Borough and Redeveloper.

“Redevelopment Area” as defined in the Recitals hereto.

“Redevelopment Law” refers to the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended or supplemented.

“Redevelopment Plan” as defined in the Recitals hereto.

“Redeveloper” means Metuchen III, LLC.

“Redeveloper’s Agents” shall mean any person employed, retained or contracted by the Redeveloper to undertake any activities hereunder.

“Redeveloper Covenants” is defined in Section 3.1.

“Release” shall mean any intentional or unintentional release, discharge, burial, spill, leaking, pumping, pouring, emitting, emptying, injection, disposal, placement or dumping into the Environment.

“Remedial Action” means those actions taken at a contaminated site as may be required by the NJDEP, the EPA, an LSRP or any other Governmental Body, including, without limitation, removal, treatment measures, containment, transportation, securing, or other engineering or institutional controls, to an Unrestricted Use Standard, designed to ensure that any contaminant is remediated in compliance with the applicable Remediation Standards. A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all Unrestricted Use Standards are met.

“Remedial Action Workplan” shall mean the plan for the Remediation of the Property as prepared and approved by the Project LSRP and, if appropriate, the NJDEP or EPA, and overseen by the Project LSRP.

“Remediation” shall have the meaning ascribed to the term at *N.J.S.A. 58:10B-1, et seq.* and *N.J.A.C. 7:26E-1, et seq.*

“Remediation Activities” shall mean any and all activities and actions required to be taken by the Redeveloper to Remediate Parcel C, Parcel E and/or the Connector Road Parcel to the applicable Remediation Standard for the Parcel’s Intended Use; to obtain a Final Remediation

Document for all Parcels; and to otherwise comply with all Environmental Obligations, Environmental Law, Remediation Documents, Governmental Approvals and this Redevelopment Agreement.

“Remediation Completion Document” shall mean, as applicable, the following:

- (a) For the Connector Road Parcel, one of the following documents: (1) issuance of a Final Remediation Document for the Connector Road Parcel based on the Parcel’s Intended Use and which reflects the final site conditions of the Connector Road Parcel upon Completion of the Connector Road Phase; or (ii) a written determination from the Project LSRP or NJDEP that no Remediation or other Remediation Activities are necessary for the Connector Road Parcel in order to ensure that upon Completion of the Connector Road Phase, no modification of the 2016 SRA Permit is necessary in order to ensure that the Remedial Action set forth in the 2016 SRA Permit continues to be protective of the public health, safety and the environment.
- (b) For Parcel C, one of the following documents: (1) issuance of a Final Remediation Document for Parcel C based on the Parcel’s Intended Use and which reflects the final site conditions of Parcel C; or (ii) a written determination from the Project LSRP or NJDEP that no Remediation or other Remediation Activities are necessary for Parcel C in order to ensure that upon Completion of the Coffee Shop Phase, no modification of the 2016 SRA Permit is necessary in order to ensure that the Remedial Action set forth in the 2016 SRA Permit continues to be protective of the public health, safety and the environment.
- (c) For Parcel E, one of the following documents: (1) issuance of a Final Remediation Document for Parcel E based on the Parcel’s Intended Use and which reflects the final site conditions of Parcel E; or (ii) a written determination from the Project LSRP or NJDEP that no Remediation or other Remediation Activities are necessary for Parcel E in order to ensure that upon Completion of the Daycare Phase, no modification of the 2016 SRA Permit is necessary in order to ensure that the Remedial Action set forth in the 2016 SRA Permit continues to be protective of the public health, safety and the environment.

“Remediation Documents” shall mean documents generated or received by the Project LSRP, including without limitation all Remediation Permits, Remedial Action Workplan, all reports, correspondence, maps, forms, proposals, work plans, field and laboratory data, summons, citations, directives, information inquiries or requests, notices of potential responsibility, notices of violation or deficiency, orders or decrees, claims, complaints, investigations, judgments, letters, notices of environmental liens or response actions in progress, site investigations, preliminary

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assessments, and any other communications, written or oral, actual or threatened, from any Environmental Agency or other third party, concerning or relating to any Environmental Conditions respecting the Property, or any activities conducted at the Property, including but not limited to Remediation Activities and Remedial Action. "Remediation Documents" shall also include any other document received or generated by or on behalf of the Redeveloper concerning or relating to any Environmental Conditions respecting the Property, or any Remediation Activities, any Remedial Action or any Remediation conducted at the Property.

"Remediation Permits" means any Federal, State or local permits or approvals required to facilitate Remediation of the Project Site as identified herein.

"Remediation Standards" means the combination of numeric standards that establish a level or concentration, and narrative standards, to which contaminants must be treated, removed or otherwise cleaned for soil, ground water, surface water or indoor air, as established by the NJDEP pursuant to the Brownfield and Contaminated Sites Remediation Act at *N.J.S.A. 58:10B-12*, and its implementing regulations at *N.J.A.C. 7:26C*, *N.J.A.C. 7:26D* and *N.J.A.C. 7:26E*, applicable for each Parcel's Intended Use determined as of the date on which the Redeveloper applies for a Certificate of Occupancy for the applicable Project Improvements.

"Responsible Party" means any Person that has an affirmative obligation undertake Remediation or any Remedial Action.

"Response Action Outcome" shall mean the document issued by the Project LSRP pursuant to *N.J.A.C. 7:26C-6.2* upon Completion of Remediation.

"Road Completion Certificate" shall mean a certification signed by the Borough Engineer, that confirms that the Connector Road has been completed to a Passable Road and in accordance with the requirements set forth in the Amended Developer's Agreement and Section 4.1(a)(iii)(B) herein, and that the Connector Road Site Improvements have been completed in accordance with the requirements of this Redevelopment Agreement. Issuance of the Road Completion Certificate shall not mean that the Connector Road or the Connector Road Phase are "Complete," as such Completion shall also require acceptance of the dedicated Connector Road and the Connector Road Site Improvements by the Borough.

"Road Construction Phase" shall mean the phase of the Project in which the Redeveloper undertakes the design, financing, construction and Completion of the Connector Road Site Improvements and all necessary Site Preparation for the same, in accordance with the requirements set forth in Section 4.1(a) below, and in cooperate with Metuchen I, LLC to ensure the construction of the Connector Road in accordance with the terms and conditions of the Amended Developer's Agreement, the Redevelopment Plan and this Redevelopment Agreement.

“**Site Investigation**” shall have the meaning set forth in *N.J.S.A. 58:10B-1*.

“**Site Plan**” shall have the meaning set forth in *N.J.S.A. 40:55D-7*.

“**Site Plan Approvals**” means Site Plan review and approval pursuant to the Redevelopment Law, *N.J.S.A. 40A:12A-13* and the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.*

“**Site Preparation**” shall mean all activities necessary in order to prepare the applicable Parcel for all development and/or construction activities to be undertaken thereon in order to Complete Remediation and/or the applicable Project Improvements on Parcel C or Parcel E and the Connector Road Parcel. Site Preparation shall include but is not limited to clearance, excavation, grading, debris removal, stabilization, soil testing and other testing, Remediation, Stormwater Cleanout, construction of necessary drainage facilities, relocation, removal and/or installation of utilities, including but not limited to electricity, gas, water, sanitary sewers, storm sewers, telephone transmission lines, television cable lines, or other such utilities, and construction of access roadway, driveways and other accessways. Site Preparation shall also include construction of all required off-site improvements.

“**Stormwater Cleanout**” is defined in Section 4.2(b).

“**State**” means the State of New Jersey.

“**Substantial Change**” shall mean (a) a change to the size of the proposed building by more than ten percent (10%); (b) a change to the location of the driveway entrances or on-site circulation for the Project which affects functional circulation of the site or the overall circulation of the entire Redevelopment Area; (c) a change that affects the design or layout of the Connector Road; (d) a change that affects an important, significant or essential architectural feature or that materially affects the overall appearance of the building; (e) a change that affects the safety or functionality of a building or the site; (f) any change that reduces or eliminates any requirement related to the Connector Road Site Improvements set forth in Section 4.1(b); (g) the addition of or any change to a drive-through proposed on any Parcel; and (h) any change that would require an amended Site Plan under the Municipal Land Use Law, *N.J.S.A. 40:55D-1 et seq.*

“**Tolling Event**” is defined in Section 4.16.

“**Transfer**” is defined in Section 9.2(a).

SECTION 1.3. Interpretation and Construction.

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In this Redevelopment Agreement, unless the context otherwise require:

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

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

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

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

(e) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld, conditioned, or delayed.

(f) All Notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time.

ARTICLE 2
GENERAL REPRESENTATIONS AND WARRANTIES

SECTION 2.1. Representations and Warranties by Redeveloper. The Redeveloper hereby represents and warrants the following to Borough for the purpose of inducing Borough 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 is a New Jersey limited liability company qualified to do business in the State and is in good standing under the laws of the State and has all requisite power and authority to carry on its business as now and whenever conducted, to enter into and perform its obligations under this Redevelopment Agreement.

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

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

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

(e) No adjudication or filing of a petition for bankruptcy under any provision of the United States Bankruptcy Code, or any other similar statute that is applicable to the Redeveloper, with respect to the Redeveloper shall have been filed.

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

(g) There is no action, proceeding or investigation now pending, nor any basis therefore known or believed to exist which (1) questions the authority of the Redeveloper to enter into this Redevelopment Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment Agreement; or (2) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities, or condition which will materially and substantially impair its ability to perform its obligations pursuant to the terms of this Redevelopment Agreement.

(h) The Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating, partnership, and/or stockholder agreement of the Redeveloper or of any agreement, Mortgage, indenture, instrument, or judgment to which the Redeveloper is a party.

(i) To the Redeveloper's knowledge, all information and statements included in any written documentation submitted by the Redeveloper to the Borough and its agents are true and correct in all material respects, and the Redeveloper acknowledges that the facts and representations contained therein are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

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(j) Redeveloper warrants and represents that it has disclosed all relevant and material information relating to its authority and ability to perform its obligations under this Redevelopment Agreement and that it has not failed to disclose any information relating to any impairment to its ability or authority to perform its obligations pursuant to the terms of this Redevelopment Agreement.

(k) Redeveloper has or is employing professionals with the expertise to conduct Remediation on the Property to discover and address all Environmental Conditions or Hazardous Substance(s) on the Property and will remediate all Environmental Conditions or Hazardous Substance(s) on the Property prior to the sale, lease or other Transfer of the Property, except for a Pre-Remediation Permitted Transfer pursuant to Section 9.2(c) herein.

(l) Redeveloper has the financial ability and expertise to Remediate any such portion(s) of the Property containing Hazardous Substance(s) and to take all necessary Remedial Action.

(m) The Redeveloper agrees that the cost and financing of the Project is the sole responsibility of the Redeveloper, pursuant to the Redevelopment Plan and this Redevelopment Agreement. The Borough shall not be responsible for any cost or expense whatsoever in respect to same.

(n) The Redeveloper is financially and technically capable of developing, designing, financing, and constructing the Project.

(o) The ownership structure of the Redeveloper is set forth on Exhibit "E." The Redeveloper shall, at such times as the Borough may reasonably request, furnish the Borough with a complete statement subscribed and sworn to by the manager of the Redeveloper, setting forth all of the ownership interests of the Redeveloper, or other owners of equity interests of the Redeveloper and the extent of their respective holdings in the Redeveloper, and in the event any other parties have a beneficial interest in the Redeveloper, their names and the extent of such interest in the Redeveloper.

(p) If the Redeveloper has not already done so, Redeveloper shall acquire fee simple title to the Property within six (6) months of the date of execution of this Redevelopment Agreement or has an equitable ownership interest in the Property and shall acquire fee simple title to the Property within six (6) months of the satisfaction of all conditions of a final unappealable Site Plan Approval.

(q) Metuchen I, LLC is an Affiliate of the Redeveloper. Redeveloper has all the requisite power and authority necessary to exercise control over the actions of Metuchen I, LLC

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to ensure that Metuchen I, LLC fully performs all obligations required under the Developer's Agreement and Amended Developer's Agreement.

Redeveloper acknowledges that the Borough expressly relies upon the representations and warranties made by the Redeveloper in this Agreement as a material inducement for entering into this Agreement. If any of the representations or warranties by the Redeveloper are untrue or incorrect, it shall constitute an Event of Default and the Borough shall be entitled to any remedy available to it under this Agreement.

SECTION 2.2. Representations and Warranties by Borough. Borough 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 Borough has the legal power, right, and authority to enter into this Redevelopment Agreement and the instruments and documents referenced herein to which the Borough is a party, to consummate the transactions contemplated hereby, and to perform its obligations hereunder.

(b) This Redevelopment Agreement is duly executed by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of Applicable Law 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 Borough is a party.

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

(d) The Borough is not a party to any agreement, contract, obligation, promise, offer, representation, letter of intent, memorandum of understanding or contractual or quasi contractual relationship that prevents or limits the Borough in its ability and right to enter into this Redevelopment Agreement and/or to grant to Redeveloper the rights set forth in this Redevelopment Agreement.

(e) The Borough shall reasonably cooperate with the Redeveloper in order to enable Redeveloper to carry out its obligations and responsibilities under this Redevelopment Agreement. Any cost associated with providing such cooperation shall be deemed a Borough Cost.

SECTION 2.3. Mutual Representations. In the event that any conditions or other matters or contractual provisions that are required by the Redevelopment Law or any other Applicable Law have been omitted from this Redevelopment Agreement, then, as appropriate, either (a) the Borough shall correct or fulfill any requirements of the Redevelopment Law or any

other Applicable Law which would have initially been the obligation of the Borough to correct or fulfill; and/or (b) the Borough and the Redeveloper agree that this Redevelopment Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Redevelopment Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the Parties, the Borough and the Redeveloper agree to act in good faith to mitigate such changes in position.

**ARTICLE 3
REDEVELOPER COVENANTS;
DECLARATION OF COVENANTS AND RESTRICTIONS**

SECTION 3.1 Redeveloper Covenants. The Redeveloper covenants and agrees that (collectively, “Redeveloper Covenants”):

(a) The Redeveloper shall carry out its obligations hereunder in accordance with the provisions of this Redevelopment Agreement and Applicable Law, including, but not limited to, the Redevelopment Law, all Governmental Approvals, and Environmental Laws.

(b) The Redeveloper shall undertake with due diligence (1) the financing of the Project, (2) commencement, construction and completion of the Project, (3) commencement and completion of each item in the Project Schedule in accordance with the Project Schedule, as the same may be delayed and/or extended by Force Majeure. All Remediation and construction activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first-class developments of the same type and nature as the Project.

(c) The Redeveloper shall not materially change or modify the Project or the Project Schedule in any manner without obtaining the Borough’s prior written approval. Redeveloper shall construct only the uses established in the current Redevelopment Plan.

(d) The Redeveloper shall use diligent efforts to obtain all Governmental Approvals requisite to the construction and development and Completion of the Project, including evidence satisfactory to the Borough that the Public Site Improvements and Project Improvements are in compliance with all Applicable Law and Environmental Laws.

(e) Subject to Force Majeure, including, without limitation, interruptions that may be caused by any casualty and/or delays caused by Tolling Events, the Redeveloper shall not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project Improvements.

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(f) The Redeveloper shall immediately notify the Borough in writing of any material adverse change in its financial condition and any material change in its ability to develop, finance or construct the Project in accordance with the Redevelopment Agreement.

(g) The Redeveloper shall make all payments in satisfaction of the Redeveloper's financial obligations as set forth in this Redevelopment Agreement, including payment of Borough Costs.

(h) The Redeveloper shall not sell, lease, convey title to or otherwise transfer the Property, Public Site Improvements, Project Improvements, or any part thereof for which a Certificate of Completion has not been issued, or otherwise use the same in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(i) The Redeveloper shall Complete the Project or cause the Project to be Completed at its sole cost and expense using any public and/or private resources that may be available; provided, however, that Borough shall in no way be obligated to provide such resources except as specifically provided for herein.

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

(k) The Redeveloper shall refrain from restricting the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Property (or any part thereof) on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, marital status, affectional preference or sex of any person.

(l) The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Property and not for speculation in land holding.

SECTION 3.2. Declaration of Covenants and Restrictions. The Redeveloper shall execute and record a Declaration of Covenants and Restrictions, approved by Borough ("**Declaration**") imposing on the Property the Redeveloper Covenants set forth in Section 3.1.

SECTION 3.3. Effect and Duration of Redeveloper Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in Section 3.1 shall be covenants running with the land and that they shall, in any event, and

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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 law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, including any Parcel, against the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Property or any part thereof, or any Parcel. The Declaration shall, by its terms and without the need for recordation of any release or other instrument, expire and be of no further force or effect upon the issuance of a Certificate of Completion with respect to a specific Parcel, except for Section 3.1(j) and (k) above, which shall continue in perpetuity, and upon the termination of this Redevelopment Agreement with respect to the Property, provided, however, that Redeveloper shall have the right to record the Certificate of Completion.

The Redeveloper Covenants set forth in Section 3.1 shall be binding on the Redeveloper itself, and on each successor in interest to the Redeveloper. Likewise, the Redeveloper Covenants shall be binding on each Party in possession or occupancy, respectively, of all or any of the Project Site under contracts entered into after the Effective Date of this Agreement. The applicable Redeveloper Covenants shall only be applicable to the specified Persons for such period of time as that Person holds possession or is in occupancy of the Property, any Parcel and/or any Project Improvements, until the earlier of the issuance of a Certificate of Completion with respect to a specific Parcel and upon the termination of this Redevelopment Agreement with respect to the Property, except for Section 3.1(j) and (k) above, which shall continue in perpetuity.

SECTION 3.4. Enforcement by Borough. In amplification, and not in restriction, of the provisions of this Article 3, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right and in the public interest for which purpose such agreements and covenants have been provided. Such agreements and covenants shall (and the Declaration shall so state) run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein. The Borough, acting as the Redevelopment Entity, shall have the sole right, in the event of any material breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled. Because redevelopment of the Redevelopment Plan is to be undertaken in phases by independent redevelopers, the agreements and covenants set forth in this Redevelopment Agreement shall continue until such time as a Certificate of Completion is issued for each Parcel of the Property and issuance of a Certificate of Completion for any specific Parcel shall not serve to cease such covenants with respect any other Parcel or to projects undertaken by other redevelopers for other portions of the Redevelopment Plan Area. Upon issuance of Certificate of

Completion for any Parcel, the conditions that were found and determined to exist at the time the Parcel was determined to be in need of redevelopment shall be deemed to no longer exist and the conditions and requirements of *N.J.S.A.* 40A:12A-9(a) shall be deemed to have been satisfied with respect to the Parcel for which the Certificate of Completion is issued. Nothing contained in any Certificate of Completion shall modify in any way any other provisions that expressly survive issuance of said Certificate of Completion or that expressly survives termination under this Redevelopment Agreement.

**ARTICLE 4
IMPLEMENTATION OF PROJECT**

SECTION 4.1. The Project. The Parties acknowledge and agree that the Project consists of the following:

a. **Road Construction Phase.** The Redeveloper shall undertake the Road Construction Phase in accordance with the following:

(i) **Construction of Connector Road.** As part of the Road Construction Phase, Redeveloper shall ensure that Metuchen I, LLC constructs the Connector Road in accordance with the Amended Developer's Agreement which is attached hereto as Exhibit "B2". The design and layout of the Connector Road shall be consistent with Exhibit "B1" and Exhibit "B2" and shall comply with all of the requirements of the Redevelopment Plan.

(ii) **Remediation of the Connector Road Parcel.** The Parties acknowledge that Redeveloper is currently undertaking Remediation of the Property. In conjunction with this Remediation, the Redeveloper shall Remediate the Connector Road Parcel to the applicable Remediation Standard to allow the Parcel's Intended Use, which such Remediation to begin once Redeveloper has obtained either a grading permit or a Construction Permit to commence Site Preparation for the Connector Road Parcel and/or the construction of the Connector Road or the Connector Road Site Improvement. All Remediation shall be performed in accordance with Article 5 hereof. Redeveloper shall complete all required Remediation to make the Connector Road Parcel safe for the Parcel's Intended Use, as evidenced by the issuance of a Remediation Completion Document for the Connector Road Parcel.

(iii) **Construction of Connector Road Site Improvements.** As part of the Road Construction Phase, Redeveloper shall undertake the following additional site improvements related to the Connector Road (which shall be collectively referred to as the "**Connector Road Site Improvements**"):

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- (A) Install a full three-color traffic signal at the intersection of the Connector Road and Middlesex Avenue, together with a pedestrian signal head and push button facilities, continental crosswalks utilizing thermoplastic paint and curb bump-outs at all crosswalks. The design and layout of the same shall be approved by the Borough Engineer prior to construction of the same.
- (B) Install sidewalks, which shall be designed in accordance with the requirements of the Redevelopment Plan. Specifically, public sidewalks shall be installed along the frontage of any portion of the Property facing Middlesex Avenue and facing Durham Avenue. Sidewalks shall also be provided along the entirety of the Connector Road on both sides of the Connector Road for the portions of Connector Road to be constructed pursuant to the Redevelopment Plan but sidewalks will not be added to the existing portion of right of way along the future Middlesex Greenway Extension across the right of way from the existing sidewalk along the Sportsplex site. Redeveloper shall obtain approval from the Borough Engineer for the final design and layout of the sidewalks prior to installation of the same. In addition, Redeveloper shall provide, either from Redeveloper or as acquired from Metuchen I, as applicable, a public access easement for all portions of the public sidewalks which are located on private property.
- (C) Construct on-street parking on the Connector Road Parcel as required pursuant to the Redevelopment Plan.
- (D) Provide street trees along the Connector Road, and along the frontage of the Property facing Durham Avenue and Middlesex Avenue at intervals of approximately 30 to 35 feet. Redeveloper shall not be required to provide street trees on the frontage of Parcel B or Parcel D, as all required street trees will be installed by the redeveloper(s) of Parcel B and Parcel D. All new trees shall be a minimum of three (3) inch caliper at the time of planting and the species of trees planted shall be selected from the recommended Borough's street tree list, latest edition, with final approval for the same from the Borough Engineer.
- (E) Install street lighting along the Connector Road and along the frontage of the Property fronting on Middlesex Avenue and Durham Avenue, in accordance with the requirements of the Redevelopment Plan and shall be of a similar or complementary style to the street lighting fixtures currently

existing on Middlesex Avenue near the Property or another style approved by the Borough.

- (F) Install context-sensitive streetscape improvements and traffic calming devices along the portion of Middlesex Avenue fronting the Redevelopment Plan area. It is intended that these improvements shall allow for the creation of a unified design and a comprehensive traffic management and calming strategy for the entire core of the Borough. The Redeveloper shall coordinate all proposed streetscape improvements and traffic calming devices with the Borough Engineer and shall submit a plan for the same to the Borough for its review and approval prior to installation of the same. The Parties shall cooperate to secure approvals and/or cooperation from Middlesex County for any roads within the jurisdiction of Middlesex County and in securing any interjurisdictional surface improvement and maintenance agreement that may be necessary.
- (G) Install a mid-block crosswalk across the Connector Road between the main entrance of the proposed buildings on Parcel B and Parcel D, which shall be designed with texture-paved or similar special paving treatment, the details and specific location of which shall be subject to coordination with and approval of the redevelopers for Parcel B and Parcel D and the Borough Engineer.
- (H) Install street furniture, benches, bicycle racks, planters and/or other landscape features, in a regular rhythm along the frontage of the Connector Road and along the frontage of the Property that fronts on Middlesex Avenue. Along the frontage of Durham Avenue, the Redeveloper shall provide decorative light fixtures, a bench and improved landscaping. The type, location and frequency of said items shall be subject to the review and approval of the Borough Engineer.
- (iv) **Coordination and Cooperation in Road Construction Phase.**
- (A) The Redeveloper shall cooperate and coordinate with Metuchen I, LLC to ensure that the Connector Road and the Connector Road Site Improvements are constructed in accordance with this Agreement, the Amended Developer's Agreement and the Redevelopment Plan. Redeveloper agrees that in the event that Metuchen I, LLC does not Complete the Connector Road in accordance with the Amended Developer's Agreement, Redeveloper shall undertake such construction or other work as may be necessary to complete construction of the Connector Road in accordance

with Amended Developer's Agreement, the Redevelopment Plan and this Redevelopment Agreement.

- (B) The Parties acknowledge and understand that the Connector Road shall have driveway connections to Parcel A, Parcel B, Parcel C, Parcel D and Parcel E. Redeveloper shall coordinate with Metuchen I, LLC and all redevelopers of Parcel B and Parcel D, and if applicable Parcel A, to ensure that when the Connector Road is constructed, appropriate driveway connections to Parcel A, Parcel B, Parcel C, Parcel D and Parcel E have been provided. Redeveloper shall also coordinate and cooperate with all redevelopers of Parcel B and Parcel D, and if applicable Parcel A, to ensure that the Connector Road shall be constructed to the level of a Passable Road, as the term is hereafter defined, in a timely manner which will not delay the ability of said redevelopers to secure a Certificate of Occupancy for their respective projects. Redeveloper shall ensure completion of construction of the Connector Road to a level of a Passable Road in accordance with the Connector Road Construction Schedule attached as Exhibit B to the Amended Developer's Agreement, provided however that Completion of the Connector Road to a Passable Condition and the Connector Road Site Improvements shall be a condition precedent to the issuance of a Certificate of Occupancy for any of the Project Improvements upon Parcel C and Parcel E. For purposes of this Redevelopment Agreement, "**Passable Road**" shall mean construction of the Connector Road to a level which traffic can safely utilize the same (as determined in writing by the Borough Engineer), which at a minimum shall include paving of the Connector Road with a base coat to a smooth finish, the recording of temporary access easement to ensure appropriate access to the Property is provided, and all necessary agreements have been executed to ensure the provision of permanent access easements (where necessary) upon completion of the Connector Road. The Borough may, in its reasonable discretion, issue a Certificate of Occupancy for Parcel C and/or Parcel E prior to Completion of the Connector Road Site Improvements upon confirmation of completion of a Passable Road and a sufficient bond, letter of credit or other performance guaranty remains in place, pursuant to Section 4.8 herein, in amount equal to 120% of the total expected costs to Complete the Connector Road Phase, based upon costs estimates prepared by the Borough Engineer as of the date of the issuance of the Certificate of Occupancy. If no redeveloper for Parcel A has been selected at the time of construction of the Connector Road, Redeveloper shall coordinate with Metuchen I, LLC to ensure that appropriate driveway connections are provided between Parcel A and the Connector Road based on the current configuration and prior bank use of Parcel A.

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- (C) The Parties acknowledge that some of the Connector Road Site Improvements, including but not limited to the traffic signal, are under the jurisdiction of Middlesex County and will require County approval and may require a maintenance agreement or other agreement with the County. The Parties agree to cooperate in obtaining approval from Middlesex County and all costs associated with obtaining the same will be borne by the Redeveloper as a Project Cost. Any costs incurred by the Borough will be reimbursed to the Borough as a Borough Cost. The design and layout of the crosswalk shall be consistent with the requirements set forth in the Redevelopment Plan and Redeveloper agrees that the final design and layout of the Connector Road shall be approved by the Borough Engineer prior to construction of the same. The Parties acknowledge that the Middlesex County approvals may require deviations from the design and layout set forth in Exhibit B1, in which case the Parties shall agree to accept such modifications or, if substantial deviations are required, engage in good-faith negotiations for modifications to the design and/or layout consistent with any County approval requirements.
- (D) Upon completion of the Connector Road to a Passable Road, completion of the Connector Road Site Improvements, and completion of Remediation of the Connector Road Parcel, the Redeveloper shall provide as-built plans to the Borough Engineer and a Remediation Completion Document for the Connector Road Parcel and shall allow the Borough Engineer an opportunity to inspect the Connector Road Site Improvements and Connector Road Site Improvements. If the Connector Road has been completed to a Passable Road and in accordance with the requirements of the Amended Developer's Agreement, the required Connector Road Site Improvements have been constructed in accordance with this Redevelopment Agreement, and the Connector Road Parcel has been Remediated in accordance with this Redevelopment Agreement, the Borough Engineer shall issue a Road Completion Certificate. If a Road Completion Certificate cannot be issued, then the Borough Engineer shall provide a list of all items which need to be completed in order for a Road Completion Certificate to be issued. In lieu of completing the Connector Road Site Improvements on Parcel B and Parcel D, the Redeveloper may provide a performance guarantee in accordance with the requirements of *N.J.S.A. 40:55D-53(a)(1)(a)*. If a performance guaranty is posted in accordance with this Section, then the applicable Connector Road Site Improvement for which a bond is posted shall be deemed "complete" solely for purposes of issuing a Road Completion Certificate upon the posting of

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the bond in accordance with this Section. The posting of a bond shall in no way relieve the Redeveloper of its obligation to Complete all Connector Road Site Improvements.

b. **Coffee Shop Phase.** As part of the Coffee Shop Phase, the Redeveloper shall Remediate Parcel C to the applicable Remediation Standard to allow the Parcel's Intended Use, which such Remediation shall begin once Redeveloper has obtained either a grading permit or a Construction Permit to commence Site Preparation on Parcel C and/or the construction of the Coffee Shop Improvements. All Remediation shall be performed in accordance with Article 5 hereof. Redeveloper shall complete all required Remediation to make Parcel C safe for the Parcel's Intended Use, as evidenced by issuance of a Remediation Completion Document. As part of the Coffee Shop Phase, Redeveloper shall undertake all Site Preparation work, obtain all Governmental Approvals, undertake and Complete design, construction and operation of all Coffee Shop Improvements substantially in conformance with Exhibit "B3." Redeveloper specifically represents and agrees that it will not apply for any Certificate of Occupancy for any Coffee Shop Improvements unless and until all Conditions Precedent to Certificate of Occupancy have been satisfied as to Parcel C.

c. **Daycare Phase.** As part of the Daycare Phase, the Redeveloper shall Remediate Parcel E to the applicable Remediation Standard to allow the Parcel's Intended Use, which such Remediation shall begin once Redeveloper has obtained either a grading permit or a Construction Permit to commence Site Preparation on Parcel E and/or the construction of the Daycare Improvements. All Remediation shall be performed in accordance with Article 5 hereof. Redeveloper shall complete all required Remediation to make Parcel E safe for the Parcel's Intended Use, as evidenced by issuance of a Remediation Completion Document. As part of the Daycare Phase, Redeveloper shall undertake all Site Preparation work, obtain all Governmental Approvals, undertake and Complete design, construction and operation of all Daycare Improvements substantially in conformance with Exhibit "B3". Redeveloper specifically represents and agrees that it will not apply for any Certificate of Occupancy for any Daycare Improvements unless and until all Conditions Precedent to Certificate of Occupancy have been satisfied as to Parcel E.

d. **Parcel A.** The Parties acknowledge that there are currently no specific plans for redevelopment of Parcel A at the present time. In the event that Redeveloper proposes a specific project to the Borough, and the Borough approves the same, the Parties may either amend this Redevelopment Agreement to include the approved project or execute a separate redevelopment agreement for Parcel A. Unless and until such development is proposed, this Redevelopment Agreement shall not create any rights or obligations with respect to Parcel A.

e. **Parcel B.** The Parties acknowledge that another redeveloper has been designated as conditional redeveloper of Parcel B and that this Redevelopment Agreement shall not create

any rights or obligations with respect to Parcel B. All rights and obligations with respect to Parcel B will be the subject of a separate redevelopment agreement with the conditional redeveloper.

f. **Parcel D.** The Parties acknowledge that there are currently no specific plans for redevelopment of Parcel D at the present time. In the event that Redeveloper proposes a specific project to the Borough, and the Borough approves the same, the Parties may either amend this Redevelopment Agreement to include the approved project or execute a separate redevelopment agreement for Parcel D. Unless and until such development is proposed, this Agreement shall not create any rights or obligations with respect to Parcel B.

SECTION 4.2 Phasing.

(a) **General Phasing Requirements.** Redeveloper shall proceed with the Project in phases. The Road Construction Phase must be Completed in accordance with the Connector Road Construction Schedule set forth in Exhibit B to the Amended Developer's Agreement; provided however, the Redeveloper expressly acknowledges and agrees that the Connector Road must be completed to the level of a Passable Road, a Remediation Completion Document must be issued for the Connector Road Parcel, and all Connector Road Site Improvements must be Completed before the Redeveloper may apply for any Certificate of Occupancy for either the Coffee Shop Phase or the Daycare Phase. The Borough may, in its reasonable discretion, issue a Certificate of Occupancy for Parcel C and/or Parcel E prior to Completion of the Connector Road Site Improvements upon confirmation of completion of a Passable Road and a sufficient bond, letter of credit or other performance guaranty remains in place, pursuant to Section 4.8 herein, in amount equal to 120% of the total expected costs to Complete the Connector Road Phase, based upon costs estimates prepared by the Borough Engineer as of the date of the issuance of the Certificate of Occupancy. Redeveloper shall entitled to undertake the Daycare Phase and the Coffee Shop Phase either simultaneously or separately, and if Redeveloper elects to undertake them separately, it may determine, in its sole discretion, decide whether to undertake the Daycare Phase or Coffee Shop Phase first.

(b) **Stormwater Cleanout.** In lieu of providing common "gray" stormwater facilities on the Project Site, the Redeveloper shall its sole cost and expense, clean the most westerly drainage pipe in the Lehigh Valley Railroad Property running from Middlesex Avenue, northerly, to its discharge point at a headwall which is located north of Durham Avenue ("**Stormwater Pipe**") in accordance with the requirements set forth in this Section 4.2 (the "**Stormwater Cleanout**"). The Stormwater Pipe runs parallel to the easterly property line of the Project Site. Redeveloper shall ensure that any contractor retained for this purpose fully complies with the requirements set forth in this Section 4.2(b).

(i) **Standards for Cleanout.** Redeveloper shall ensure that the cleaning of the Stormwater Pipe (the "**Cleanout**") shall, at a minimum, remove all

sediment, trash and debris from the Stormwater Pipe and shall be conducted in accordance with the most recent version of the New Jersey Stormwater Best Management Practices Manual prepared by the NJDEP, the Borough's NJPDES permit for small MS4s and all Environmental Laws. Redeveloper shall ensure during the Cleanout clean water is used to clean the pipe and that sediment, trash and/or debris is not allowed to migrate beyond the downstream headwall (North of Durham Avenue). Redeveloper shall ensure that upon completion of the Cleanout, the Stormwater Pipe is free of sediment, trash and debris. All sediment, trash and debris that is removed as part of the Cleanout shall be properly disposed of by Redeveloper onsite or otherwise in accordance with all Environmental Laws.

- (ii) **Timing of Cleanout.** Redeveloper agrees to coordinate the timing of the Cleanout with the Borough Engineer, who will coordinate the timing of the Cleanout based on the progress of the other redevelopment projects on Parcel A, Parcel B, Parcel C, Parcel D and Parcel E to ensure that completion of the cleanout does not delay any other redeveloper's ability to connect their project to the Borough's stormwater system. The Parties specifically acknowledge and agree that no project on any Parcel shall be permitted to connect to the stormwater system unless and until the Redeveloper has completed the Cleanout. Unless an earlier date for completion of the Cleanout is provided by the Borough Engineer, the Cleanout shall be completed at the earlier of: (A) prior to connecting any portion of the Project to the Borough's stormwater system; or (B) within ninety (90) days of the Borough's receipt of an application from any other redeveloper of any other Parcel to hookup to the Borough's stormwater system ("**Cleanout Completion Deadline**"). Redeveloper agrees that it shall not, whether directly or through another Person, connect to the Borough's stormwater system until the Cleanout is completed in accordance with this Section 4.2(b).
- (iii) **Notice and Inspection.** At least thirty (30) days prior to commencement of the Cleanout, Redeveloper shall notify the Borough Engineer, in writing, of the dates on which the Cleanout is anticipated to begin and to end and shall allow the Borough Engineer to periodically inspect the work performed as part of the Cleanout in order to ensure that the Stormwater Pipe is free of sediment, trash and debris. If the Cleanout is delayed for any reason beyond the dates set forth in the notice, Redeveloper shall provide the Borough Engineer with an updated notice setting forth the new dates for commencement and/or completion of the Cleanout.

- (iv) **Record-Keeping.** Redeveloper shall prepare and maintain records of the activities undertaken as part of the Cleanout in accordance with the maintenance and record-keeping requirements set forth in the New Jersey Stormwater Best Management Practices Manual prepared by the NJDEP, the Borough's NJPDES permit for small MS4s and all Environmental Laws ("**Cleanout Records**"). Redeveloper shall provide a copy of all Cleanout Records to the Borough Engineer on a weekly basis, or more frequently upon reasonable request. If requested by the Borough Engineer, the Cleanout Records shall be on forms provided by the Borough Engineer.

- (v) **Completion of Cleanout.** Redeveloper shall provide written notice to the Borough Engineer that the Cleanout is complete within five (5) business days of completion, along with all Cleanout Records. Upon receipt of said notice and all Cleanout Records, the Borough Engineer shall inspect the Cleanout Records and the final work, and if satisfactory, the Borough Engineer shall notify the Redeveloper and the Borough's Construction Department that the Cleanout work has been satisfactorily completed for purposes of issuing a Certificate of Occupancy for the Project ("**Cleanout Completion Certificate**"). If the Borough Engineer determines that the Cleanout work has not been satisfactorily completed, the Borough Engineer shall notify the Redeveloper in writing of the reason for which the Cleanout work and/or recordkeeping is unsatisfactory.

- (vi) **Failure to Complete Cleanout.** In the event that the Redeveloper fails to complete the Stormwater Cleanout by the Cleanout Completion Deadline, the Borough shall be permitted, but is not required, to undertake the required Stormwater Cleanout and shall charge the Redeveloper all costs incurred by the Borough to complete the Stormwater Cleanout ("**Cleanout Costs**"). Redeveloper shall reimburse the Borough for all Cleanout Costs within thirty (30) days of the Redeveloper's receipt of an invoice for the same. In the event that the Redeveloper fails to fully reimburse the Borough for all Cleanout Costs, within thirty (30) days, the Borough shall be entitled to charge the Redeveloper interest on the Cleanout Costs in the highest amount authorized by Applicable Law ("**Cleanout Interest**"). The Redeveloper Agrees that it shall not apply for any Certificate of Occupancy for Parcel C or Parcel E unless and until all Cleanout Costs and Cleanout Interest have been fully paid.

SECTION 4.3. Acquisition of Property. Redeveloper has heretofore acquired a fee simple interest in Block 71, Lot 37.01 at its sole cost and expense. Currently, Block 71, Lot 37.02 is owned by Redeveloper's Affiliate, Metuchen I, LLC. Within six (6) months of the Effective

Date, Redeveloper shall acquire all necessary title, license, lease or other permission to enable Redeveloper to perform all of Redeveloper's obligations under this Redevelopment Agreement. Redeveloper shall pay all real estate taxes and other impositions lawfully due on any Property from the Effective Date of this Redevelopment Agreement.

SECTION 4.4. Governmental Approvals. The Redeveloper represents that attached hereto as Exhibit "F" is a list of all Governmental Approvals known or identified to date that must be or that have been obtained by Redeveloper in connection with the development and construction of the Project Improvements. This list shall be updated as part of the Progress Reports identified in Section 8.2. The Redeveloper shall use diligent efforts to secure, or cause to be secured, any and all Governmental Approvals necessary for Each Phase and shall carry out each Phase in conformance therewith. The Borough shall fully cooperate with the Redeveloper in obtaining the Governmental Approvals. All costs to the Borough in providing such cooperation shall be deemed a Borough Cost. Redeveloper agrees that it shall cooperate and coordinate with Metuchen I, LLC to ensure that Redeveloper applies for all Governmental Approvals for the Connector Road Site Improvements simultaneously with all Governmental Approvals applied for by Metuchen I, LLC for the Connector Road.

SECTION 4.5. Borough Review/Approvals.

(a) **Borough Approval of Site Plan.** Prior to filing any Application for Development, as the term is defined in *N.J.S.A. 40:55D-3* ("**Application for Development**"), which may be necessary for any of the Public Site Improvements or any Phase, the Redeveloper agrees to, and shall submit all proposed Site Plans and other Application for Development for the Public Site Improvements or applicable Phase to the Borough Council for review and approval by the Borough prior to submission to the Planning Board. The Borough shall complete its review and provide comments thereto to the Planning Board and Redeveloper within thirty (30) days of receipt thereof. To the maximum extent practicable, the Borough's comments shall be incorporated into the Application for Development prior to submission to the Planning Board. Such approval by the Borough shall be an explicit condition of submission of any Site Plan or other Application for Development to the Planning Board and Commencement of Construction for all Public Site Improvements and for each Phase. Review and approval by the Borough of the Site Plan or other Application for Development shall not constitute a representation, warranty or guaranty by the Borough as to the substance or quality of the documents, work or other matter reviewed, approved or accepted. At all times, however, the Redeveloper shall use its judgment as to the accuracy and quality of all such documents, work or other matters. Once the Application for Development has been approved by the Borough, it shall not be changed or modified without the express written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed, except as follows: (1) the change or modification is not a Substantial Change, or (2) the change or modification is a result of deviations, waivers, or variances granted by the Planning Board, pursuant to Section 7.4 of the Redevelopment Plan. The Redeveloper specifically agrees to not

request a variance, waiver or deviation from any requirement that constitutes a Substantial Change without the express written consent of the Borough.

(b) **Borough Approval of Architectural Plan.** The Redeveloper agrees to, and shall, submit architectural plans for the Coffee Shop Phase and the Daycare Phase for review and approval by the Borough Council at the same time as the submission of the Application for Development pursuant to Section 4.5(a) above. Architectural plan approval by the Borough shall be an explicit condition precedent to the submission of an Application for Development to the Planning Board. Once the architectural plans have been approved by the Borough, they shall not be changed or modified without the express written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed, except as follows: (1) the change or modification is not a Substantial Change, or (2) the change or modification is a result of deviations, waivers, or variances granted by the Planning Board, pursuant to Section 7.4 of the Redevelopment Plan. The Redeveloper specifically agrees to not request a variance, waiver or deviation from any requirement that constitutes a Substantial Change without the express written consent of the Borough. Approval of any such change or modification shall be an express shall be an explicit condition of submission of any application for a Construction Permit for the Coffee Shop Improvements and the Daycare Improvements, and Redeveloper agrees that it shall not apply for any such Construction Permit without first obtaining Borough approval of any such change or modification.

(c) **Borough Review of Project Budget.** Prior to applying for Construction Permits, the Redeveloper shall submit to the Borough for its review a budget setting forth an estimate of the Project Costs and the anticipated source of funds to satisfy the estimated Project Costs for Each Phase ("**Project Budget**"). The Redeveloper shall also provide such supporting documentation that the Redeveloper reasonably believes will be necessary or beneficial to the Borough for the Borough's review of such Project Budget and to ensure that the Project is financially feasible. The Redeveloper shall also provide such additional documentation as the Borough may request in order to complete its review of the Project Budget, within ten (10) business days of the Borough's request for the same.

SECTION 4.6. Planning Board. Following satisfaction of the requirements set forth in Section 4.5 above, the Redeveloper shall apply for all required preliminary and/or final Site Plan, lot consolidation or subdivision approvals, or other Applications for Development, and any necessary amendments thereto, for each Phase and shall comply with conditions, if any, of such approvals. No Application for Development, as the term is defined in *N.J.S.A. 40:55D-3*, shall be considered "complete" until approval by the Borough has been given in accordance with Section 4.5 above.

SECTION 4.7. Existence of Utilities. The Parties acknowledge that local public utility providers may have certain rights with respect to the Property and may own certain facilities

located therein. The Redeveloper agrees that it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, relocate, or otherwise address the existence of these utilities and improvements and easements therefore, in order to Complete the Project as provided by this Redevelopment Agreement, provided that Borough shall, upon request from the Redeveloper, provide any appropriate orders as may be reasonably required to accomplish such relocation, consistent with the provisions of *N.J.S.A. 40A:12A-10*, and any reasonable and standard costs incurred by Borough in connection therewith shall be reimbursed by the Redeveloper. Prior to commencement of Site Preparation work for each Phase, the Redeveloper shall consult local public utility providers with respect to the applicable Phase and shall take all reasonable and customary precautions to prevent personal injury, property damage, and other liabilities related to utilities above, at or under the Property. Notwithstanding the foregoing, in the event that utility relocation is required in connection with the Public Site Improvements or any applicable Phase, the cost thereof (if not borne by the local public utility pursuant to the Applicable Law) shall be borne by the Redeveloper. The Redeveloper and the Borough shall cooperate in such undertaking, including, but not limited to, Redeveloper's provision of easements over areas within the Property suitable for such relocation, if necessary.

SECTION 4.8. Public Site Improvements. Redeveloper shall provide a maintenance bond or a letter of credit in a form generally acceptable to Governmental Bodies in the State guaranteeing that completion of the Public Site Improvements to be constructed in each Phase in accordance with the requirements of the Municipal Land Use Law, *N.J.S.A. 40:55D-1, et. seq.* The Borough acknowledges that Metuchen I, LLC has posted a letter of credit for the completion of the Connector Road, pursuant to a certain Amended Developer's Agreement. No further bond or letter of credit shall be required of Redeveloper as it relates solely to the Connector Road, except that Redeveloper shall still be required to post a bond or letter of credit for all other Public Site Improvements, including but not limited to the Connector Road Site Improvements.

SECTION 4.9. Site Preparation and Condition of Site. Redeveloper shall undertake all Site Preparation work necessary for each applicable Phase. Site preparation work shall not commence until the Effective Date. After Commencement of Construction of the applicable Phase, the Redeveloper shall keep the applicable Parcel free from any material accumulation of debris or waste materials and shall maintain in good condition any landscaping and amenities required under the final site plan or other Governmental Approvals. In addition, the Redeveloper shall ensure that each Parcel shall at all times comply with Chapter 140 of the Code of the Borough of Metuchen.

SECTION 4.10. Neighborhood Impacts. The Redeveloper acknowledges that the construction of the Project will have certain impacts on the neighborhoods in the vicinity of the Property. Although it is anticipated that the Project will provide many positive effects on the community, it is also recognized that it may result in some temporary inconveniences during the time that construction takes place and for a short time thereafter. Therefore, the Redeveloper shall take steps, reasonably consistent with the nature of the construction activity required to Complete

each Phase, that are reasonably necessary in order to minimize any potential negative effects that construction of the applicable Phase may produce.

SECTION 4.11. Traffic/Parking.

(a) **Traffic Impacts.** The Redeveloper and the Borough agree that the direction, flow and amount of traffic in and around the Property is an issue to be addressed during the construction of the Project, and during construction of each Phase. The Redeveloper shall exert reasonable efforts to minimize the traffic effects of the Project and each Phase upon the surrounding neighborhoods.

(b) **EV Parking Spaces.** The Redeveloper acknowledges and agrees that in constructing all parking as part of the Project, or any Phase thereof, Redeveloper shall be responsible for compliance with P.L. 2021, c.171 adopted by the New Jersey Legislature on July 9, 2021 (“EV Law”), as set forth in Section 5.6.2(F)(7) of the Redevelopment Plan. This will include the conversion of four (4) of the existing parking spaces on Parcel E into electric vehicle charging stations as follows: (i) Redeveloper shall install “electric vehicle supply equipment” (as the term is defined in the EV Law) at four (4) existing parking spaces, with one (1) such parking space being accessible to people with disabilities; and (ii) Redeveloper shall complete installation of the “electric vehicle supply equipment” prior to applying for a Certificate of Occupancy for the Daycare Improvements on Parcel E. Redeveloper acknowledges and agrees that demonstration of compliance with the EV Law and the Redevelopment Plan shall be a condition of the issuance of a Certificate of Occupancy for the applicable Parcel.

SECTION 4.12. Standards of Construction. Without limitation, all work on each Phase shall be performed in a good workman like manner, with the best quality materials called for under the applicable Governmental Approvals, including without limitation, the Remediation Permits. All construction shall be in accordance with the Uniform Construction Code, codified at *N.J.A.C.* 5:23. The Project and all work performed, and materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Applicable Law. Redeveloper shall ensure that all contractors and subcontractors perform all work on the Project in accordance with the standards set forth in this Redevelopment Agreement.

SECTION 4.13. Occupancy Permit. Upon Completion of construction of the Coffee Shop Improvements and the Daycare Improvements, respectively, and, in accordance with the Governmental Approvals and Applicable Law, the Redeveloper shall apply to the appropriate Governmental Body for a Certificate of Occupancy prior to the occupancy or operation of the Coffee Shop Improvements and the Daycare Improvements. Prior to Redeveloper applying for any Certificate of Occupancy for either the Coffee Shop Improvements or the Daycare Improvements, the Redeveloper shall be required to provide to the Borough Administrator the following evidence, in a form acceptable to the Borough, to establish that the following has been

completed before the date on which the Redeveloper expects to apply for any Certificate of Occupancy (“**Conditions Precedent to Certificate of Occupancy**”): (a) the Connector Road is constructed to the level of a Passable Road as evidenced by the issuance of the Road Completion Certificate and the Connector Road Site Improvements have been Completed as evidenced by the issuance of the Road Completion Certificate, and a performance bond has been issued to the Borough, in accordance with the requirements of *N.J.S.A. 40:55D-53(a)(1)(a)*, in amount equal to 120% of the total expected costs to complete the Connector Road Phase, based upon an itemized cost estimate of the improvements and other work to be completed which is prepared by the Borough Engineer; (b) the required Stormwater Cleanout has been completed as evidenced by the issuance of the Cleanout Completion Certificate and all Cleanout Costs and Cleanout Interest, if any, have been fully paid; (c) Completion of all required Remediation for Parcel C and/or Parcel E, as applicable, such that each Parcel can be occupied for the Intended Uses, pursuant to the Environmental Laws and any Final Remediation Document, if applicable, as evidenced by the issuance of a Remediation Completion Document; (d) proof of payment of the Open Space Contribution required in Section 10.8; (e) completion of all Site Preparation Work, including all Public Site Improvements necessary for Parcel C and/or Parcel E, as applicable, as evidenced by submission of “as built” Site Plans; and (f) for Parcel E only, completion of installation of the “electric vehicle supply equipment” on Parcel E as evidenced by submission of “as built” Site Plans. In lieu of the requirements of subsection (a) above, the Borough may, in its reasonable discretion, issue a Certificate of Occupancy for Parcel C and/or Parcel E upon written confirmation from the Borough Engineer of completion of the Connector Road to the level of a Passable Road and a performance bond has been issued by the Redeveloper to the Borough, in accordance with the requirements of *N.J.S.A. 40:55D-53(a)(1)(a)*, in amount equal to 120% of the total expected costs to Complete the Connector Road Phase, based upon an itemized cost estimate of all improvements and other work to be completed as part of that Phase, which is prepared by the Borough Engineer determined as of the date of the issuance of the Certificate of Occupancy.

SECTION 4.14. Certificate of Completion. The Parties acknowledge and agree that because the redevelopment work on the Property will be undertaken in Phases, and additional redevelopment work is anticipated to be taken by redevelopers other than the Redeveloper, issuance of a Certificate of Completion shall occur upon Completion of the Daycare Phase and the Coffee Shop Phase, and shall apply only to Parcel E and Parcel C, respectively. Therefore, the Parties acknowledge and agree that any Certificate of Completion issued for any portion of the Redevelopment Plan Area to be redeveloped pursuant to this Agreement will be limited to the each such applicable Parcel for which the Certificate of Completion was issued. The Parties further acknowledge and agree that Certificates of Completion for the remainder of the Redevelopment Plan Area shall be applied for by the respective future redevelopers upon completion of the respective project improvements for the applicable subsequent projects and/or phases with respect to Parcel A, Parcel B and Parcel D. Upon the issuance of the Certificate of Completion for each phase or Parcel of the Property, the conditions that were found and determined to exist at the time the Parcel was determined to be in need of redevelopment shall be deemed to no longer exist and

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the conditions and requirements of *N.J.S.A. 40A:12A-9(a)* shall be deemed to have been satisfied with respect to the Parcel to which the Certificate of Completion is applicable. The Parties agree that no Certificate of Completion shall be issued nor required for the Road Construction Phase as the Connector Road and the Connector Road Site Improvements shall be dedicated to the Borough and/or Middlesex County, as applicable, upon Completion of the Road Construction Phase. Issuance of the Road Completion Certification, along with dedication and acceptance of the Connector Road and the Connector Road Site Improvements by the Borough shall be evidence of Completion of the Road Construction Phase.

Upon Completion of the Coffee Shop Phase and the Daycare Phase, respectively, the Redeveloper shall provide the Borough with a Notice (as defined in Section 15.1) indicating that the applicable Phase is Complete, and provided that the Borough has determined that applicable Phase is Complete in accordance with the terms and conditions of this Agreement, the Borough agrees to issue a Certificate of Completion in form and content satisfactory to counsel for the Redeveloper and in proper form for recording which shall acknowledge that the Redeveloper has completed the applicable Phase in accordance with this Redevelopment Agreement, the Redevelopment Plan and all other agreements referred to herein and/or annexed. However, the Borough may withhold issuance of a Certificate of Completion for the applicable Phase in the event that the Borough determines that: (a) an Event of Default by the Redeveloper has occurred; and/or (b) the applicable Phase has not been Completed in accordance with this Redevelopment Agreement, the Redevelopment Plan, the Plans and Specification and/or the Project Budget, and/or (c) if a Certificate of Occupancy has not been issued. In the event that the Borough shall fail or refuse to provide such Certificate of Completion within thirty (30) days after written request by the Redeveloper, the Borough shall provide the Redeveloper with a Notice setting forth in detail the respects in which it believes that the Redeveloper has failed to Complete the applicable Phase in accordance herewith or is otherwise in default under this Redevelopment Agreement or any other applicable agreement and what measures or acts will be necessary in the opinion of the Borough in order for the Redeveloper to be entitled to such Certificate of Completion.

Such Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the Redeveloper's obligations pursuant to this Redevelopment Agreement as to the applicable Phase or Parcel. The Certificate of Completion shall also constitute a conclusive determination that the conditions that were found and determined to exist at the time the applicable Parcel was determined to be in need of redevelopment shall be deemed to no longer exist and the conditions and requirements of *N.J.S.A. 40A:12A-9(a)* shall be deemed to have been satisfied with respect to the applicable Phase, as evidenced by the issuance of the Certificate of Completion. Nothing contained in the Certificate of Completion shall modify in any way any other covenants, provisions or continuing obligations of the Redeveloper under this Redevelopment Agreement with respect to any other Parcel(s) or any other provisions of those documents which are incorporated in this Redevelopment Agreement, which such covenants, provisions and obligations shall remain in full force and effect and the Project shall continue until

such time as all obligations of the Redeveloper under this Agreement shall be satisfied and this Agreement is terminated.

SECTION 4.15. Project Schedule. A Project Schedule for development of the Project is attached hereto as Exhibit "C." Redeveloper agrees to commence and complete of each item in the Project Schedule in accordance with the Project Schedule. If Redeveloper fails to meet a Completion Date or other deadline set forth in the Project Schedule, or Redeveloper determines between Progress Meetings that it will fail to meet a Completion Date or other deadline set forth in the Project Schedule, Redeveloper shall promptly provide written notice to Borough stating: (a) the reason for the failure to complete the applicable task, (b) Redeveloper's proposed method for correcting such failure, (c) Redeveloper's schedule for diligently completing such task, and (d) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the dates set forth in the Project Schedule. This may include a request by Redeveloper for an extension of the Project Schedule or applicable milestone thereunder, which request the Borough will not unreasonably deny. The Redeveloper's performance of its obligations under this Section with respect to the provision of notice, shall not, however, limit the rights of the Borough to declare the occurrence of an Event of Default hereunder in accordance with the terms of this Redevelopment Agreement.

SECTION 4.16. Tolling Event. The Project Schedule represents the Redeveloper's current expectations as to the schedule for the progress and Completion of the Project and each applicable Phase. The Redeveloper will diligently endeavor to complete the Project, and each applicable Phase by the Completion Date set forth in the Project Schedule subject to relief resulting from (a) the occurrence of any one or more events of Force Majeure, (b) casualty affecting all or any part of the Public Site Improvements or Project Improvements, and (c) an Event of Default by the Borough that has a material adverse effect on the ability of the Redeveloper to adhere to the Project Schedule (each of the foregoing, a "**Tolling Event**").

SECTION 4.17. Prohibition Against Suspension, Discontinuance or Termination. The Redeveloper shall not suspend or discontinue its performance of its obligations under this Redevelopment Agreement or terminate this Redevelopment Agreement (other than in the manner provided for herein) for any reason other than a Tolling Event, but only to the extent and for the period of time that such performance is limited or prevented as a direct result of such occurrence.

SECTION 4.18. Project Team. A list of the names, addresses and phone numbers of all individuals who will comprise Redeveloper's "**Project Team**" including, but not limited to, those individuals who will be directly responsible for managing the design, approvals, and construction of the Project and each applicable Phase are set forth on Exhibit "D." Redeveloper shall provide Notice to Borough of any changes in the representatives on the Project Team.

SECTION 4.19. Local Office. During construction of the Project Improvements, the Redeveloper shall maintain an office within the State of New Jersey (the “**Local Office**”) from which it will perform its duties hereunder. Such office need not be distinct from the office in which the Redeveloper carries on its other business activities in New Jersey. The Redeveloper may change the location of such office within the State of New Jersey upon at least fifteen (15) days prior written notice to the Borough.

SECTION 4.20. Execution of Documents. Redeveloper shall, in order to effectuate the purposes of this Redevelopment Agreement, make, execute, acknowledge, and deliver any contracts, orders, receipts, writings and instructions with any other persons, firms or corporations and in general do all things which may be requisite or proper for the acquisition, construction and development of the Project in accordance with all necessary Governmental Approvals.

SECTION 4.21. Compliance with Redevelopment Agreement. Redeveloper shall use reasonable efforts to ensure that all consultants, professionals, employees, agents, and contractors engaged by Redeveloper or any of Redeveloper’s subcontractors shall have the skill and judgment necessary to implement the Project and each applicable Phase in compliance with the terms and conditions of this Redevelopment Agreement.

SECTION 4.22. Cooperation. Both Parties shall fully cooperate with each other as necessary to accomplish the each Phase, including entering into additional agreements that may be required, provided, however, that such actions shall not result in a material increase in the Parties’ respective obligations hereunder or material decrease in the Parties’ respective rights hereunder. All costs to the Borough as a result of such cooperation shall be considered a Borough Cost.

SECTION 4.23. Term. This Redevelopment Agreement shall become effective upon the Effective Date, and shall remain in full force and effect from such Effective Date until each Phase has been fully Completed as evidenced by the issuance of a Certificate of Termination or any earlier termination as otherwise provided herein, and until such time all provisions of this Redevelopment Agreement shall remain in full force and effect. Upon receipt of a Notice from the Redeveloper requesting issuance of a Certificate of Termination, the Borough shall evaluate whether or not the Redeveloper has fully complied with all obligations under this Agreement. If the Borough determines that a Certificate of Termination shall not issue, it shall provide the Redeveloper with a Notice setting forth the reasons why the Certificate of Termination should not be issued. In no event shall the Borough be obligated to issue a Certificate of Termination until the issuance of a Certificate of Completion for Parcel C and Parcel E

**ARTICLE 5
ENVIRONMENTAL MATTERS**

SECTION 5.1. Definitions. For the purposes of this Article, all capitalized terms used in this Article which are not defined in Section 1.1 above shall have the meaning set forth in *N.J.S.A. 58:10B-1 et seq.*

SECTION 5.2. Environmental Status of the Property. The Redeveloper hereby represents and warrants the following to Borough for the purpose of inducing Borough to enter into this Redevelopment Agreement and to consummate the transactions contemplated hereby, all of which shall be true and accurate as of the date hereof. In the event that any of the following representations and warranties should no longer be true or accurate, the Redeveloper shall promptly notify the Borough, but in no event later than thirty (30) days from the date of the change. Said notice shall identify the representation or warranty that is no longer true or accurate and describe what has changed.

- (a) The Redeveloper has retained Crystal L. Leavey of APTIM as the Project LSRP, pursuant to *N.J.A.C. 7:26C-2.3, et seq.*,
- (b) As of the date hereof, (i) soil, groundwater and other Environmental Medium on portions of the Redevelopment Plan Area are contaminated with various substances arising at least in part from the former operation of the Redevelopment Plan Area and that the Redevelopment Plan Area is subject to a Deed Notice that is recorded in Deed Book 06655, Page 0590 on January 23, 2015 in the Middlesex County Clerk's Office and a Deed Notice that is recorded in Deed Book 06655, Page 0621 on January 23, 2015 in the Middlesex County Clerk's Office ("**Deed Notices**"); (ii) that the Redevelopment Plan Area is listed on the NJDEP's list of Active Sites With Confirmed Contamination and remediation is ongoing under the supervision of an LSRP; (iii) the Remediation status of the Property is set forth in the Memorandum from APTIM, dated May 27, 2021, which is attached hereto as Exhibit H;
- (c) The Deed Notices include a restriction against the use of Parcel E as a daycare center without prior approval from the NJDEP, unless a presumptive remedy has been implemented in accordance with *N.J.A.C. 7:26E-5.3*, as may be amended or supplemented;
- (d) The Deed Notices do not include any restriction against the use of the Property for residential use, including a convalescent facility offering memory loss care or an independent living facility; and
- (e) Soil Remedial Action Permits have been issued by NJDEP for the Property, dated September 28, 2016, which are attached hereto as Exhibit I-1 and Exhibit I-2 (collectively referred to "**2016 SRA Permit**").

- (f) A Response Action Outcome for Soils has been issued by the Project LSRP for the Property, dated November 8, 2016, a copy of which is attached hereto as Exhibit J-1, and which was amended on March 27, 2019, a copy of which is attached hereto as Exhibit J-2 (collectively referred to as the “2016 Property RAO”).

SECTION 5.3 Redeveloper’s Remediation Obligations.

The Redeveloper agrees that it shall retain a Project LSRP at all times until the Remediation of Parcel C, Parcel E and the Connector Road Parcel is complete as evidenced by a Remediation Completion Document issued for each respective Parcel. In the event that the Project LSRP is dismissed, released, fired, quits, is replaced or is otherwise no longer retained by the Redeveloper, the Redeveloper will provide notice of the same to the Borough within ten (10) days, and if a Remediation Completion Document has not been issued for any Parcel, shall notify the Borough within thirty (30) days of the name and contact information of the new Project LSRP retained by the Redeveloper. The Redeveloper shall be solely responsible to undertake and complete any and all Remediation necessary to ensure that Parcel C, Parcel E and the Connector Road Parcel have been remediated to the applicable New Jersey Remediation Standard for each Parcel’s Intended Use in accordance with Applicable Remediation Standards to allow issuance of a Remediation Completion Document, and, if applicable, to allow issuance of a Final Remediation Document. The Redeveloper shall at its sole cost and expense, undertake, perform and complete all Remediation at, on, under and in the vicinity of, if appropriate, the Redevelopment Plan Area as necessary to comply with applicable Environmental Laws and this Redevelopment Agreement. Remediation of the Parcels shall, at a minimum, satisfy NJDEP’s applicable Remediation Standards for the Parcel’s Intended Use. Redeveloper agrees that it shall not apply for a Certificate of Occupancy for any Parcel unless and until it has completed Remediation of the applicable Parcel as evidenced by the issuance of a Remediation Completion Document. Redeveloper shall not be entitled to a Certificate of Termination until the Remediation of all Parcels is Complete, as evidenced by the issuance of a Remediation Completion Document for Parcel C, Parcel E and the Connector Road Parcel, as applicable.

SECTION 5.4 Remediation Process. The fees and expenses of the Project LSRP will be paid directly by Redeveloper. Redeveloper shall commence the Remediation by having the Project LSRP prepare a Remedial Action Workplan for submission to the NJDEP, which shall include a statement indicating each Parcel’s Intended Use, and setting forth the proposed Remedial Action to be undertaken to ensure that the applicable Parcel is remediated in accordance with the applicable Remediation Standards for the Parcel’s Intended Use. A copy of the Remedial Action Workplan shall be provided to the Borough within ten (10) days of the Project LSRP’s preparation of the same. If a Remedial Action Workplan has been prepared prior to the Effective Date of this Redevelopment Agreement, Redeveloper shall provide the Borough with a copy of the same within ten (10) days of the Effective Date. Remediation shall commence for each Parcel once Redeveloper has obtained either a grading permit or a Construction Permit to commence Site

Preparation for the applicable Parcel. Redeveloper shall undertake and Complete all Remediation Activities required in order to comply with the Redevelopment Agreement and to obtain Modified Soil Remedial Action Permits if/as applicable, and issuance of a Remediation Completion Document for each Parcel.

Redeveloper shall provide the Borough with a copy of: all environmental reports, all Remediation Documents, all testing for the presence of Hazardous Substances or other environmental testing or testing to determine the presence of underground storage tanks, all correspondence with the NJDEP related to the Remediation, all Final Remediation Documents, and/or all documents or other reports issued by or received by the Project LSRP or issued by any other LSRP or the NJDEP for any Parcel.

SECTION 5.5 Conformity with Law. The Redeveloper shall carry out its Environmental Obligations and all Remediation Activities in accordance with all Environmental Laws and Applicable Law, including but not limited to the Remedial Action Workplan, any Remediation Permits, licenses or Governmental Approvals issued by the NJDEP, EPA, or other Governmental Body, or as required by the Project LSRP for the Property, and such other permits, licenses and Governmental Approvals as may be required in order to carry out such obligations or may otherwise be applied for and received from any Environmental Agencies or Governmental Body in connection therewith. For Parcel E, Remediation shall also be carried out in accordance with the newest version of the NJDEP Technical Guidance for Investigating Child Care Centers and Educational Facilities. Upon Completion of all required Remediation Activities for Parcel C, Parcel E and the Connector Road Parcel, as applicable, Redeveloper shall request that the NJDEP, EPA or the Project LSRP, as applicable, issue the Final Remediation Document for the applicable Parcel. A copy of the Final Remediation Document shall be provided to the Borough within thirty (30) days from Redeveloper's receipt thereof.

SECTION 5.6. No Release of Hazardous Substances. Other than as may have been approved by the NJDEP prior to the Effective Date, the Redeveloper shall not manage any Hazardous Substances on the Property, nor conduct or authorize the same, without prior written disclosure to and the prior written consent of the Borough and the Project LSRP, nor shall the Redeveloper, in any event, cause or permit any underground storage tank to be installed, embedded or maintained on the Property. The Redeveloper shall not Release or cause or permit the Release of Hazardous Substances on, at, under or from the Property, including without limitation into any drains or sewers or other piping used for the conveyance of sanitary wastewater or stormwater. The Redeveloper shall at its sole cost and expense, arrange for the lawful transportation, storage and off-site disposal of all Hazardous Substances in accordance with the Remedial Action Workplan and under the oversight of the Project LSRP.

SECTION 5.7. Environmental Indemnification. The Redeveloper shall defend, protect, indemnify and hold harmless the Borough Indemnified Parties, from any Claims, liability, injury,

damages, costs, claims, actions and expenses (including, without limiting the generality of the foregoing, the cost of any required Remediation of any Environmental Conditions, and the cost of attorneys' fees) which may be sustained as the result of or arising from: (a) any Environmental Conditions on, in, under or emanating/migrating to or from the Property, any Parcel, the Public Site Improvements or the Project Improvements to the extent any such liability attaches to the Borough Indemnified Parties as a result of the activities performed by the Redeveloper or its contractors pursuant to this Redevelopment Agreement, including without limitation claims against the Borough Indemnified Parties by any third party; (b) the failure of the Redeveloper, or any of its employees, agents, representatives, consultants, contractors, sub-contractors, licensees, sublessees or invitees, other than the Borough Indemnified Parties ("**Redeveloper Agents**") to comply with the provisions of this Article 5; (c) any exacerbation or disturbance of any Environmental Condition by Redeveloper or Redeveloper Agents on, at, under or emanating from the Redevelopment Plan Area; (d) the Release of Hazardous Substances caused by the Redeveloper or any Redeveloper Agents; (e) the excavation, testing, removal, transport, handling, storage, management, on-site re-use or recycling or off-site disposal by the Redeveloper or any Redeveloper Agents of all surface or subsurface soils, sediments or waters (including groundwater) that are disturbed, excavated or extracted in connection with Redeveloper's Remediation of the Redevelopment Plan Area and/or construction of the Public Site Improvements and Project Improvements; (f) the failure of the Project Improvements to be suitable for occupancy and/or any claims of any owners or occupants of the Project Improvements that any ownership and/or occupancy of the Project Improvements has caused exposure to any Hazardous Substances; (g) any allegation that the Borough is liable under any Environmental Laws or is a Responsible Party or a potentially Responsible Party; and/or (h) the failure of the Redeveloper or Redeveloper's Agents to undertake any Remediation of the Property and/or any Parcel which is required to be undertaken pursuant to any Applicable Laws or any Environmental Laws (the "**Environmental Indemnity**").

SECTION 5.8. Limited Waiver and Release of Claims by Redeveloper. Redeveloper specifically acknowledges that the BOROUGH MAKES NO REPRESENTATIONS, WARRANTIES OR GUARANTEES REGARDING THE ENVIRONMENTAL CONDITION OF ANY PARCEL OR THE ABILITY OF ANY PARCEL TO BE DEVELOPED OR REDEVELOPED FOR ANY PARTICULAR PURPOSE. Redeveloper represents and warrants that it undertook all due diligence and analysis it deemed appropriate to determine the feasibility and desirability of undertaking each Phase prior to execution of this Agreement and that the environmental condition of any Parcel will not be an impediment to the construction and Completion of the Project or any Phase. Redeveloper further represents and warrants that it will not apply for a Certificate of Occupancy for the Coffee Shop until a Remediation Completion Document has been issued for Parcel C, and Parcel C has been Remediated to the applicable Remediation Standard for this Parcel's Intended Use, and all invitees or licensees thereon, including but not limited to any customers or employees of the coffee shop use. Redeveloper further represents and warrants that it will not apply for a Certificate of Occupancy for the Daycare

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Improvements until a Remediation Completion Document has been issued for Parcel E and Parcel E has been Remediated to the applicable Remediation Standard for this Parcel's Intended Use, and that all invitees and licensees thereon, including but not limited to any children who may attend the daycare or any employees of the daycare.

Except to enforce its rights under this Redevelopment Agreement, the Redeveloper hereby waives and releases and covenants not to sue the Borough and shall require all Transferees to waive and release and covenant not to sue the Borough with respect to any and all claims, including without limitation, Claims under Environmental Laws, including any Claim for natural resource damages, and consequential damages, rights, remedies or causes of action that the Redeveloper or such Transferees may have now or in the future or that may arise against the Borough under laws, including without limitation Environmental Laws, or any other theory of liability with respect to: (i) the inability of the Redeveloper or any other entity to develop the Property and/or any Parcel; (ii) any environmental matters of any kind or nature whatsoever respecting the Property, and/or any Parcel, including, but not limited to, Environmental Conditions on, at, under or emanating/migrating from the Property and/or any Parcel; (iii) any claims of contribution pursuant to the Joint Tortfeasor's Contribution Law, *N.J.S.A. 2A:53A-2 to 2A:53A-5*, as may be amended or supplements, or the common law, for any tort claims arising out of the Redeveloper's Remediation Activities required to be undertaken pursuant to this Redevelopment Agreement or any claim for which the Borough is entitled to Environmental Indemnity; or (iv) any claims of contribution pursuant to the Joint Tortfeasor's Contribution Law, *N.J.S.A. 2A:53A-2 to 2A:53A-5*, as may be amended or supplements, or the common law, for any tort claims arising out of the Redeveloper's failure to undertake Remediation Activities required by any Applicable Laws or Environmental Laws to perform or any claim for which the Borough is entitled to Environmental Indemnity (the "**Environmental Waiver and Release**"). Documentation of the acceptance of any such Transferee of this Environmental Waiver and Release shall be a precondition to the validity of any Transfer of this Redevelopment Agreement and the Borough's consent to any Transfer.

Under no circumstances will the Redeveloper or any Transferee pursue the Borough as a Responsible Party or potentially Responsible Party or for any action or inaction of the Borough with respect to this Agreement or relating to the environmental status of the Property and/or any Parcel. In the event any party brings or pursues such a claim against the Borough, the Redeveloper shall indemnify the Borough for all costs related to such claim, including any damages awarded to such party and shall pay all attorneys' fees and court costs to defend against such claim as they are incurred.

SECTION 5.9. Environmental Insurance. The following insurance shall be required in addition to any other insurance requirements set forth in this Redevelopment Agreement:

a. **Contractor Pollution Liability Insurance.** For any Contractor performing Remediation or carry out Redeveloper's Environmental Obligations and/or

Remediation Activities, Redeveloper shall obtain and keep, or shall require that its Contractor obtain and keep for a term beginning on the date the Contractor is hired and continuing for five (5) years when the work is completed, Contractors Pollution Liability Insurance covering the Contractor and subcontractor and naming the Borough as an additional insured, which covers any and all liability for any and all Claims relating to said work or transportation of any Hazardous Substances, including, but not limited to claims involving bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death, property damage, diminution in fair market value of a property, loss of use damages, environmental damage, natural resource damages, toxic torts, and/or cleanup costs. The Contractor Pollution Liability Insurance shall have limits of not less than \$2,000,000 per occurrence and \$5,000,000 annual aggregate.

b. **Insurance Policy Standards.** All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (1) the policies are primary and noncontributing with any insurance that may be carried by the Borough, (2) the policies cannot be canceled or materially changed except after sixty (60) days prior written Notice by the insurer to the Borough, and (3) the Borough shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to the Borough.

c. If any of the above coverages expire during the term of this Agreement, the Redeveloper shall deliver renewal Certificates and/or policies to the Borough at least ten (10) days prior to the expiration date.

d. The Redeveloper shall not commence any work under this Agreement until it has obtained the insurance required under this Section.

SECTION 5.10. Survival. The provisions Sections 5.7 and 5.8 of this Article 5 shall survive the expiration or earlier termination of this Redevelopment Agreement.

ARTICLE 6

ACKNOWLEDGMENT OF RECEIPT OF COLLATERAL DOCUMENTS

SECTION 6.1. Simultaneous Delivery of Documents by Redeveloper. The Redeveloper and Borough agree that the rights, obligations and liabilities of the Parties under this Redevelopment Agreement are conditioned upon the delivery of the following fully executed collateral documents and hereby acknowledge the receipt of such documents, simultaneously with the execution of this Redevelopment Agreement:

- (a) Certification of the Redeveloper as to the Representations in Section 2.1 (a) – (q).

(b) Copies of the Certificate of Formation and Certificate of Good Standing of the Redeveloper, duly certified by the Secretary of State of the state of its formation.

**ARTICLE 7
TAX EXEMPTIONS**

SECTION 7.1. Exemptions Under the Environmental Opportunity Zone Act.

Because the Property is contaminated and in need of Remediation, the Borough agrees to designate the Property as an Environmental Opportunity Zone (“EOZ”) pursuant to the Environmental Opportunity Zone Act, *N.J.S.A. 54:4-3.150* (“EOZ Act”). As soon as practical but no later than sixty (60) days of the Effective Date, the Borough shall introduce an ordinance establishing Parcels C and E and the Connector Road of the Property as an EOZ. The Redeveloper acknowledges and agrees that it is not entitled to any tax exemption as may be authorized by the EOZ designation and expressly waives any right to seek such EOZ tax exemption. Redeveloper expressly agrees that neither Redeveloper, nor any Affiliate of Redeveloper, including but not limited to Metuchen I shall apply for any exemption authorized under the EOZ Act or any ordinance adopted pursuant thereto. Redeveloper’s breach of this provision will be a material breach of this Agreement for which the Borough, in addition to any other remedies available pursuant to Article 13 herein, shall expressly be entitled to seek damages resulting from such breach, including an award of attorney’s fees. The Parties agree that the Borough would be unable to accurately determine the amount of actual damages it would incur in the event that Redeveloper claimed it is entitled under the EOZ Act to an EOZ tax exemption because of the variables that could affect damages, such as the amount of taxes anticipated to be paid, the amount of the exemption that would be taken which has not yet been determined, the applicable tax rate each year which has not yet been determined and often fluctuates year to year, the assessed value of the Property which has not yet been determined and which can fluctuate over time, the impact that any tax exemption taken by the Redeveloper may have on the Borough’s ability to grant tax exemptions to future redevelopers pursuant to the Long Term Tax Exemption Law, *N.J.S.A. 40A:20-1 et. seq.* and the impact such inability may have on the future redevelopment of the Property. Due to the inability to determine the actual amount of damages, the Parties agree that in the event that the Redeveloper breaches its obligations under this Section 7.1 by claiming entitlement to a tax exemption under the EOZ Act, the Borough shall be entitled to collect a liquidated damage of five million dollars (\$5,000,000.00). The Parties acknowledge and agree that this is not a penalty.

(a) Redeveloper agrees that there shall be no real property tax abatements, payments in lieu of taxes, credits or other reductions in sewer, water or construction fees for the Project or any Phase thereof, and that Redeveloper’s financial commitment and other obligations under this Agreement are not conditioned in any way upon receipt of the same.

(b) Redeveloper agrees that the Property must be assessed as of October 1 of the pretax year pursuant to *N.J.S.A. 54:4-23* and that all assessment of the Property, any Parcel and/or any

improvements thereon shall be done in accordance with all Applicable Law, including but not limited to New Jersey tax laws set forth in Title 54 of the New Jersey Statutes.

ARTICLE 8 PROJECT OVERSIGHT

SECTION 8.1. Progress Meetings. Redeveloper shall attend and participate in quarterly progress meetings with the Borough to report on the status of the Project and to review the progress under the Project Schedule. Borough shall give Redeveloper ten (10) days advance notice of such meetings unless such Progress Meetings are to be held on a designated day during each month at a designated time and place. The meetings shall be held at the Borough Hall or the Property, unless another location is mutually agreed upon. The agenda for the meeting shall include, but not be limited to, a status report with regard to Redeveloper's development of Plans and Specifications, including any Site Plan and the Project Budget, Governmental Approval submissions and approvals, financial commitments, Remediation Activities undertaken, construction of Project Improvements and Public Site Improvements, compliance with the Project Schedule, compliance with the Redevelopment Plan and activities concerning marketing and sales. At the meeting, this information shall be made available to the Borough for review and evaluation, which the Borough shall maintain as confidential, except to the extent that the Borough is required to disclose documents in response to a public request under the Open Public Records Act, *N.J.S.A. 47:1A-1, et seq.*, in which case the Borough will provide Redeveloper with notice of receipt of any such request as soon as practical and in any case prior to the time within which the Borough must respond to such request. The Borough shall have the right at all reasonable times to inspect the books and records of Redeveloper relative to the Project Improvements, as well as to inspect the Project Site to inspect the progress of the work on the Project.

SECTION 8.2. Progress Report. The Redeveloper shall submit to the Borough a detailed quarterly written progress report ("**Quarterly Progress Report**") (or more frequent Progress Reports, if requested by Borough) which shall include a description of activities completed, the activities to be undertaken prior to the next Quarterly Progress Report, the status of all Governmental Approvals, an explanation of each activity, if any, which is showing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule, an explanation of corrective action taken or proposed and certifications from its professionals that key milestones set forth in the Project Schedule are proceeding according to the Project Schedule. Redeveloper also agrees to provide monthly progress reports on the Road Construction, which include all required information for the regular Quarterly Progress Report for the Road Construction Phase, as well as a list of all activities left to be completed in each of those Phases, and the anticipated timeline for completion of each such activity ("**Monthly Progress Report**"). As part of the Monthly Progress Report, the Redeveloper shall report on the status of remediation of the Connector Road Parcel, Parcel E and Parcel C, identifying all Remediation Activities undertaken

and all Remediation Activities left to be undertaken, and the anticipated completion dates for each. The Quarterly Progress Report shall also contain a Certificate of No Default to the effect that Redeveloper is not aware of any condition, event or act that constitutes a violation or an Event of Default under this Redevelopment Agreement or if any such condition, event or act exists, specifying the same as of the date of the Quarterly Progress Report. A Certificate of No Default shall not be required to be submitted with the Monthly Progress Report.

For purposes of this Redevelopment Agreement, “**Certificate of No Default**” shall mean a certificate to the effect that Redeveloper is not aware of any condition, event or act that constitutes a violation of this Redevelopment Agreement or that would constitute an Event of Default hereunder and no condition, event or act exists that, with notice or lapse of time, or both, would constitute such a violation, or Event of Default, or if any such condition, event or act exists, specifying the same.

SECTION 8.3. Access to Property. If reasonably determined to be necessary by the Borough, the Borough or its authorized representatives shall have the right from time to time, upon reasonable Notice to Redeveloper, to enter the Property, or any Parcel, to inspect the Property, the Parcel and/or Project Improvement, and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement; provided, however, that the Borough acknowledges hereby that the Property will be an active construction site and the Redeveloper shall not be liable or responsible to the Borough, its employees or agents for injury to person or property sustained in connection with such inspections except to the extent that the Redeveloper violates the standard of due care owed to invitees. Where the Borough’s activities are of such a nature that might significantly affect the Redeveloper’s use of any Parcel or any Project Improvements, the Borough shall give five (5) days’ prior Notice of the Borough’s intent to access the Property, the Parcel and/or the Project Improvements; provided, however, that in the event of an emergency, Notice may be given at such time as reasonably practicable, including Notice subsequent to the Borough’s entry. Such entrance shall be for informational purposes and shall not relieve the Redeveloper from its obligation to Complete any Phase and/or any Project Improvements in accordance with this Redevelopment Agreement. In no event shall the Borough’s inspection be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement. This Section does not apply to inspections by any Borough Code Officials in the conduct of their official duties, who shall be permitted to enter the Property at any time.

SECTION 8.4 Copies of Submissions. Redeveloper shall be required to provide the Borough with a copy of each and every application for Governmental Approvals submitted to Governmental Bodies at the same time those applications are submitted to same.

ARTICLE 9 TRANSFERS

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SECTION 9.1. Prohibition Against Transfers. Redeveloper recognizes the importance of the Project to the general welfare of the community and that the identity of the Redeveloper and its qualifications are critical to the Borough in entering into this Redevelopment Agreement, particularly in view of the public aids that have been or will be made available for the purpose of making such redevelopment possible. Accordingly, except as set forth below in Section 9.2 and in accordance with Sections 9.3 and 9.4 below, the lease, sale, assignment or Transfer of the Property, any Parcel, the Project Improvements and/or any portion thereof is specifically prohibited, except as otherwise stated herein. Likewise, the Borough considers that a Transfer of the ownership in Redeveloper, or any other act or transaction involving or resulting in a change in the ownership of or with respect to the identity of the parties in Control of Redeveloper or the degree thereof, is for practical purposes a Transfer or disposition by Redeveloper and is prohibited without the written consent of the Borough.

Redeveloper expressly acknowledges and agrees that, other than a Pre-Remediation Permitted Transfer, no Parcel or other portion of the Property or portion of the Project Improvements shall be sold, leased or otherwise Transferred to any other Person or entity, and the ownership and control of the Redeveloper shall not change prior to the issuance of a Remediation Completion Document for the applicable Parcel or portion of the Property to be sold leased or otherwise Transferred. Any transfer in violation of this provision shall be null and void *ab initio*.

SECTION 9.2. Redeveloper Covenants. The Redeveloper covenants and agrees that:

(a) **Transfers Prior to Issuance of a Certificate of Completion.** Prior to the issuance of a Certificate of Completion for all Parcels of the Property, the Redeveloper shall not: (1) effect or permit any change, directly or indirectly, in the ownership or control of the Redeveloper (except in the case of death of an individual(s) having such ownership or control); (2) assign or attempt to assign this Redevelopment Agreement or any rights herein or in the Property or any Parcel; (3) make any total or partial sale, lease, transfer or conveyance of the whole or any part of the Property, the Project Improvements, any Phase, any Parcel or its interests therein, other than a Permitted Transfer (collectively a “**Transfer**”). Upon issuance of the Certificate of Completion for each Parcel these restrictions shall be terminated as they apply to the Parcel for which a Certificate of Completion is issued and the Redeveloper shall be entitled to record the Certificate of Completion for the Applicable Parcel as evidence that these restrictions are terminated.

The Parties acknowledge and understand that for purposes of this section, the following shall not be considered a Transfer, provided that prior Notice of the same is provided to the Borough in accordance with Section 9.3 below: (1) utility, stormwater or access easements necessary for the Public Site Improvements or Project Improvements; (2) environmental covenants and restrictions imposed by a Governmental Body as a condition of any permit or approval; and (3) any remediation funding source established pursuant to *N.J.A.C. 7:26C-5*.

(b) **Transfers Prior to Issuance of a Certificate of Completion**. Prior to the issuance of a Certificate of Completion for all Parcels of the Property, except for Permitted Transfers, as defined below, the Redeveloper shall not undertake any Transfer, and shall not lease, sell, assign or otherwise transfer the Property, the Project Improvements, any Phase or any Parcel or any portion thereof, without the prior written consent of the Borough, which shall not be unreasonably withheld.

(c) **Permitted Transfers**. The following Transfers are exceptions to the prohibition set forth in the previous subparagraph and shall not require prior approval by the Borough, the written consent of the Borough to such Transfers being deemed given hereby provided Notice of same is given to the Borough prior to the Transfer in accordance with Section 9.3 below, which such Transfers may be permitted before Remediation of the Property is Complete, provided that an Environmental Waiver and Release has been executed by the Redeveloper prior to the Transfer, and the Deed Notices remain of record in the County Recording office (“**Pre-Remediation Permitted Transfers**”): (1) a Mortgage or Mortgages for the purposes of financing the Project Costs associated with, or incurred in connection with any Phase; (2) a transfer (whether by sale, grant or foreclosure) to any Holder or to any third party who may acquire the Property from a Holder or at a mortgage foreclosure sale; (3) any lease, sub-lease, option agreement or contract of sale for any portion of the Property to a redeveloper, as defined in *N.J.S.A. 40A:12A-3* who has entered into a redevelopment agreement with the Borough for the redevelopment of one or more Parcels and (4) any contract or agreement with respect to any of the foregoing exceptions.

In addition, leases to end-users of the Project Improvements are exceptions to the prohibition set forth in the previous subparagraph and shall not require prior approval by the Borough, the written consent of the Borough to such Transfers being deemed given hereby provided that: (i) Notice of same is given to the Borough prior to the Transfer in accordance with Section 9.3 below; (ii) occupancy and commencement of operations by the end-user shall not occur until after the issuance of both a Remediation Completion Document for the applicable Parcel and a Certificate of Occupancy for said Project Improvements; provided however, that possession may be taken by an end user pursuant to the terms of a lease solely for the purposes of undertaking tenant fit-out prior to the issuance of a Certificate of Occupancy so long as either: (A) a Remediation Completion Document has been issued for the applicable Parcel, or (B) detailed written notice is given to the end user, with a copy to the Borough Administrator, describing the current environmental status of the Parcel as of the date of possession, which includes a description of all Remediation Activities left to be undertaken in order for a Remediation Completion Certificate to be issued, and a description of all “areas of concern” as the term is defined in N.J.A.C. 7:26E-1.8 existing on the applicable Parcel as of the date of possession; and (iii) an Environmental Waiver and Release has been executed (“**Post-Remediation Permitted Transfer**”). Redeveloper expressly acknowledges and agrees that a Transfer to an end user pursuant to this Paragraph shall not relieve Redeveloper of its Remediation obligations hereunder with respect to any Parcel or portion thereof.

SECTION 9.3. Notice of Permitted Transfers. With respect to any Permitted Transfers, the Redeveloper shall provide to the Borough written Notice thirty (30) days prior to any such Permitted Transfer, including a description of the nature of such Permitted Transfers, and the name(s) and address(es) of the parties and any parties, individuals and/or entities comprising such parties.

SECTION 9.4. Requirements for Obtaining Consent to a Transfer. Prior to the Issuance of a Certificate of Completion, with the express prior written consent of the Borough, which consent shall not unreasonably be withheld, conditioned or delayed if the Redeveloper complies with the requirements of this Section 9.4 and submits all information set forth herein, the Redeveloper may effect a Transfer of title to all or a portion of the Property, and/or effect or permit any change, directly or indirectly, in the majority ownership or control of the Redeveloper (except in the case of death of an individual(s) having such ownership or control) or any other prohibited Transfer, to a transferee that has the qualifications and financial responsibility necessary and adequate, as may be reasonably determined by the Borough, to fulfill the obligations to be undertaken in this Agreement by the Redeveloper. As part of the Borough's consideration of any Transfer pursuant to this Section, the proposed transferee must provide the following information and satisfy any other conditions as reasonably determined by the Borough:

- (a) Evidence that the proposed transferee possesses the qualifications and financial responsibility necessary and adequate to fulfill the obligations undertaken in this Agreement with respect to the Public Site Improvements and each Phase or future phases of the redevelopment of the Property or any Parcel and other obligations pursuant to Governmental Approvals, or any part of such obligations that may pertain to the transferred interest or the transferred portion of the Property, Parcel, or Phase and/or Project Improvements, as determined from evidence of experience on comparable projects, which may include letters of recommendation from reputable parties for whom the prospective transferee has undertaken a comparable development, stating that the proposed transferee or assignee possesses the competence and integrity to undertake the Project or part thereof.
- (b) Written documentation by the proposed transferee, in form and content reasonably satisfactory to the Borough, for itself and its successors and assigns, and for the benefit of the Borough, by which the proposed transferee (i) expressly assumes all of the obligations of the Redeveloper under this Agreement applicable to the property interest conveyed with such sale, assignment or Transfer and (ii) agrees to be subject to all the conditions and restrictions to which Redeveloper is subject under this Agreement, including restrictions regarding the right to subsequent Transfers.

- (c) Written documentation by the proposed transferee, in form and content reasonably satisfactory to the Borough, for itself and its successors and assigns, and for the benefit of the Borough, which establishes the proposed transferee's financial capability and financial resources, including all necessary equity and debt financing in an amount necessary to fully finance all portions of the project that the transferee proposes to undertake.
- (d) Evidence satisfactory to the Borough that the Redeveloper and its transferee(s) have satisfied any other conditions that the Borough may find necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

SECTION 9.5. Transfers Void. Any Transfer of the Redeveloper's interest in violation of this Redevelopment Agreement shall be an Event of Default (as defined in Section 13.1) and shall be null and void *ab initio*. Such Event of Default shall entitle Borough to seek all remedies available under the terms hereof, and those available pursuant to law or in equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by Borough, no such sale, Transfer, conveyance or assignment of the Property, any Phase, any Parcel, the Project Improvements, or any part thereof shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. The Declaration shall contain a Deed Notice restricting Transfers as set forth in this Article and, in addition, shall provide that in the event of any attempted Transfer in violation of the restrictions in this Article, the Borough shall be entitled to seek an injunction restraining such Transfer, rescission of said Transfer, and the award of legal fees and related expenses of the Borough in connection with any such legal action. Within thirty (30) days of execution of this Redevelopment Agreement, the Redeveloper shall prepare and record the Declaration as a Deed Notice, in a form acceptable to the Borough, which sets forth the restrictions set forth in this Article 9.

ARTICLE 10 FINANCIAL OBLIGATIONS

SECTION 10.1. Redeveloper's Financial Commitment. The Redeveloper represents and warrants that it has obtained or can obtain and will commit the requisite equity and debt financing in an amount necessary to implement and complete the Project and each Phase hereof.

SECTION 10.2. Project Costs. All costs of implementing and Completing the Project, including all costs for implementing and Completing each Phase (collectively, the "Project Costs"), including Borough Costs, shall be borne by the Redeveloper.

SECTION 10.3. Governmental Approval Fees. The Redeveloper shall pay all fees for all Governmental Approvals required by the Borough and any other Governmental Body for the construction and development of the Project. The Redeveloper shall maintain separate escrow

accounts with the Borough Planning Board as may be required under Applicable Law for (i) land use approvals; (ii) site improvements; and (iii) construction of the Public Site Improvements and Project Improvements. The Redeveloper shall also be required to post Performance and/or Payment Bonds and inspection escrows for the Public Site Improvements, as may be required by Applicable Law and as set forth in Article XI herein.

SECTION 10.4 Borough Declaration of Event of Default. The Redeveloper's performance of its obligations under this Section shall not, however, limit the rights of the Borough to declare the occurrence of an Event of Default hereunder in accordance with the terms hereof.

SECTION 10.5. Sewer and Water Connection Fees.

(a) **Water Connection Fees.** The water distribution system within the Borough is owned and operated by Middlesex Water Company. The Redeveloper shall be responsible for and shall pay any and all water connection fees due to Middlesex Water Company for water connections for the Project. Such fees shall be due and payable prior to the issuance of any Construction Permit for the Project or, if applicable, in accordance with the schedule set forth in the regulations of the Middlesex Water Company.

(b) **Sewer Connection Fees.** The sanitary sewer collection system is owned and operated by the Borough. New Jersey law permits a municipality or authorized agency that provides sewer service within the municipality to charge a connection fee or tapping fee in respect of each connection of any property with the sewerage system. Such connections shall be uniform within each class of users and shall not exceed the actual cost of the physical connections plus the capital cost of the construction of the sewerage system calculated pursuant to statute. The connection fee shall be apportioned to each new connector according to the number of service units attributed to that connector. The connection fee shall be calculated annually and may be imposed upon those who subsequently connect in that fiscal year to the system. *N.J.S.A. 40:14B-22*. New Jersey law also permits a municipality which provides sewer service within the municipality to charge an annual sewer service charge applied uniformly throughout the municipality. The sewer service charge shall be calculated pursuant to *N.J.S.A. 40:14B-22*. The Redeveloper shall be responsible to pay the sewer connection fees and sewer service fees for the Project. The sewer service fees shall be those fees calculated pursuant to *N.J.S.A. 40:14B-22*. The Parties acknowledge any fees charged by the appropriate authority(ies) shall be deemed Project Costs, as defined in Section 10.2.

SECTION 10.6. Affordable Housing Obligation. The Project Improvements do not include residential development and, therefore, there shall be no obligation to provide affordable housing in the Project. Redeveloper's affordable housing obligation shall be satisfied by making payment of the Non-Residential Development Fee, pursuant to *N.J.S.A. 40:55D-8.1, et seq.* Redeveloper agrees comply with the requirements of the Non-Residential Development Fee Act,

to *N.J.S.A. 40:55D-8.1, et seq.* Any additional Borough affordable housing obligations for the Redevelopment Plan Area, to the extent there are any, will be addressed in separate redevelopment agreements for the redevelopment of the other Parcels of the Redevelopment Plan Area in accordance with the Settlement Agreement entered into between the Borough and Fair Share Housing Center in May 2016.

SECTION 10.7. Borough Costs.

(a) **Reimbursement for Borough Costs.** From the date of execution of this Agreement, the Redeveloper agrees to reimburse the Borough in full for: (1) all actual and reasonable out of pocket costs incurred by the Borough in connection with the development, drafting, negotiation, and implementation of this Agreement; (2) all direct costs paid by the Borough to third parties in connection with the Project, including but not limited to reasonable legal fees, planning fees, engineering fees, financial consultants and other reasonable professional fees; provided that all such costs incurred by the Borough shall have been reasonably incurred; and (3) all other expenses of the Borough incurred in implementation of the Project (the “**Borough Costs**”).

(b) **Escrow Fund.** Redeveloper shall establish a separate escrow account with the Borough by depositing the amount of Thirty Thousand Dollars (\$30,000) to be drawn down by the Borough to cover Borough Costs. This escrow account shall be separate from the escrow accounts established pursuant to Section 10.3 above. The Borough shall provide Redeveloper with invoice(s) setting forth Borough Costs incurred by the Borough that will be drawn down at least fifteen (15) days prior to the date of the draw. Redeveloper will have the opportunity to object to the reasonableness of charges or invoice submitted for payment within that fifteen (15) day period. Within fifteen (15) days of the receipt by Redeveloper of written notice from the Borough that the amount in the escrow account has decreased to Five Thousand Dollars (\$5,000), Redeveloper shall replenish the escrow account with the Borough to the amount of Thirty Thousand Dollars (\$30,000). If Borough Costs incurred by the Borough exceed the amount in the escrow account, Redeveloper will pay such costs upon fifteen (15) days written notice from the Borough that such costs are due, and shall replenish the escrow account to Thirty Thousand Dollars (\$30,000).

Section 10.8. Off-Site Contribution

In lieu of providing on-site public recreational facilities on the Property, the Redeveloper shall pay a contribution in the amount of one hundred and thirty-five thousand dollars (\$135,000.00) for open space and recreational facilities off-site (“**Open Space Contribution**”), which shall be used by the Borough for the design of off-site improvements to the existing Trailhead Park located across from Middlesex Avenue, as determined by the Borough. The Open Space Contribution shall be paid to the Borough as follows: (i) an initial payment of sixty thousand dollars (\$60,000) within fifteen (15) days of the Effective Date; and (ii) a second payment of

seventy-five thousand dollars (\$75,000.00) prior to the issuance of any Construction Permits for any building or other structure to be constructed on Parcel C or Parcel E.

ARTICLE 11
PERFORMANCE AND PAYMENT BONDS

SECTION 11.1. Performance and Payment Bonds.

(a) To the extent not already posted in connection with Governmental Approvals or to a construction lender, in which case the Borough shall be named as an additional insured, Redeveloper shall furnish to the Borough a performance bond as set forth in Exhibit "G" (hereinafter called "**Performance and Payment Bond(s)**") as security for the performance of the obligations of the construction of the Public Site Improvements. Said Performance and Payment Bond(s) shall be in form and content most often accepted by Governmental Bodies in the State and sufficient for the protection of the Borough and that are standard in the underwriting industry for ensuring full performance and completion of construction by contractors and payment of all payments to multiple prime contractors, subcontractors, workers and material suppliers by contractors and subcontractors pursuant to the contract(s) for the Public Site Improvements in accordance with the laws of the State and the regulations promulgated thereunder. In this regard (and if allowed by *N.J.S.A. 40:55D-1 et seq.*), the Parties acknowledge that the delivery of one or more letters of credit will be an adequate substitute for the amounts otherwise required on any such Performance and Payment Bonds (which letter(s) of credit will be referred to herein as "**P & P LOC**"), in which case the Redeveloper and the Borough will enter into an agreement establishing protocols for the administration of draws under any such P & P LOC(s), to afford the coverage that the Borough would otherwise have under any such Performance and Payment Bonds.

(b) In the event that Redeveloper is entitled to and fails to exercise its rights under the Performance and Payment Bond or P & P LOC, and if there occurs an Event of Default by Redeveloper, then, subject to the rights of a Holder, the Borough shall thereafter have the right to the protections and guarantee(s) available through and from the surety provided by the Performance and Payment Bond(s) and/or P & P LOC. The Borough shall also have all other rights and remedies available to it under the Performance and Payment Bond(s), the P & P LOC(s), this Redevelopment Agreement and/or at law. The Performance and Payment Bond and/or P & P LOC shall name the Redeveloper and Borough as their respective interests may appear, as beneficiaries of the Performance and Payment Bond(s) and/or P & P LOC, and of all rights, payments and benefits flowing or deriving therefrom.

(c) Any Performance and Payment Bond(s) or P & P LOC(s) must include any change orders or other modifications to work material to completion of the Public Site Improvements, and Redeveloper agrees that it will comply and cause its contractor(s) to comply with all requirements

set forth in the Performance and Payment Bond(s) or in respect of the P & P LOC(s) in connection therewith.

(d) The identity and financial net worth of the surety issuing the Performance and Payment Bond, and the form and content of the Performance and Payment Bond, shall be acceptable to the Borough and subject to its approval to the extent provided under the Municipal Land Use Law. Any P & P LOC will be issued by a nationally chartered banking association.

(e) The Borough acknowledges that the purpose, inter alia, of requiring the Redeveloper to obtain the Performance and Payment Bond(s) and/or P & P LOC(s), if applicable, is to assure timely completion of the Public Site Improvements.

(f) The cost of obtaining the Performance and Payment Bond or P & P LOC, if issued, shall be borne by the Redeveloper or its contractors.

(g) Any acts or omissions by the Redevelopers' contractor(s) shall be deemed to be acts or omissions of the Redeveloper.

ARTICLE 12 INDEMNIFICATION; INSURANCE

SECTION 12.1. Indemnity.

(a) Redeveloper covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, actions, or expenses (including reasonable attorneys' fees, disbursements, and court costs) of every kind, character and nature arising out of, resulting from or in any way connected with the acquisition, condition, use, possession, conduct, management, planning, design, implementation, construction, installation, financing, marketing, Transfer, leasing or sale of the Property, any Parcel, any Phase, or the Project Improvements, or any part thereof, including but not limited to, the death of any person or any accident, injury, loss, and damage whatsoever caused to any person or to the property of any person that shall occur on the Property, any Parcel, any Phase or Project Improvements or any part thereof, and that, with respect to any of the foregoing, are related to or resulting from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors. This indemnity shall not extend to any negligent or willful acts or omissions of the Borough Indemnified Parties.

(b) The obligations of the Redeveloper pursuant to Section 12.1(a) shall not be deemed to relieve any insurance company which has issued a policy of insurance as may be provided for in the Redevelopment Agreement from its obligation to defend the Redeveloper, the Borough or any other insured named in such policy of insurance in connection with liability, losses, damages,

demands, costs, claims, actions, or expenses (including attorneys' fees, disbursements, and court costs) covered by such policy.

(c) In any situation in which the Borough Indemnified Parties are entitled to receive and desire defense and/or indemnification by the Redeveloper, the Borough Indemnified Parties shall give prompt Notice of such situation to the Redeveloper. Failure to give prompt Notice to the Redeveloper shall not relieve the Redeveloper of any liability to indemnify the Borough Indemnified Parties, unless such failure to give prompt Notice materially impairs the Redeveloper's ability to defend. Upon receipt of such Notice, the Redeveloper shall resist and defend any action or proceeding on behalf of the Borough Indemnified Parties, including the employment of counsel reasonably acceptable to the Borough Indemnified Parties, the payment of all expenses and the right to negotiate and consent to settlement. The Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Redeveloper or if there is a final judgment against the Redeveloper in any such action, the Redeveloper shall indemnify and hold harmless the Borough Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which the Borough Indemnified Parties are entitled to indemnification hereunder.

SECTION 12.2 Failure to Defend. In the event that the Redeveloper does not meet its obligations under Section 12.1, then and in that event, all costs incurred by the Borough and the Borough Indemnified Parties or any of them in their own defense and all costs incurred in pursuing the indemnity obligations of the Redeveloper under this Redevelopment Agreement, including without limitation, reasonable attorneys' and experts' fees and expenses, shall be reimbursed to the Borough and/or to any Borough Indemnified Parties by the Redeveloper in connection with such indemnification.

SECTION 12.3. Survival of Indemnity. The provisions of this Article 12 shall survive the termination of this Redevelopment Agreement due to an Event of Default and shall run with the land and be referenced in the Declaration until such time as the Declaration is discharged; provided, however, that such indemnity shall be binding on the Redeveloper itself, each successor in interest to the Project Improvements, the Property, any Phase, any Parcel or any part thereof, and each Party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or Party shall have title to, or an interest in, or possession or occupancy of the Property, any Parcel, any Phase, the Project Improvements or any part thereof.

SECTION 12.4. Insurance Required.

(a) The Redeveloper shall furnish or shall cause to be furnished to the Borough certificates evidencing the existence of commercial general liability insurance coverage, insuring the Redeveloper against losses, costs, liabilities, claims, causes of action and damages for bodily injury, property damage and personal injury on the Property and all Parcels or related to the

construction thereon, including claims made by subcontractor personnel, in the amounts set forth in Items 1 and 2 of Exhibit "G." Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other customary covered losses, however occasioned, occurring during the policy term, and shall be endorsed to add the Borough as an additional insured and to provide that such coverage shall be primary and that any insurance maintained by the Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against the Borough. On or before the renewal date of each said policy, Redeveloper shall be required to provide the Borough with a Certificate of Insurance indicating the continuation of insurance coverage and designating the Borough as an "Additional Insured."

(b) Builder's risk insurance for the benefit of the Redeveloper (subject to the interests of any Holder), during the term of construction, sufficient to protect against loss or damage resulting from: (i) fire; (ii) lightning; (iii) flood, sewer or water back-up, subterranean or ground water; (iv) earthquake, mudslide or earth movement of any kind; (v) 1 faulty, inadequate or defective design, specifications, construction, materials or workmanship; (vi) collapse; (vii) explosion; and (viii) the standard extended coverage perils, theft, vandalism, and malicious mischief. The limits of liability will be as set forth in Item 3 of Exhibit "G," including items of labor and materials, whether in or adjacent to the structure(s) insured, connected therewith, and materials in place or to be used as part of the permanent construction of the Project Improvements.

(c) The Redeveloper shall also furnish or cause to be furnished to the Borough evidence satisfactory to Borough that the Redeveloper and any contractor with whom it has contracted for the construction of the Project carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for the Borough.

(d) Comprehensive automobile liability insurance covering all owned, hired and non-owned vehicles with at least the following limits of liability: Bodily Injury Liability and Property Damage Liability - \$1,000,000 combined single limit per occurrence.

(e) Redeveloper shall also furnish or cause to be furnished to the Borough evidence satisfactory to Borough that Redeveloper carries professional liability insurance for a term of not less than three (3) years following the issuance of the Certificate of Completion for the Project Improvements. The form and content of such policy of insurance shall be that which is reasonably acceptable to the Borough.

All insurance policies required by this Section shall be obtained from insurance companies licensed in the State and rated at least an "A" in Best's Insurance Guide. All insurance policies required hereunder shall be kept in force until a final Certificate of Completion is issued.

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(f) All insurance policies required by this Section shall be non-assessable and shall contain language to the effect that (1) the policies are primary and noncontributing with any insurance that may be carried by the Borough, (2) the policies cannot be canceled or materially changed except after thirty (30) days prior written Notice by the insurer to the Borough, and (3) the Borough shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to the Borough.

(h) If any of the above coverage's expire during the term of this Agreement, the Redeveloper shall deliver renewal Certificates and/or policies to the Borough at least ten (10) days prior to the expiration date.

(i) The Redeveloper shall not commence any work under this Agreement, other than ongoing Remediation Work pursuant to a Remedial Action Workplan, until it has obtained the insurance required under this Section.

**ARTICLE 13
EVENTS OF DEFAULT AND REMEDIES**

SECTION 13.1. Events of Default. Any one or more of the following events shall constitute an event of default ("**Event of Default**") hereunder, unless such event results from the occurrence of (i) a Tolling Event (in the case of an alleged Event of Default of Redeveloper) or (ii) Event of Default by Redeveloper or occurrence of event of Force Majeure (in the case of an alleged Event of Default of the Borough):

(a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition or agreement in this Redevelopment Agreement and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written Notice from the non-defaulting Party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition or agreement is one which cannot be completely remedied within the thirty (30) 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 twenty (120) days after such written Notice.

(b) A default or event of default under any of the Redeveloper's financing documents for the Project that continues beyond any applicable cure periods.

(c) The Connector Road is not constructed in accordance with Amended Developer's Agreement or in accordance with the Connector Road Construction Schedule set forth in Exhibit B of the Amended Developer's Agreement, unless the same has been extended in accordance with

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the Amended Developer's Agreement or the Borough has otherwise agreed to an extension of time, in writing, for Completion of the Connector Road

(d) (1) 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; (2) a custodian shall have been legally appointed with or without consent of the Redeveloper; (3) 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; (4) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (5) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (6) 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; (7) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the United State Bankruptcy Code; (8) 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 unstayed and in effect for any period of ninety (90) consecutive days; or (9) the Redeveloper shall have suspended the transaction of its usual business.

(e) The Redeveloper shall default in or violate its obligations with respect to the design development and construction of the Public Site Improvements and/or Project Improvements in accordance with this Redevelopment Agreement, the Redevelopment Plan, Governmental Approvals or Applicable Law, including but not limited to failure to comply with the Commencement of Construction after obtaining any and all necessary Governmental Approvals, abandonment or suspension of construction work (subject to Tolling Events and/or Force Majeure), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so

(f) (1) The passage of ninety (90) days following the filing of a complaint in foreclosure if such complaint has not been stayed or discharged or (2) the issuance of a deed in lieu of foreclosure for the Property or for any financing in connection with the Project Improvements.

(g) The Redeveloper or its successor in interest (except for third parties to which a portion of the Project Improvements has been conveyed in the ordinary course of business) shall fail to pay any real estate taxes or assessments on any real property or any part thereof owned by it in the Borough when due, or shall place thereon any encumbrance or lien unauthorized by this Redevelopment Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed

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or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within sixty (60) days after written demand by the Borough to do so.

(h) The Redeveloper implements a Transfer in violation of this Redevelopment Agreement.

(i) On the Effective Date and during the term of this Agreement, a representation made by Redeveloper in Article 2 is materially false.

(j) A default under a P&P LOC that continues beyond any applicable cure periods.

(k) A decision or order determination by a court of competent jurisdiction that Redeveloper has engaged in fraud in the inducement of, or willful misconduct in connection with the Project Improvements, and such determination results in a material adverse effect on the operations or financial condition of Redeveloper, or the ability of Redeveloper to complete its obligations in a timely fashion under this Redevelopment Agreement.

SECTION 13.2. Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following acts, events or conditions or any combination thereof 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 (“**Force Majeure**”):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of a public enemy, war, terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project Improvements, and such events have physically affected a Party’s ability to fulfill its obligations hereunder;

(b) A landslide, fire, explosion, flood or release of nuclear radiation not created by an act or omission of either Party hereto and such events have physically affected a Party’s ability to fulfill its obligations hereunder;

(c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than Borough when acting in conformance with this Redevelopment Agreement) with jurisdiction within the Borough, excepting decisions interpreting Federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project Improvements; provided, however, that such order, judgment, action and/or determination shall

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not be the result of the willful, intentional or negligent action or inaction of the Party to this Redevelopment Agreement relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other 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, or bad faith 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, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

(e) Strikes or similar labor action by equipment manufacturers, suppliers of material and/or transporters of same;

(f) Public health emergencies, or local, state or national declarations of emergency and such events have directly and physically affected a Party's ability to fulfill its obligations hereunder;

(g) Acts or omissions of the other Party, except in conformance with this Redevelopment Agreement;

The Parties hereto acknowledge that the acts, events or conditions set forth in paragraphs (a) through (g) above are intended to be the only acts, events or conditions that may (upon satisfaction of the conditions specified above) constitute Force Majeure, provided however, the consequential effect of such events (e.g., impact on market conditions) shall not be considered a Force Majeure event. Notice by the Party claiming such extension shall be sent to the other Party within thirty (30) calendar days of the commencement of the event of Force Majeure. In the event of a Force Majeure event, the applicable deadline, obligation or term affected by the Force Majeure shall be extended for a period of time equal to the delay caused by the Force Majeure, following the receipt of timely notice of the same.

During any Force Majeure that affects part of the Project Improvements, Redeveloper shall continue to perform its obligations for the rest of the Project Improvements. The existence of an act of Force Majeure shall not prevent a Party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure provided that the event that is the basis of the Event of Default is not a result of the Force Majeure. All act or acts of Force Majeure will be deemed to have ceased to exist as of a date eighteen (18) months from its initial occurrence and if it has not ceased to exist as of a date eighteen (18) months from its initial occurrence, this Redevelopment Agreement may be rescinded at the option of either Party upon written notice to the other Party.

Each party shall diligently and in good faith seek to mitigate the effect of such Force Majeure event to the extent practicable and to overcome any Force Majeure event as soon as practicable.

SECTION 13.3. Remedies of Borough Upon Event of Default by Redeveloper. In the event that an Event of Default by the Redeveloper occurs, then subject to all other provisions herein for Notice, cure and mitigation of damages, the Borough may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper, as applicable, under this Redevelopment Agreement including the seeking of damages (including reasonable attorneys' fees and costs) or institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including but not limited to compelling specific performance. Further, the Borough shall have the right, in its sole and absolute discretion, upon sixty (60) days' Notice to the Redeveloper, to terminate this Redevelopment Agreement and rescind redeveloper designation from Redeveloper.

In the event that this Redevelopment Agreement is terminated by the Borough pursuant to the preceding paragraph, the Borough shall terminate the Redeveloper's designation as redeveloper. The Borough shall have the right to apply to its damages any funds of the Redeveloper in the hands of the Borough at the time of such default and termination, after such funds have first been utilized for their specific purpose and applied to any outstanding Borough Costs or pursuant to the terms of any P&P LOC and to the extent permitted under Applicable Law.

SECTION 13.4. Remedies of Redeveloper Upon Event of Default by Borough. In the event that an Event of Default by the Borough occurs, then Redeveloper may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Borough, as applicable, under this Redevelopment Agreement, including the seeking of damages in an amount not to exceed the net anticipated benefit from the agreements contemplated in this Redevelopment Agreement plus legal and professional fees. Further, the Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' Notice to the Borough, to terminate this Redevelopment Agreement.

SECTION 13.5. Specific Performance. If an Event of Default occurs, or a Party hereto threatens to take an action that will result in the occurrence of an Event of Default, the non-defaulting (or non-threatening) Party shall have the right and remedy, without posting bond or other security, to have the provisions of this Redevelopment Agreement specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach may cause irreparable injury to the Borough or the Redeveloper and that money damages may not provide an adequate remedy thereto.

SECTION 13.6. Failure or Delay. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either Party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 13.7. Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

SECTION 13.8. Continuance of Obligations. The occurrence of an Event of Default shall not relieve any Party of its obligations under this Redevelopment Agreement.

SECTION 13.9. Litigation Costs. In the event that a Party to this Redevelopment Agreement successfully pursues an action to enforce any remedy provided in this Article, that Party shall be entitled to payment by the other Party of all reasonable costs and expenses incurred in connection with such action.

SECTION 13.10 Limitation on Damages.

(a) Notwithstanding the provisions of Article 13 to the contrary, the liability of the Borough (as a result of the occurrence of an Event of Default by the Borough) and/or the liability of the Redeveloper (as a result of the occurrence of an Event of Default by the Developer) shall be limited to the actual damages incurred by the non-defaulting Party and in no event shall the defaulting Party be liable to the non-defaulting Party for economic, consequential or compensatory damages, except that the Parties specifically agree that the Redeveloper shall be liable for all economic, compensatory and consequential damages incurred by the Borough in the event that Redeveloper breaches its obligations under Section 7.1 hereof, and the liquidated damages provisions contained therein is declared invalid or otherwise unenforceable.

(b) Nothing in this Redevelopment Agreement shall authorize Redeveloper's ability to seek specific performance to compel an act of legislative discretion and nothing in this Redevelopment Agreement shall be construed to obligate the Borough or the Borough Council to exercise its legislative discretion in a particular manner.

SECTION 13.11. Mitigation. The parties shall act reasonably to mitigate any damages that may be incurred as the result of an Event of Default hereunder.

SECTION 13.12. Survival of Termination. The provisions of this Article shall survive the termination of this Redevelopment Agreement as a result of an Event of Default by Redeveloper.

**ARTICLE 14
MORTGAGE FINANCING; RIGHTS OF MORTGAGEE**

SECTION 14.1. Notice of Default to Holder and Right to Cure. Whenever the Borough shall deliver any Notice or demand to Redeveloper with respect to any breach or default by Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Holder a copy of such Notice or demand, provided that Redeveloper has delivered to the Borough a written Notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Borough 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 which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. If such default shall be a default which can only be remedied or cured by such Holder upon obtaining possession, such Holder shall seek to obtain possession of the Property, any Parcel (or portion to which its Mortgage relates) with diligence and continuity through a receiver or otherwise, and shall remedy or cure such default within ninety (90) calendar days after obtaining possession, provided that the Holder has provided copies to the Borough of all documents filed with any Court or any Governmental Body and all documents served upon Redeveloper in its attempt to obtain possession of the Property or any Parcel or any portion thereof.

SECTION 14.2. No Guarantee of Construction or Completion. A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Public Site Improvements or the Project Improvements (or portion to which its Mortgage relates), or to guarantee such construction or completion; nor shall any covenant or any other provision be construed so as to obligate a Holder. Notwithstanding the foregoing, nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project, or portion to which its Mortgage relates (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made), without the Holder first having expressly assumed Redeveloper's obligations to the Borough with respect to the Project (or portion to which its Mortgage relates) by written agreement reasonably satisfactory to the Borough.

SECTION 14.3. Foreclosure. Nothing contained in this Redevelopment Agreement will, under any circumstances, be deemed or construed as limiting or in any other way prohibiting a Holder from exercising each and any right or remedy that it may have under its Mortgage, or under any other document evidencing or securing the indebtedness described therein, or under *N.J.S.A. 55:17-1, et seq.* Notwithstanding the foregoing, however, if a Holder forecloses its Mortgage on the Redeveloper's interest in the Property or any Parcel (or portion to which its Mortgage relates),

or takes title to the Redeveloper's interest in the Property or any Parcel (or portion to which its Mortgage relates) by deed-in-lieu of foreclosure or similar transaction (collectively a "Foreclosure"), the Holder shall be entitled to preserve and retain the benefits of this Redevelopment Agreement only if (a) the Holder sells or otherwise Transfers, if permitted hereunder, the Property, any Phase, any Parcel and/or the Project Improvements to a Qualified Entity upon terms in which the Qualified Entity shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with applicable law and executes a written agreement reasonably satisfactory to the Borough evidencing the same, subject to reasonable extensions of the Project Schedule; and/or (b) the Holder assumes the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and executes a written agreement reasonably satisfactory to the Borough evidencing the same, subject to reasonable extensions of the Project Schedule. Should the conditions set forth in (a) and/or (b) not be satisfied, the Borough shall have the right to terminate this Redevelopment Agreement and the Holder and/or any third party who may acquire the Property from a Holder or at a mortgage foreclosure sale shall have no further rights to the same. In the event of a Foreclosure, and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such Holder's interest any of the remedies available to the Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. In order to preserve the benefits of this Redevelopment Agreement, the Holder, or the Person assuming the obligations of the Redeveloper as to the Property or Parcel (or portion thereof) affected by such Foreclosure or sale, in that event must agree to complete the Project in the manner provided in this Redevelopment Agreement, but subject to reasonable extensions of the Project Schedule and Completion Date, and shall (in the case of a third party purchaser) submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other Person assuming such obligations of Redeveloper, to devote the Property, any Phase or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and/or in the Redevelopment Plan. Nothing in this Agreement shall entitle any Holder or such person assuming the obligations of the Redeveloper hereunder to retain any rights or benefits relating to the Connector Road Parcel or the Connector Road, without such Holder expressly assuming the obligations under the Amended Developer's Agreement in addition to this Agreement and obtaining the Borough's express written approval of the same.

SECTION 14.4. Borough's Option to Pay Mortgage Debt or Acquire Project Improvements.

(a) **Holder Failure.** In any case where, subsequent to an Event of Default by the Redeveloper under this Redevelopment Agreement and/or Foreclosure, the Holder:

(i) has, but does not exercise, the option to undertake and/or resume construction of the Project or part thereof covered by its Mortgage or to which it has obtained title, and such failure continues for a period of thirty (30) calendar days after written notice from the Borough requiring Holder to confirm its intent to exercise or reject such option; or

(ii) undertakes and/or resumes construction of the Project but does not complete such work within a reasonable period, and such default shall not have been cured within thirty (30) calendar days after written demand by the Borough so to do (with the events specified in subparagraphs (i) and (ii) each being referred to as a “**Holder Failure**”);

then the Borough shall have the option of (1) paying to the Holder the amount of the mortgage debt, inclusive of Holder’s costs in exercising its rights under such Mortgage, and obtaining an assignment of the Mortgage and the debt secured thereby, or, (2) in the event ownership of the Project (or part thereof) has vested in such Holder by way of foreclosure or action in lieu thereof, the Borough shall be entitled, at its option, to a conveyance to the Borough of the Property and Public Site Improvements and Project Improvements or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (A) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (B) all expenses with respect to the foreclosure, including reasonable attorney’s fees and expenses; (C) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the mortgaged property; (D) the costs incurred by such Holder in making any Public Site Improvements and Project Improvements; and (E) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Every mortgage instrument made with respect to the Property, Public Site Improvements and/or the Project Improvements by Redeveloper shall provide for the foregoing.

(b) **Redeveloper Default.** In any case where the Redeveloper has defaulted under or breached any provision of any mortgage instrument, note or other document with a Holder, the Holder shall provide Notice of said default or breach to the Borough, and if the Redeveloper has not cured said breach or default within any applicable cure periods, the Borough shall have the option of (1) paying to the Holder the amount of the mortgage debt and obtaining an assignment of the Mortgage and the debt secured thereby, or, (2) in the event ownership of the Project Improvements (or part thereof) has vested in such Holder by way of foreclosure or action in lieu thereof, the Borough shall be entitled, at its option, to a conveyance to the Borough of the Property, Public Site Improvements and Project Improvements or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (A) the mortgage debt at the time of foreclosure or action in lieu thereof (less all appropriate credits, including those resulting from collection and application of rentals and other income received during foreclosure proceedings); (B) all expenses with respect to the foreclosure, including reasonable attorney’s fees and expenses;

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(C) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the mortgaged property; (D) the costs incurred by such Holder in making any Public Site Improvements and Project Improvements; and (E) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Every mortgage instrument made with respect to the Property and/or the Project Improvements by Redeveloper shall provide for the foregoing.

(c) The foregoing provisions of Section 14.4(a) and (b) notwithstanding, the Township expressly reserves the right to acquire the Connector Road Parcel, and any Public Site Improvements, by condemnation, to the extent allowed by law.

ARTICLE 15 MISCELLANEOUS

SECTION 15.1. Notice. Formal notices, demands and communications between the Borough and Redeveloper (each a “Notice”) shall be deemed sufficiently given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Notice may also be sent by a commercial overnight delivery service with package tracking capability and for which proof of delivery is available. In this case such Notice is deemed effective upon delivery. Such written Notices, demands and communications may be sent in the same manner to such other addresses as either Party may from time to time designate by written Notice. Except for notices required under Article 13 (Events of Default and Remedies), notices may also be sent by electronic mail and shall be considered received when the email server produces a read confirmation receipt.

Copies of all Notices shall be sent as follows:

(a) When sent by the Borough to Redeveloper:

Metuchen III, LLC
Attn: Stuart Schooler
4905 Del Ray Aveue, Suite 200
Bethesda, MD 20814
Email: stuart.schooler@themavengroup.us

With a copy to:

Robert Beckelman, Esq.
Wilentz, Goldman & Spitzer, P.A.

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90 Woodbridge Center Drive, Suite 900
Woodbridge, New Jersey 07095
T: 732.855.6090
F: 732.726.4790
rbeckelman@wilentz.com

(b) When sent by Redeveloper to the Borough:

Borough of Metuchen
Attn: Borough Clerk
500 Main Street
Metuchen, NJ 08840
sjackson@metuchen.com

With a copy to:

M. James Maley, Jr., Esquire
Maley Givens PC
A Professional Corporation
1150 Haddon Avenue, Ste. 210
Collingswood, New Jersey 08108
T: (856) 854-1515
F: (856) 858-2944
JMaley@maleygivens.com

Any Party may change its address for Notices by Notice theretofore given in accordance with this Section 15.1 which shall be deemed effective only when actually received by the other Party.

SECTION 15.2. Non-Liability of Officials and Employees of Borough. No member, official or employee of the Borough shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

SECTION 15.3. Non-Liability of Officials and Employees of Redeveloper. No member, officer, shareholder, director, partner or employee of Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by

Redeveloper or for any amount which may become due to the Borough, or its successor, on any obligation under the terms of this Redevelopment Agreement.

SECTION 15.4. Estoppel Certificate. Within thirty (30) days following written request therefor by a Party hereto, or of any Holder, purchaser, tenant or other party having an interest in the Property, any Parcel, Project Improvements, or any part thereof, the other Party shall issue a signed estoppel certificate either stating that this Redevelopment Agreement is in full force and effect and that there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of Notice would result in a default or breach under this Redevelopment 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 and/or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

SECTION 15.5. Lender Changes. If any prospective Holder requires a change in the terms of this Redevelopment Agreement and/or the correction or fulfillment by the Borough of any matter under the Redevelopment Law, the Borough 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 Borough as set forth in this Redevelopment Agreement. In addition, the Borough shall enter into such agreements as any such prospective Holder (or the Redeveloper's equity participants) may reasonably require provided that such agreement shall not be inconsistent with the terms of this Redevelopment Agreement and which shall not increase the Borough's responsibilities or decrease its benefits hereunder.

SECTION 15.6. No Brokerage Commissions. The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acting on behalf of either the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying Party.

SECTION 15.7. 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 any deeds transferring title to any portion of the Property, any Parcel, the Public Site Improvements, Project Improvements, or any part thereof from the Redeveloper or any successor in interest, and any deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

SECTION 15.8. No Consideration For Redevelopment Agreement. 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. Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough any money or other consideration for or in connection with this Redevelopment Agreement.

SECTION 15.9. 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.

SECTION 15.10. Exhibits and Schedules. All Exhibits and Schedules attached hereto and/or referred to in this Redevelopment Agreement are incorporated herein as though set forth in full.

SECTION 15.11. Titles of Articles and Sections. The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 15.12. Severability. If any term or provision of this Redevelopment Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced to the extent permitted by law.

SECTION 15.13. Enforcement by Borough. It is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the public interest. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which they or any other beneficiaries of such agreement or covenant may be entitled.

SECTION 15.14. Execution of Counterpart. This Redevelopment Agreement may be executed in one or more counterparts and when each Party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the Parties and such counterparts shall constitute one and the same instrument.

SECTION 15.15. Drafting Ambiguities; Interpretation. In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any

construction or interpretation be influenced by, the fact that counsel for one of the Parties drafted this Redevelopment Agreement, each Party acknowledging that it and its counsel have had an opportunity to review this Redevelopment Agreement and have contributed to the final form of same.

SECTION 15.16. Time Period for Notices. All Notices to be given hereunder shall be given in writing in conformance with Section 15.1 hereof, and, unless a certain number of days is specified, within a reasonable time.

SECTION 15.17. Modifications, Waivers and Amendments in Writing. All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Borough and Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and Redeveloper. The waiver by either Party of a default or of a breach of any provision of this Redevelopment Agreement by the other Party shall not operate or be construed to operate as a waiver of any subsequent default or breach. No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the Party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

SECTION 15.18. Conflict of Interest. No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to the Redevelopment Agreement which is prohibited by law.

SECTION 15.19. Governing Law. This Redevelopment Agreement shall be governed by and construed in accordance with the applicable laws of the State.

SECTION 15.20. Withholding of Approvals. All approvals, consents and acceptances required to be given or made by any Person or Party hereunder shall not be unreasonably withheld or delayed unless specifically stated otherwise.

SECTION 15.21. Relationship of the Parties. Nothing contained herein shall be deemed or construed as making the Borough and the Redeveloper the partner, joint venturer, principal or agent of the other and neither Party shall have the power or authority to bind the other. It is expressly acknowledged and understood that the relationship between the Parties is solely as contracting parties under this Redevelopment Agreement.

SECTION 15.22. Counting of Days. The word "days" as used in this Redevelopment Agreement shall mean calendar days unless a contrary intention is specifically stated, provided that if the final date of any period herein for the performance of an obligation or for the taking of any action by the Borough shall fall on a day other than a business day, then the time period for

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such action shall be deemed extended to the next business day. The term "business day" as used herein means any day other than a Saturday, a Sunday or a day on which banks and public offices are not open generally or under the laws of the State of New Jersey or the United States.

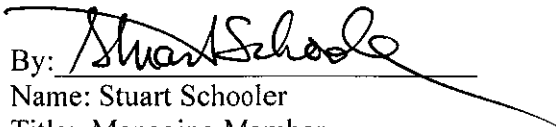
SECTION 15.23. Prior Agreements. Any prior agreements between the Parties shall be deemed null and void and of no further force or effect.

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

METUCHEN III, LLC

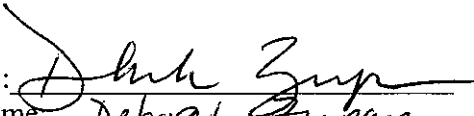
Attest:

By: 
Name: Robert Beckelmann
Title: Attorney

By: 
Name: Stuart Schooler
Title: Managing Member

Attest:

BOROUGH OF METUCHEN

By: 
Name: Deborah Zupans
Title: Acting Borough Clerk

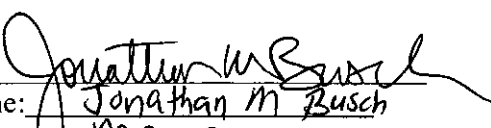
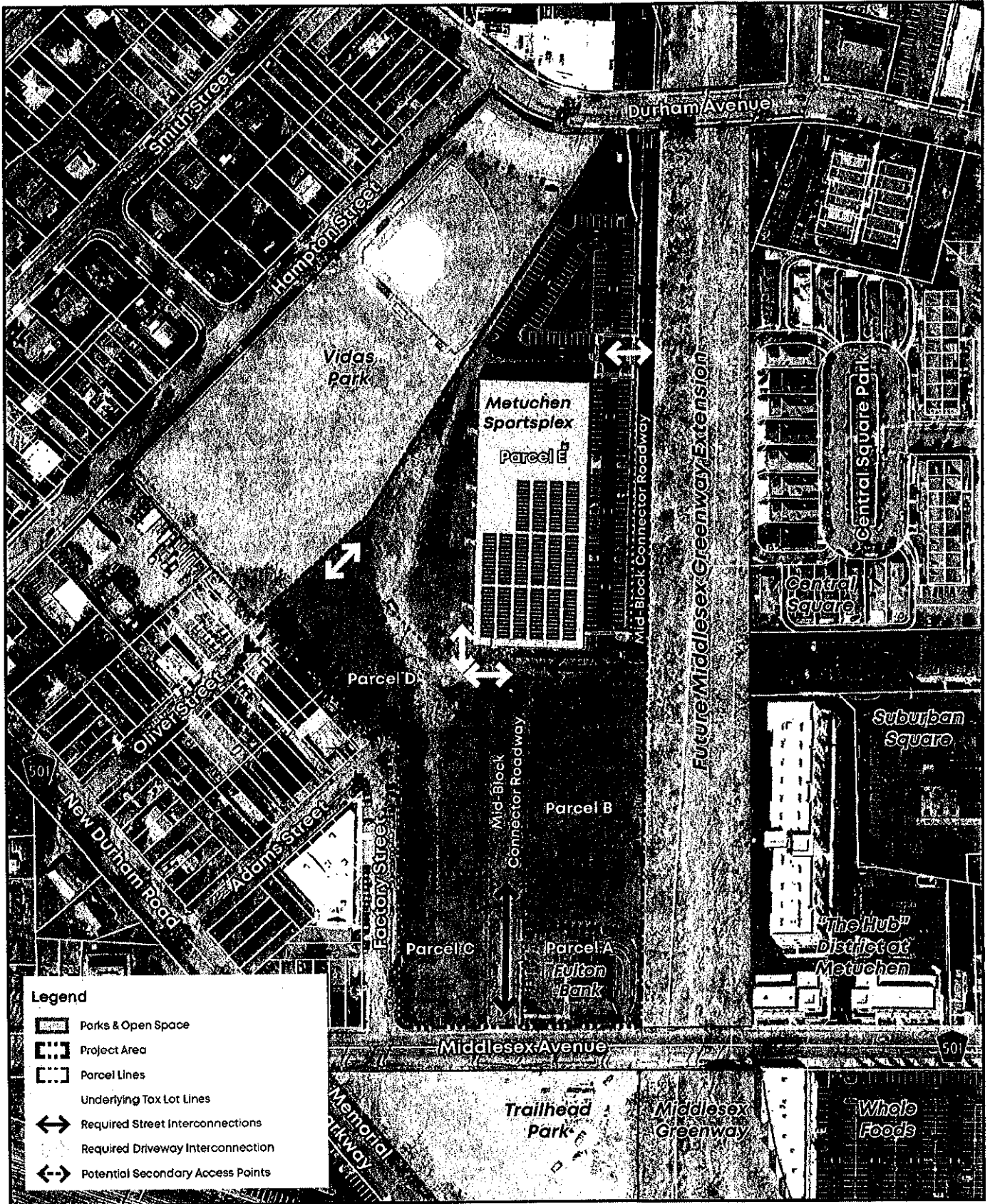
By: 
Name: Jonathan M. Busch
Title: Mayor

EXHIBIT A
Redevelopment Plan Area Map



Amended Oakite Redevelopment Plan

Block 71, Lots 37.01 & 37.02

Borough of Metuchen, Middlesex County, NJ

**Exhibit B
Project Area Map**

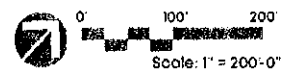


EXHIBIT B
Project Description

The Project shall consist of three phases.

Road Construction Phase

The Redeveloper shall also undertake the Road Construction Phase of the Project in accordance with the terms and conditions of this Redevelopment Agreement, which shall include construction of a mid-block connecting roadway between Durham Avenue and Middlesex Avenue connecting the existing internal roadway on Block 71, Lot 37.02 with the existing stub street on Middlesex Avenue. The Connector Road shall be constructed on the Connector Road Parcel and developed with required street interconnections, street trees and on-street parking in accordance with the Redevelopment Plan. The design and layout of the Connector Road shall be consistent with Exhibit "B1," Exhibit "B2" and the requirements of the Redevelopment Plan. The Road Construction Phase shall also include construction of all required Connector Road Site Improvements in accordance with the terms and conditions of this Redevelopment Agreement.

Coffee Shop Phase

The Redeveloper shall undertake the design, construction, and management of a 2,200 s.f. coffee shop, with a drive-thru, along with associated parking spaces, and associated amenities on Parcel C in accordance with the requirements of the Redevelopment Plan, and as depicted in Exhibit "B3" attached hereto.

Daycare Phase

The Redeveloper shall undertake the design, construction, and management of a 12,870 s.f. commercial daycare facility, with a 2,430 s.f. tot lot, a 12,981 s.f. outdoor space and related amenities on Parcel E, as more particularly described in Exhibit "B4" attached hereto.

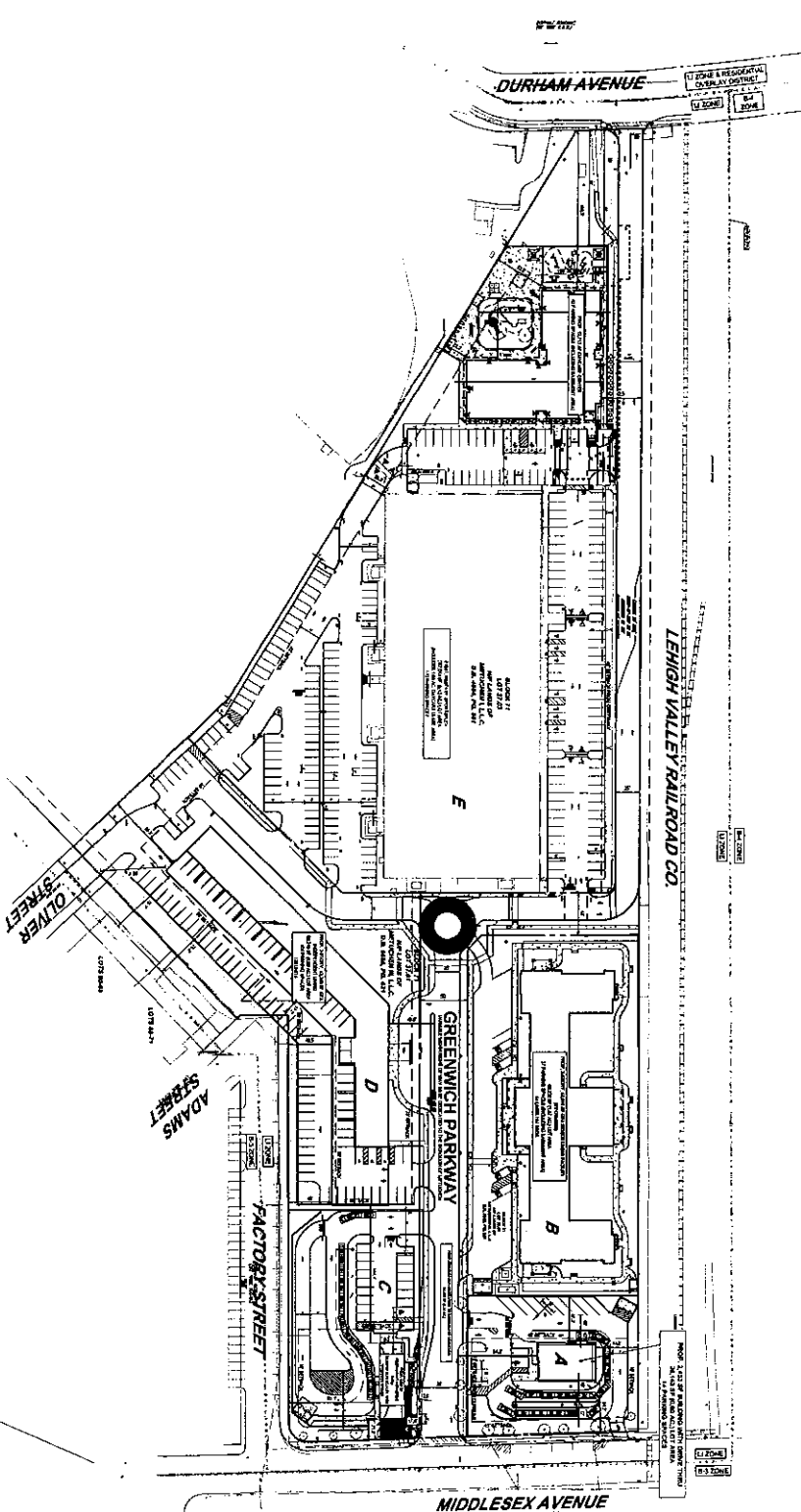
EXHIBIT B1
Connector Road



ZONING TABLE
APPLICANT/OWNER INFORMATION
 PROJECT NAME: [Blank]
 APPLICANT/OWNER: [Blank]
 PROJECT ADDRESS: [Blank]

BULK REQUIREMENTS

ITEM	REQUIRED	PROPOSED	PERMITTED	REMARKS
1. MAXIMUM BUILDING HEIGHT	35 FT	35 FT	35 FT	
2. MAXIMUM BUILDING FOOTPRINT	100,000 SQ FT	100,000 SQ FT	100,000 SQ FT	
3. MAXIMUM NUMBER OF STORIES	4	4	4	
4. MAXIMUM NUMBER OF UNITS	100	100	100	
5. MAXIMUM GROUND COVER	20%	20%	20%	
6. MAXIMUM LOT COVERAGE	20%	20%	20%	
7. MAXIMUM LOT AREA	100,000 SQ FT	100,000 SQ FT	100,000 SQ FT	
8. MAXIMUM LOT WIDTH	100 FT	100 FT	100 FT	
9. MAXIMUM LOT DEPTH	100 FT	100 FT	100 FT	
10. MAXIMUM LOT AREA PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	
11. MAXIMUM LOT AREA PER UNIT PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	
12. MAXIMUM LOT AREA PER UNIT PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	
13. MAXIMUM LOT AREA PER UNIT PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	
14. MAXIMUM LOT AREA PER UNIT PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	
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18. MAXIMUM LOT AREA PER UNIT PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	
19. MAXIMUM LOT AREA PER UNIT PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	
20. MAXIMUM LOT AREA PER UNIT PER UNIT	1,000 SQ FT	1,000 SQ FT	1,000 SQ FT	



CONCEPT LAYOUT PLAN NOTES:

1. ALL DIMENSIONS ARE IN FEET UNLESS OTHERWISE NOTED.
2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
3. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
4. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
5. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
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9. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.
10. ALL DIMENSIONS ARE TO CENTERLINE UNLESS OTHERWISE NOTED.

BOHLER
 SITE PLAN AND CONSULTING ENGINEERING
 LAND SURVEYING
 PROFESSIONAL ENGINEERING
 LANDSCAPE ARCHITECTURE
 PLANNING SERVICES
 PERMITTING SERVICES
 REAL ESTATE SERVICES

NO.	DATE	DESCRIPTION
1	10/1/2023	CONCEPT PLAN
2	10/1/2023	CONCEPT PLAN
3	10/1/2023	CONCEPT PLAN
4	10/1/2023	CONCEPT PLAN
5	10/1/2023	CONCEPT PLAN
6	10/1/2023	CONCEPT PLAN
7	10/1/2023	CONCEPT PLAN
8	10/1/2023	CONCEPT PLAN
9	10/1/2023	CONCEPT PLAN
10	10/1/2023	CONCEPT PLAN

FOR CONCEPT PURPOSES ONLY

BOHLER
 1000 N. 10TH STREET
 SUITE 100
 PHILADELPHIA, PA 19107
 TEL: 215-595-1234
 FAX: 215-595-1234
 WWW.BOHLER.COM

MAVEN GROUP
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 PHILADELPHIA, PA 19107
 TEL: 215-595-1234
 FAX: 215-595-1234
 WWW.MAVENGROUP.COM

A. TAMOUS
 1000 N. 10TH STREET
 SUITE 100
 PHILADELPHIA, PA 19107
 TEL: 215-595-1234
 FAX: 215-595-1234
 WWW.ATAMOUS.COM

CONCEPT PLAN

OVERALL CONCEPT PLAN

1

EXHIBIT B2
Amended Developer's Agreement

THIS AMENDMENT TO DEVELOPER'S AGREEMENT ("Amended Agreement"), dated as of August 23, 2021 by and between **METUCHEN I, LLC**, a New Jersey Corporation having offices at 4905 Del Ray Avenue, Suite 200, Bethesda, Maryland 20814, and/or its assignee, (the "Developer"), and the **BOROUGH OF METUCHEN**, a Municipal Corporation of the State of New Jersey, having offices at 500 Main Street, Metuchen, New Jersey 08840 (the "Borough") (the Borough and Redeveloper being collectively referred to herein as the "Parties").

WITNESSETH

WHEREAS, on February 24, 2009, Developer obtained variance relief and site plan approval from the Metuchen Zoning Board of Adjustment for the development of property designated as Block 71, Lot 37.02 ("Lot 37.02") with an indoor sports and recreation facility (the "Zoning Board Approval"); and

WHEREAS, included as a condition of such approval was for Developer to complete construction of a public roadway across Lot 37.02, as well as across the contiguous property owned by Developer or an affiliate thereof, designated as Block 71, Lot 37.01 ("Lot 37.01"), connecting Middlesex Avenue and Durham Avenue (the "Connector Road"); and

WHEREAS, also as a condition of the Zoning Board Approval, Developer was required to enter into a developer's agreement, outlining its obligations to fulfill all conditions under the Zoning Board Approval, including the obligation to complete construction of the Connector Road; and

WHEREAS, the Borough and Developer entered into such developer's agreement on January 19, 2010 (the "Developer's Agreement") and a First Addendum to the Developer's Agreement on June 21, 2010; and

WHEREAS, Paragraph 9 of the Developer's Agreement incorporated Developer's obligation to complete construction of the Connector Road; and

WHEREAS, Paragraph 10 required Developer to post a bond or letter of credit in the amount of 120% of the estimated costs for completion of the Connector Road and associated public improvements; and

WHEREAS, Developer has completed the Connector Road and all other public improvements upon Lot 37.02 and there are no current proceeds posted through bond or letter of credit being held by the Borough in connection with the Zoning Board Approval or the Connector Road; and

WHEREAS, under the terms of the Zoning Board Approval and the Developer's Agreement, Developer remains obligated to complete the construction of the Connector Road through to Middlesex Avenue; and

WHEREAS, the Borough is contemplating further development of Block 71, Lots 37.01 and 37.02 and is considering development proposals from an affiliate of Developer, as well as other parties unrelated to Developer; and

WHEREAS, prior to proceeding with the approval of any such development, the Borough wishes to have financial assurances in place to assure that the Connector Road will be completed as required pursuant to the Zoning Board Approval and Developer's Agreement; and

WHEREAS, the proposed plan for the construction of the Connector Road was submitted to the Borough, reviewed and approved by the Borough Engineer, who prepared a construction cost estimate for the construction and completion of the Connector Road, all of which are attached hereto as **Exhibit A**.

WHEREAS, the Parties wish to amend the Developer's Agreement to specify the terms and conditions for Developer providing the required financial assurances for the completion of the Connector Road, as well as to address the details for completion of the Connector Road.

NOW, THEREFORE, for and in consideration of the premises and of the mutual representations, covenants, and agreements herein set forth, the Parties hereto, each binding itself, its successors and assigns, do mutually promise, covenant, and agree that the Developer's Agreement is hereby amended as follows:

1. Developer, or its affiliate, Metuchen III, LLC, shall, within ten (10) days of the execution of this Amendment, post an irrevocable letter of credit in a form acceptable to the Borough, in the total amount of \$410,064.00, ten percent (10%) of that amount shall be in cash, for which the Parties agree represents 120% of the estimated costs to complete construction of the Connector Road, as set forth in more detail on the Connector Road Plans and estimate attached hereto as **Exhibit A**. In the event that an entity other than the Developer posts an irrevocable letter of credit, Developer shall remain fully responsible for the construction of the Connector Road and all other conditions and requirements of the Zoning Board Approval and the Developer's Agreement.

2. Construction of the Connector Road shall be completed pursuant to the schedule attached hereto as **Exhibit B**, subject to delays that result from events or circumstances that are beyond the reasonable control of Developer including, but not limited to:

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of a public enemy, war, terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project Improvements, and such events have physically affected a Party's ability to fulfill its obligations hereunder;

(b) A landslide, fire, explosion, flood or release of nuclear radiation not created by an act or omission of either Party hereto and such events have physically affected a Party's ability to fulfill its obligations hereunder;

(c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than Borough when acting in conformance with this Redevelopment Agreement) with jurisdiction within the Borough, excepting decisions interpreting Federal, State and local tax laws generally applicable to all business taxpayers, prohibiting the construction of the Connector Road; provided, however, that such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party to this Amendment to the Developer's Agreement relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval for the construction of the Connector Road, 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, or bad faith 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, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party;

(e) Strikes or similar labor action by equipment manufacturers, suppliers of material and/or transporters of same;

(f) Public health emergencies, or local, state or national declarations of emergency and such events have directly and physically affected a Party's ability to fulfill its obligations hereunder;

(g) Acts or omissions of the other Party, except in conformance with this Amendment and/or the Developer's Agreement.

3. The Borough shall release the letter of credit upon completion of the Connector Road, after the final paving and grading is complete pursuant to the attached plans such that it is useable for vehicular traffic and upon the written approval of the Borough Engineer and the posting of an acceptable maintenance bond or irrevocable letter of credit. The Borough shall also, at Developer's request, pursuant to Paragraph 10 of the Developer's Agreement, permit the Developer to reduce the amount of the letter of credit as specific improvements set forth in Exhibit A are completed, as confirmed by the Borough Engineer.

4. All other terms governing performance and maintenance bonds set forth in Paragraph 10 of the Developer's Agreement, and any and all other provisions of the Developer's Agreement and any other amendments or addenda thereto, not specifically amended herein, shall remain in full force and effect.

FOR EXECUTION


such action shall be deemed extended to the next business day. The term "business day" as used herein means any day other than a Saturday, a Sunday or a day on which banks and public offices are not open generally or under the laws of the State of New Jersey or the United States.

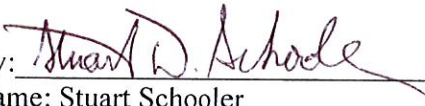
SECTION 15.23. Prior Agreements. Any prior agreements between the Parties shall be deemed null and void and of no further force or effect.

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

METUCHEN III, LLC

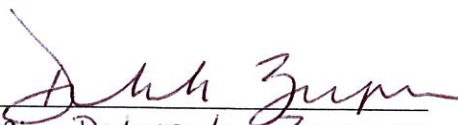
Attest:

By: 
Name: Robert Beckerman
Title: Attorney

By: 
Name: Stuart Schooler
Title: Managing Member

Attest:

BOROUGH OF METUCHEN

By: 
Name: Deborah Zupari
Title: Acting Borough Clerk

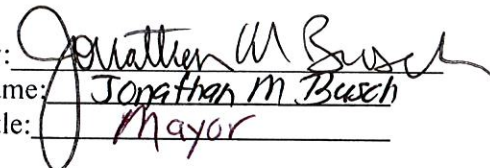
By: 
Name: Jonathan M. Busch
Title: Mayor

EXHIBIT A

CONNECTOR ROAD PLANS AND CONSTRUCTION COST ESTIMATE



Performance Bond Estimate					
Oakite/Sportsplex Development Agreement - Offsite Improvements					
Metuchen Borough, Middlesex County, New Jersey					
MET-001					
June 8, 2021					
Item	Description	Units	Qty.	Cost	Total
Site Work					
1	Clearing & Grubbing	AC	0.57	\$10,000.00	\$5,700.00
2	Grading @ Buildings & Sidewalks	SY	156	\$3.75	\$585.00
3	Grading @ Pavement	SY	1,690	\$4.00	\$7,560.00
4	Grading @ Landscape areas	SY	600	\$2.50	\$1,500.00
5	Concrete Curb	LF	1,600	\$25.00	\$40,000.00
6	Bituminous Pavement - Surface Course 2" Thk	TN	227	\$86.00	\$19,295.00
7	Bituminous Pavement - Base Course 4" Thk	TN	483	\$85.00	\$38,505.00
8	DGA Subbase 6" Thk	SY	1,890	\$7.50	\$14,175.00
9	4" Concrete Sidewalk	SY	156	\$75.00	\$11,700.00
10	ADA Detectable Warnings	SY	5	\$300.00	\$1,350.00
Drainage					
11	15" HDPE	LF	400	\$35.00	\$14,000.00
12	18" HDPE	LF	35	\$40.00	\$1,400.00
13	30" HDPE	LF	200	\$50.00	\$10,000.00
14	Manholes	EA	2	\$2,500.00	\$5,000.00
15	B Inlets	EA	5	\$4,500.00	\$22,500.00
Water					
16	8" DIP	LF	600	\$150.00	\$90,000.00
17	8" Wet Tap	EA	1	\$5,000.00	\$5,000.00
18	Hydrant, Valve & Stem	EA	2	\$7,000.00	\$14,000.00
Sanitary					
19	8" PVC	LF	600	\$40.00	\$24,000.00
20	4' Diameter Manhole	EA	2	\$3,500.00	\$7,000.00
21	Saddle Connection	EA	1	\$500.00	\$500.00
Landscaping					
22	Shade Tree	EA	11	\$350.00	\$3,850.00
Soil Erosion and Sediment Control					
23	Silt Fence	LF	600	\$2.00	\$1,200.00
24	Haybales	LF	30	\$5.00	\$150.00
25	Inlet Protection	EA	5	\$150.00	\$750.00
26	Tracking Pad	EA	1	2000	\$2,000.00
Total Construction Cost					\$361,720.00
Construction Inspection Escrow (5% of Total Const. Cost)					\$17,086.00
120% Performance Guarantee					\$410,064.00
10% Cash Portion					\$41,006.40
90% Bond Portion					\$369,057.60
Maintenance Guarantee (15% of Total Const. Cost)					\$51,258.00

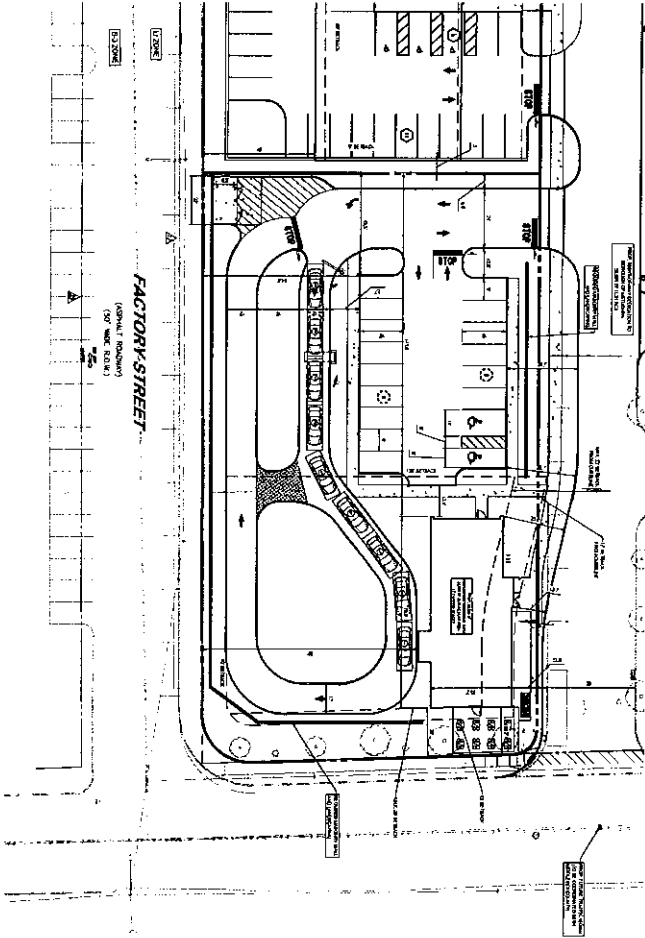
EXHIBIT B
CONNECTOR ROAD CONSTRUCTION SCHEDULE

Metcuchen To-Built Roadway Timeline Based on Earlier Approval of 1) Artis Site Plan or 1) Metcuchen III Redevelopment Agreement and Redevelopment Ordinance

ROADWAY TASK	ELAPSED TIME FROM APPROVAL	NOTES / DETAILS
ARCHITECTURE/ENGINEER/CIVIL JURISDICTIONAL PERMITTING	105 Days	105 Days Level of Non-Appealable 1) Artis Site Plan Approval 2) Redevelopment Ordinance
MOBILIZATION SITE UTILITY INSTALLATION	139 Days	139 Days Site utilities stubbed approximately two (2) feet inside individual pad lines.
GREENWICH PARKWAY ROUGH-IN TO SUBGRADE INCLUDING SIDEWALK GREENWICH PARKWAY COMPLETION, INCLUDING STREETScape AND LANDSCAPING.	181 Days 360 Days	181 Days 181 Days 360 Days Future roadbed is already improved by gravel construction road extending westless Avenue to Starbucks Trolley Line Greenwich parkway to be completed through entrance to Starbucks prior to Starbucks C of O. Upon close-in of the later of CA or Artis construction, but no later than 360 days after non-appealable approval.
GREENWICH PARKWAY DEDICATION	180 Days	180 Days Inspector BY Borough

¹ Metcuchen III responsible for utility installation.

EXHIBIT B3
Coffee Shop Improvements



CONCEPT LAYOUT PLAN NOTES

1. THE SITE PLAN IS FOR INFORMATION ONLY AND IS NOT TO BE USED FOR CONSTRUCTION. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF LOS ANGELES DEPARTMENT OF PUBLIC WORKS AND ENGINEERING (DPWE) STANDARDS AND SPECIFICATIONS. ALL UTILITIES SHALL BE SHOWN AND DEPT. OF PUBLIC WORKS AND ENGINEERING (DPWE) SHALL BE NOTIFIED PRIOR TO CONSTRUCTION. ALL UTILITIES SHALL BE SHOWN AND DEPT. OF PUBLIC WORKS AND ENGINEERING (DPWE) SHALL BE NOTIFIED PRIOR TO CONSTRUCTION. ALL UTILITIES SHALL BE SHOWN AND DEPT. OF PUBLIC WORKS AND ENGINEERING (DPWE) SHALL BE NOTIFIED PRIOR TO CONSTRUCTION.



BOHLER //
 CITY, CIVIL AND CONSULTING ENGINEERING
 LAND SURVEYING
 PROGRAM MANAGEMENT
 LANDSCAPE ARCHITECTURE
 PLANNING SERVICES
 TRANSPORTATION SERVICES

NO.	DATE	DESCRIPTION
1	10/15/2023	ISSUED FOR PERMITTING
2	10/15/2023	ISSUED FOR PERMITTING
3	10/15/2023	ISSUED FOR PERMITTING
4	10/15/2023	ISSUED FOR PERMITTING
5	10/15/2023	ISSUED FOR PERMITTING
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49	10/15/2023	ISSUED FOR PERMITTING
50	10/15/2023	ISSUED FOR PERMITTING



FOR CONCEPT PURPOSES ONLY

CONCEPT PLAN

MAVEN GROUP

BOHLER //

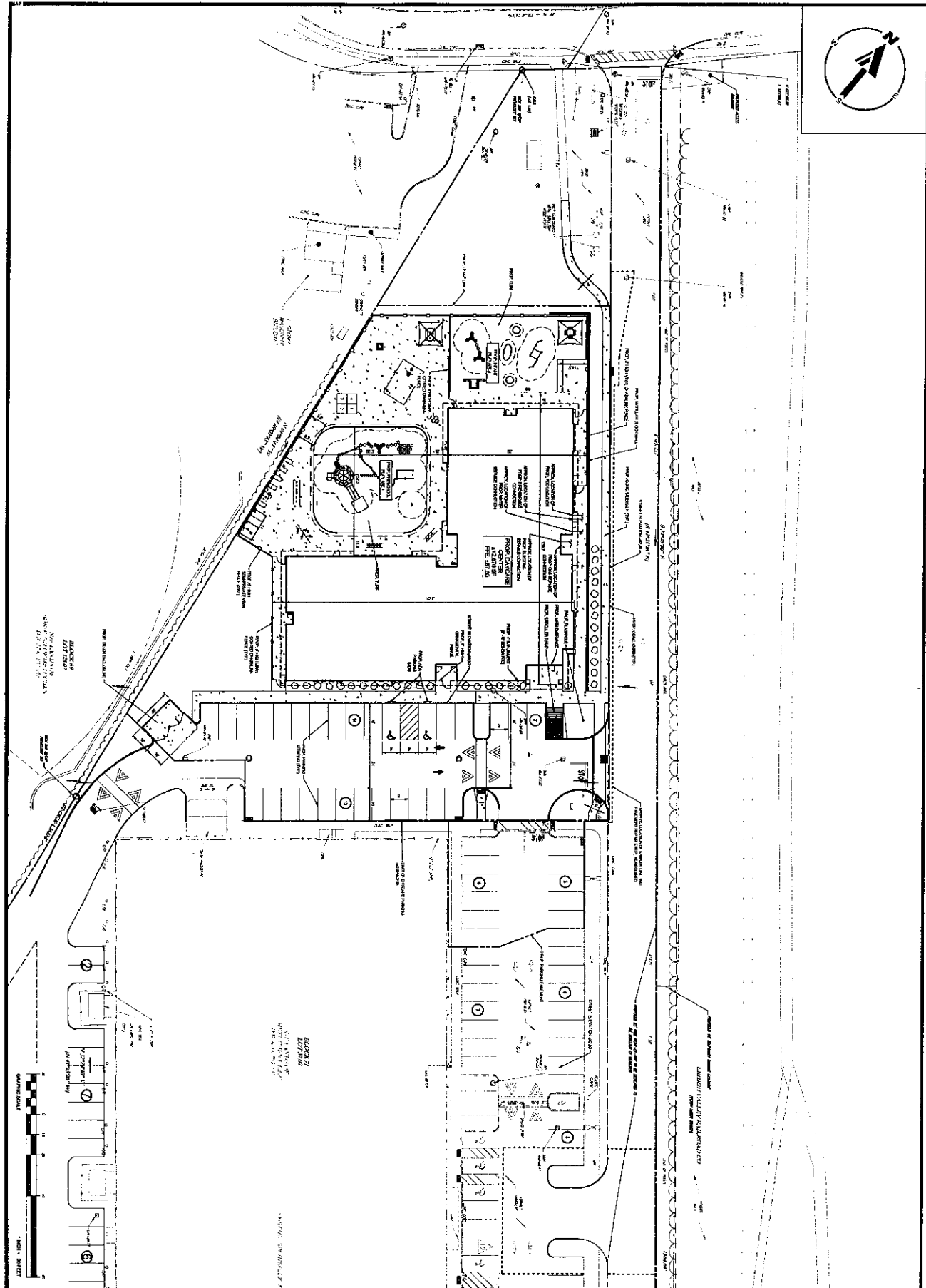
A. TAMOUS

CONCEPT PLAN X

1

REVISIONS

EXHIBIT B4
Daycare Improvements



BOHLER // SITE/CML AND CONSULTING ENGINEERS LAND SURVEYING PROGRAM MANAGEMENT LANDSCAPE ARCHITECTURE SUSTAINABLE DESIGN PLANNING SERVICES TRANSPORTATION SERVICES	814 THE BOHLER GROUP 1000 W. 10th St., Suite 1000 Denver, CO 80202 Phone: 303.733.8800 Fax: 303.733.8801 www.bohlergroup.com	PRELIMINARY PRELIMINARY SITE PLAN FOR MAVEN GROUP PROPOSED DEVELOPMENT	BOHLER // THE BOHLER GROUP 1000 W. 10th St., Suite 1000 Denver, CO 80202 Phone: 303.733.8800 Fax: 303.733.8801 www.bohlergroup.com	A. TAMOUS ARCHITECTURAL CONSULTANT 1000 W. 10th St., Suite 1000 Denver, CO 80202 Phone: 303.733.8800 Fax: 303.733.8801 www.a-tamous.com	C-01 LEASE EXHIBIT SHEET NO. 1 OF 1 DATE: 04/20/2010
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EXHIBIT C
Project Schedule

ROAD CONSTRUCTION PHASE

In accordance with Exhibit B to the Amended Developer's Agreement, except that all Connector Road Site Improvements shall be completed within 360 days after receipt of all non-appealable approvals for the Connector Road.

PROJECT IMPROVEMENTS PHASE

Preparation of Project Improvement Plans	Within 90 days of Effective Date
Planning and Design	Within 90 days of Preparation of Plans
Structure Equity & Debt Financing	Within 180 days of Effective Date
Filing of Applications for Governmental Approvals	Within 210 days of Effective Date
Commencement of Construction	Within 90 days of receipt of all Governmental Approvals
Completion of Construction	Within 18 months of Commencement of Construction
Installation of Electric Vehicle Supply Equipment On Parcel E	Prior to Applying for Certificate of Occupancy for the Daycare Improvements

EXHIBIT D
Project Team

REDEVELOPER

Principal: Stuart Schooler (Metuchen III, LLC)
Project Manager: Stuart Schooler (Metuchen III, LLC)
Attorneys: Robert Beckelman (Wilentz, Goldman & Spitzer, PA)
Engineer: Matthew Landro (Bohler Engineering)
Architect: REDCOM Design and Construction, LLC
Project LSRP: Crystal Leavey, APTIM

BOROUGH

Redevelopment Attorneys: M. James Maley, Jr., Esq. (Maley Givens, P.C.)
Engineer: Tom Herits (Maser Consulting, P.A.)
Professional Planner: James Constantine (LRK, Inc.)

Exhibit E
Redeveloper Ownership Structure

Metuchen III, LLC, is owned by Metuchen I, LLC, which is owned by Recycland, LLC, whose principals are Stuart Schooler and Warren Teitelbaum.

EXHIBIT F
List of Governmental Approvals

Remediation Permits

Final Remediation Documents

Borough Planning Board Preliminary and Final Site Plan Approval

Middlesex County Planning Board Approval

Middlesex County Soil & Water Commission Approval

Middlesex County Soil Conservation District Permit

EXHIBIT G
TABLE OF INSURANCE AND BOND REQUIREMENTS

Type of Insurance	Limits of Liability	Term of Coverage
1. Commercial General Liability	\$1,000,000 each loss/\$2,000,000 policy aggregate	Annual policy Until completion ¹
2. Umbrella Excess Liability	\$5,000,000 each loss/\$5,000,000 policy aggregate	Annual policy Until completion ²
3. Builder's Risk Coverage ³	100% of replacement cost of all insurable construction	As-Built Until completion
4. Performance Bond (Construction) ⁴	The bonding mandate of <i>N.J.S.A. 40:55D-53</i>	During construction
5. Environmental Insurance	\$2,000,000 per occurrence and \$5,000,000 annual aggregate.	5 Years Post-Work

¹ Policy is to provide completed operations coverage for a minimum of 3 years following issuance of final Certificate of Completion.

² See Footnote 1 above.

³ Provided by general contractor(s), naming Borough Indemnified Parties as additional insureds.

⁴ Provided by Redeveloper or general contractor(s) for construction of Project Improvements, naming Borough as an additional insured

EXHIBIT H
APTIM MEMORANDUM, dated May 27, 2021



Memorandum

To The Honorable Jonathan Busch, Mayor of the Borough of Metuchen Page 1

CC Stuart Schooler, Maven Group
Aaron Schooler, Maven Group

Subject Status of Remediation
Oakley Specialized Services, Inc. & Epic Industries
700 Middlesex Avenue
Borough of Metuchen, Middlesex County, New Jersey
Block(s): 71 Lot(s): 37.01 & 37.02
NJDEP Preferred ID: 024790
ISRA Case # E88967, E88996, E89654, and E89852

From Crystal L. Leavey, LSRP, APTIM

Date May 27, 2021

At the request of Metuchen I, LLC (Metuchen I), Aptim Environmental & Infrastructure, LLC (APTIM) has prepared this letter to provide information regarding the status of remediation at the above referenced property (site).

Background

Oakite Products, Inc. (Oakite) purchased the site from Celotex Corporation in 1960. Celotex manufactured a variety of building siding products, including shingles made of an asbestos/cement mixture. Oakite manufactured various chemical products for the cleaning and treatment of metal and other surfaces. In 1987, Oakite initiated an asbestos site investigation under the jurisdiction of the NJDEP Division of Solid Waste Management (DWSM).

In November 1988, Oakite triggered the Environmental Cleanup Responsibility Act (ECRA), the predecessor to the Industrial Site Recovery Act (ISRA). The NJDEP approved an ECRA sampling plan that was initially implemented in August 1990. The results of the initial ECRA investigations were reported to the NJDEP in April 1991. The site has been undergoing investigation and/or remedial actions since 1990.

Soil

The following is a brief summary of the investigations and remedial actions completed with respect to soil at the site to date:

- 1992: delineation of asbestos in soil, additional soil sampling and completion of limited remedial activities were conducted at various areas on site.
- 1995-1997: remediation of volatile organic compounds (VOCs), petroleum hydrocarbons, and asbestos-contaminated soil was completed.
 - Onsite low-temperature thermal desorption (LTTD) of VOCs and petroleum hydrocarbon-contaminated soil
 - Onsite re-deposition of LTTD-processed soil
 - Onsite consolidation of asbestos/asbestos-contaminated soil
- 2002: building demolition and soil excavation activities were completed at the site.
 - Documented in a July 2004 *Remedial Action Report (RAR)*
 - Conditionally approved by the NJDEP; additional post-excavation soil samples required on the north side of the excavation at the former liquid solvent manufacturing area, beneath the adjacent (former) warehouse.
 - NJDEP required horizontal and vertical delineation of VOCs and petroleum hydrocarbon contamination in soil in that area of the site based on sample results.
 - Delineation completed and the results were presented in a *Remedial Action Work Plan (RAWP)* dated November 2008.
 - Accepted by the NJDEP in July 2009.
- 2008: warehouse building demolished, building slab remained in place.
- 2009: slab was removed in November
- 2010: Remedial Actions for soil completed in January
- 2010: A RAR was submitted to the NJDEP in February
 - The RAR documented the VI investigation at the Bank building on the southern portion of the site.
- 2010: NJDEP Approved the RAR and No Further Action proposal for soil in September. Approval required engineering and institutional controls for the asbestos and limited areas of soil contamination allowed to remain on site.
- 2015: Deed Notice (deed restriction) documents filed with the Middlesex County Clerk for Block 71, Lot 37.01 and Block 71, Lot 37.02.
- 2016: Remedial Action Permit for Soil (RAP for Soil) Applications submitted to NJDEP in June.
- 2016: Two RAP for Soil permits issued (RAP160001 and RAP160002) in September.
- 2016: A restricted use Response Action Outcome (RAO) was issued on November 8, 2016
- 2019: RAO was amended on March 22, 2019 at the NJDEP's request to correct administrative errors.

The current engineering controls in place at the site are depicted on the figure entitled *Remedial Cap As-Built*, provided in Attachment 1. The area of the site that is slated for redevelopment as an assisted/independent living and memory care facility is situated on portion of the parcel identified as Block 71, Lot 37.01 on the Tax Map of the Borough of Metuchen. Currently, a portion of the future development area is encumbered by an environmental deed restriction and Remedial Action Permit for Soil (RAP160002) due to the presence of historic fill material beneath the engineering control. In this location, the engineering control currently consists of two feet of clean fill material that was

imported during the remedial action activities described above. The proposed location is depicted on the figure entitled *Remedial Cap As-Built* in Attachment 1. The proposed location is also depicted on the *Concept Plan*, prepared by Bohler Engineering NJ, LLC (Bohler), dated April 5, 2021 in Attachment 1.

The proposed facility would be considered a Residential Type II usage pursuant to the NJDEP's *Presumptive and Alternative Remedy Technical Guidance* (Version 2.1, February 2018). The *Presumptive and Alternative Remedy Technical Guidance* defines Residential Type II as "an area under the control or authority of an entity or person, other than the occupant, with the legal authority to preclude anyone from disturbing an engineering control."

The proposed finish for the area currently under environmental deed restriction consists of a combination of lawn area and sidewalk, which is presumed will be a concrete surface. For Type II Residential where the contamination type consists of historic fill, the *Presumptive and Alternative Remedy Technical Guidance* requires the following:

Category	Engineering Control	Inspection Frequency*
Vegetative Cover (Lawn Area)	<ul style="list-style-type: none"> ▪ Barrier: Vegetative cover, minimum of 6" of clean fill ▪ Buffer Minimum of 6" of clean fill; ▪ Visible contamination boundary marker between clean fill and contaminated soil 	Semi-Annual
Concrete Surface	<ul style="list-style-type: none"> ▪ Barrier: Minimum of 4" of concrete ▪ Buffer Minimum of 4" of sub base; ▪ Visible contamination boundary marker between sub base and contaminated soil 	Annual

*Unless otherwise approved by the NJDEP as part of the Remedial Action Permit for Soil application process

The current engineering control exceeds the minimum requirements outlined in the *Presumptive and Alternative Remedy Technical Guidance*. It is assumed that some of the existing engineering control material may be removed as part of normal site development activities, but so long as the engineering control is reinstalled in accordance with the *Presumptive and Alternative Remedy Technical Guidance*, and the Deed Notice (environmental deed restriction) and Remedial Action Permit for Soil are amended to reflect the final site conditions, the remedy will continue to be protective of human health and the environment following development.

Groundwater

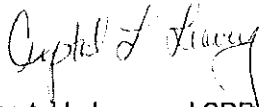
The following is a brief summary of the investigations completed with respect to groundwater at the site to date:

- 1992: installation and sampling of groundwater monitoring wells
- 1993: additional groundwater investigation was completed at the site.
- 1994: NJDEP approved quarterly sampling program was established for VOCs and initiated

- 1997-1999: purging of monitoring well MW-15S for free product and sampling and analysis of the three groundwater zones for VOCs on a quarterly and annual schedule.
- 2000: Site Investigation Report summarizing the results of this investigative work was submitted to the NJDEP in October.
- 2000-2012: Quarterly groundwater sampling was completed.
- 2012: A Classification Exception Area (CEA) was established that extended from the site onto the adjacent Conrail property
- 2016: Groundwater sampling completed in March.
 - Multiple targeted VOCs in excess of the NJDEP Groundwater Quality Standards (GWQS) and/or the NJDEP Groundwater Screening Levels for Vapor Intrusion (GWSL, March 2013).
- 2018: MW-27 and MW-27DD were installed upgradient of existing monitoring wells MW-11 and MW-11D.
- 2018: Groundwater samples were collected from 26 monitoring wells

The current monitoring well network is depicted on Figure 2 of Attachment 1.

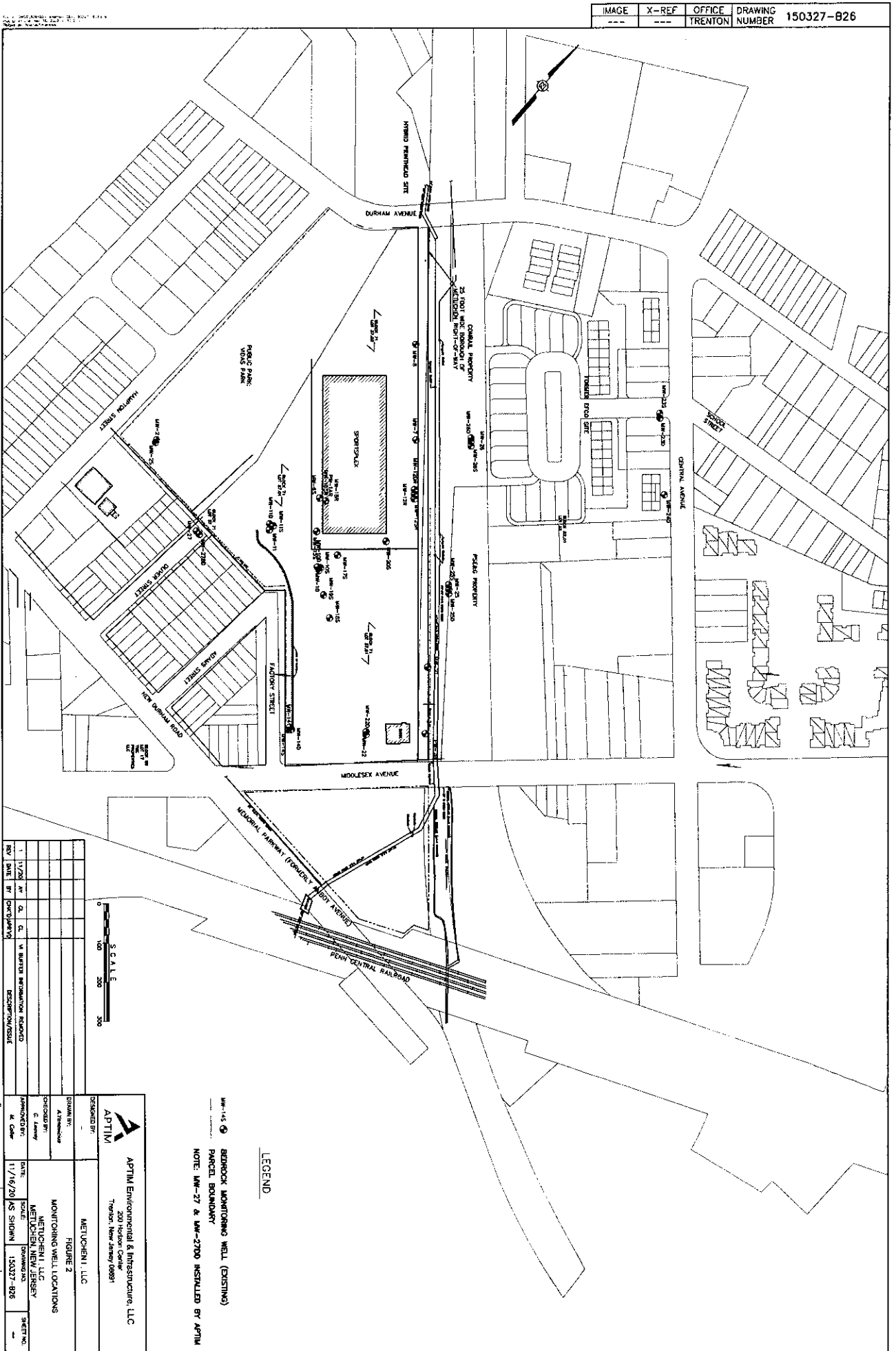
Sincerely yours,



Crystal L. Leavey, LSRP
Project Management Manager
crystal.leavey@aptim.com

Attachment 1

Figures



REV	DATE	BY	DESCRIPTION
1	11/20/20	AW	AS SHOWN

SCALE
0 100 200 300

DESIGNED BY:	APTIM	APTIM Environmental & Infrastructure, LLC 200 Hudson Center Trenton, New Jersey 08611
DRAWN BY:	A. Trinick	
CHECKED BY:	C. Lamy	
DATE:	11/16/20	
SCALE:	AS SHOWN	
DRAWING NO.:	150327-026	
SHEET NO.:	2	

LEGEND

MW-145 BEDROCK MONITORING WELL (EXISTING)

--- PARCEL BOUNDARY

NOTE: MW-27 & MW-2700 INSTALLED BY APTIM

EXHIBIT I
SOIL REMEDIAL ACTION PERMITS



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

Site Remediation and Waste Management Program
Remediation Oversight Element
Bureau of Remedial Action Permitting
401 E. State Street
P.O. Box 420
Mail Code 401-05S
Trenton, NJ 08625-0420
Phone: (609) 984-2990

September 28, 2016

Stuart Schooler
Managing Member
Metuchen I, LLC
8101 Glenbrook Road, Floor 1, Suite B
Bethesda, MD 20814

Stuart Schooler
Managing Member
METUCHEN III LLC
8101 Glenbrook Rd. Floor 1, Suite B
Bethesda, MD 20814

RE: Soil Remedial Action Permit
Site: Oakley Specialized Services, Inc.
Address: 700 Middlesex
City: Metuchen Boro
County: Middlesex
SRP Program Interest #: 024790
Soil Remedial Action Permit #: RAP160001
Block: 71 Lot: **37.01**

Dear Mr. Schooler:

Enclosed is a Soil Remedial Action Permit issued pursuant to the Site Remediation Reform Act, 58:10C-1 et seq. and the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1 et seq. This permit becomes effective on 09/29/2016. Please note the referenced permit and program interest numbers and refer to them when corresponding with the Department.

The enclosed permit requires the permittee to conduct monitoring, maintenance and evaluation for compliance and effectiveness of the remedial action and its associated institutional control. The permit establishes all requirements necessary for demonstrating that the remedial action and control continue to be protective of public health, safety and the environment.

Requirement to Retain Licensed Site Remediation Professional

The Technical Requirements for Site Remediation (Technical Requirements) at N.J.A.C. 7:26E-1.8 define remediation to include a remedial action. The Technical Requirements further define remedial action such that "... A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met." Therefore, a person who is implementing a remedial action that includes an engineering or institutional control is conducting remediation, and that person is required to hire a licensed site remediation professional (LSRP) pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS; see N.J.A.C. 7:26C-2.3(a) and (b)).

At all times, an LSRP is required to be retained for a case that has a Deed Notice, Classification Exception Area, Soil Remedial Action Permit, and/or Ground Water Remedial Action Permit until the remedial action(s) is no longer needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met. The LSRP must be retained to operate, maintain, and monitor the institutional and/or engineering controls at the site, to ensure that the remedial action(s) remains protective of public health and safety and the environment, and to ensure compliance with the requirements of the Deed Notice, Classification Exception Area, Soil Remedial Action Permit, and/or the Ground Water Remedial Action Permit. This includes but is not limited to site inspections, ground water sampling, biennial submission of a Soil and/or Ground Water Remedial Action Protectiveness/Biennial Certification Form and Report, responding to any activities involving the institutional and/or engineering controls at the site, and responding to any public inquiries regarding the current status of the site. It is the responsibility of the LSRP certifying the Remedial Action Permit application to inform the Responsible Entity of the requirement regarding LSRP retention for a case that has a Soil and/or Ground Water Remedial Action Permit.

An LSRP may be retained or dismissed for a case that has an approved Soil and/or Ground Water Remedial Action Permit through the New Jersey Department of Environmental Protection online portal (www.nj.gov/dep/online/) by choosing the "LSRP Retention" or "LSRP Release" submission type selection option within the "LSRP Notification of Retention or Dismissal" service, and choosing the "Remedial Action Permit" activity in the case selection page. Please note that the Bureau of Remedial Action Permitting records the LSRP Retention for pending Remedial Action Permit Applications so there is no need to perform this function online. Also note that the LSRP Comprehensive Report (datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=SRRA) now includes information pertaining to approved Soil and Ground Water Remedial Action Permits to which the LSRP is assigned.

Annual Fees

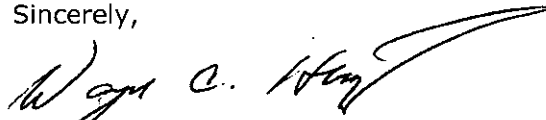
Please be aware that there are annual fees associated with this permit in accordance with N.J.A.C. 7:26C-4.6. These annual permit fees will be handled by invoicing the fee billing contact we have on record:

Stuart Schooler
Managing Member
Metuchen III, LLC
8101 Glenbrook Rd. Floor 1, Suite B
Bethesda, MD 20814
Phone: (301) 656-1956
Email: stuart.schooler@themavengroup.us

Any changes to this contact should be brought to the Department's attention. Changes to fee billing contacts are updates and are not considered modifications to the permit.

The Department looks forward to future continued cooperation in working together to provide a healthy environment for the citizens of New Jersey and to protect its resources. Going forward, questions or comments regarding this permit should be addressed to the Bureau of Remedial Action Permitting at 609-984-2990, attention Robert Soboleski, Bureau Chief.

Sincerely,



Wayne C. Howitz, Assistant Director
Remediation Oversight Element

Enclosure

cc: Lester Jones, Middlesex County Public Health Department
Middlesex County Clerk
Metuchen Borough Clerk
Crystal Leavey, LSRP

New Jersey Department of Environmental Protection



Bureau of Remedial Action Permitting
401 East State Street
P.O. Box 420
Mail Code 401-05S
Trenton, NJ 08625-0420
Phone #: 609-984-2990

SOIL REMEDIAL ACTION PERMIT
Deed Notice with Engineering Control

The New Jersey Department of Environmental Protection hereby grants you a Remedial Action Permit pursuant to N.J.S.A. 58:10C-1 et seq. and N.J.A.C. 7:26C-1 et seq. for the facility/activity named in this document. This permit is the regulatory mechanism used by the Department to help ensure your remedial action will be protective of human health and the environment.

This permit establishes the monitoring, maintenance, and evaluation requirements for determining the effectiveness of the deed notice's engineering control. Specifically, a September 27, 2016 telephone conversation with the licensed site remediation professional (LSRP), indicated that the engineering controls associated with the Deed Notice will be inspected on a semi-annual schedule.

Site: Oakley Specialized Services, Inc.

Facility Address: 700 Middlesex Ave Metuchen Boro, NJ 08840 Middlesex County Block: 71 Lot: 37.01	Program Interest#: 024790 Permit#: RAP160001
Person Responsible for Conducting the Remediation - Co-Permittee: Stuart Schooler Managing Member METUCHEN I LLC 8101 Glenbrook Road, Floor 1, Suite B Bethesda, MD 20814 Phone: (301) 656-1956 Email: stuart.schooler@themavengroup.us	
Property Owner - Co-Permittee: Stuart Schooler Managing Member METUCHEN III LLC 8101 Glenbrook Rd. Floor 1, Suite B Bethesda, MD 20814 Phone: (301) 656-1956 Email: stuart.schooler@themavengroup.us	
X – Primary Responsibility for Permit Compliance	

Issuance Date:
09/28/2016

Effective Date:
09/29/2016

I. Authority

The Department is issuing this permit in accordance with N.J.S.A. 58:10C-1 et seq. and N.J.A.C. 7:26C-1 et seq.

II. Permit Requirements

A. MONITORING REQUIREMENTS

1. The permittee shall conduct monitoring and maintenance pursuant to Exhibit C of the attached Deed Notice. [N.J.A.C. 7:26C- 7.8(a)2]
2. The permittee shall conduct periodic inspections of each engineering control to determine its integrity, operability, and effectiveness. [N.J.A.C. 7:26C- 7.8(b)2]
3. The permittee shall conduct periodic inspections of any excavations or disturbances that have resulted in unacceptable exposure to the soil contamination. The permittee shall maintain a detailed maintenance and evaluation log. [N.J.A.C. 7:26C- 7.8(b)]

B. REMEDIAL ACTION PROTECTIVENESS/BIENNIAL CERTIFICATION FORM

1. Reporting Requirements

- a. The permittee shall prepare and submit to the Department a Remedial Action Protective-ness/Biennial Certification Form every two years following the anniversary of the date of the effective date of this permit. The certification shall be submitted on the required form provided by the Department. Submit a Remedial Action Protectiveness/Biennial Certification Form biennially from the effective date of this permit. [N.J.A.C. 7:26C- 7.7(a)1]

2. Evaluation Requirements

- a. The permittee shall hire a Licensed Site Remediation Professional to prepare and certify that the remedial action continues to be protective of the public health and safety and the environment. [N.J.A.C. 7:26C- 1.5(a)2]
- b. The permittee shall conduct the remediation in accordance with all applicable statutes, rules, and guidance. [N.J.A.C. 7:26C- 1.2(a)]
- c. The permittee shall provide the results of the periodic inspections required under the monitoring requirements of this permit. [N.J.A.C. 7:26C- 7.8(c)]
- d. The Remedial Action Protectiveness/Biennial Certification Form shall include an evaluation of any actual or pending zoning or land use changes to determine if these changes are consistent with the use restrictions contained in the attached deed notice/declaration of environmental restriction. If the evaluation finds that the engineering/institutional controls are no longer protective of the public health and safety and the environment, the permittee shall im-

plement appropriate remedial action to ensure that the engineering/institutional controls are protective of the public health and safety and the environment. [N.J.A.C. 7:26C- 7.8(b)1]

e. The Remedial Action Protectiveness/Biennial Certification Form shall include a comparison of the laws, Remediation Standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws or regulations to determine whether the engineering or institutional control remains protective. The results shall be provided in table format, comparing of applicable laws, regulations, and standards. [N.J.A.C. 7:26C- 7.8(b)3]

C. FINANCIAL ASSURANCE REQUIREMENTS

1. Reporting Requirements - Letter of Credit

a. The permittee shall have the issuer of the Letter of Credit notify the Department, and the person providing the Letter of Credit by certified mail that, if the issuer of the Letter of Credit decides not to extend the letter of credit beyond the expiration date. Submit a written notification of lapse of Letter of Credit prior to 120 days before the letter of credit expiration date. [N.J.A.C. 7:26C- 5.7(a)4]

b. The permittee shall prepare an estimate of the future costs to operate, maintain, and inspect all engineering controls subject to this permit, and submit it to the Department. Submit engineering controls maintenance cost estimate with the Protectiveness/Biennial Certification biennially from the effective date of this permit. [N.J.A.C. 7:26C- 7.10(a)1]

2. Financial Assurance - Maintenance

a. The permittee shall maintain financial assurance in an amount equal to or greater than the most recent estimated full cost to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit. [N.J.A.C. 7:26C- 7.7(a)3]

D. FEES

1. For each year hereafter on the anniversary of the effective date of this permit, the Department shall invoice the permittees the amount of the annual Remedial Action Permit Fee. [N.J.A.C. 7:26C- 4.6]

E. PERMIT TRANSFERS

1. The permittee shall, at least 60 days prior to the sale or transfer of the property, or transfer of the operation of the property, or termination of a lease, submit a Remedial Action Permit Transfer/Change of Ownership Application and pay the permit transfer fee to the Department. [N.J.A.C. 7:26C- 7.11(b)]

F. PERMIT MODIFICATIONS

1. Soil Permit Modifications

- a. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after a statement that the permittee has completed a protectiveness evaluation required in its permit and has determined that the remedial action is not adequately protective of the public health and safety and of the environment, and stating the reasons for coming to this conclusion. [N.J.A.C. 7:26C- 7.12(b)1]
- b. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after any person proposes to change the engineering controls applicable to the site, as described in the deed notice filed for the property. [N.J.A.C. 7:26C- 7.12(b)3]
- c. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after the person responsible for conducting the remediation modifies the remedial action. [N.J.A.C. 7:26C- 7.12(b)4]
- d. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after the permittee changes its address. [N.J.A.C. 7:26C- 7.12(b)6]

G. PERMIT TERMINATIONS

1. A request for a permit termination can be filed by submitting a Remedial Action Permit Application to terminate the permit to the Department when the remedial action meets all applicable remediation standards without the need for the Remedial Action Permit and the remedial action is protective of the public health and safety and of the environment without the presence of the Remedial Action Permit. [N.J.A.C. 7:26C- 7.13]

H. FORM SUBMITTAL

1. Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. [N.J.A.C. 7:26C- 1.6(c)]
2. All submissions required pursuant to this permit shall be made on forms approved and available from the Department. These forms and instructions for completing these forms can be found at <http://www.nj.gov/dep/srp/srra/forms>. [N.J.A.C. 7:26C- 1.6]

I. RESTRICTED LAND USES

1. Contaminated sites remediated to non-residential soil remediation standards that require the maintenance of engineering and/or institutional controls cannot be converted to a child care facility, public, private or charter school without the Department's prior approval, unless a pre-sumptive remedy is implemented pursuant to the Department's Presumptive Remedies for Soil Contamination at Schools, Child Care Centers, and Residences. [N.J.A.C. 7:26E- 5.3]

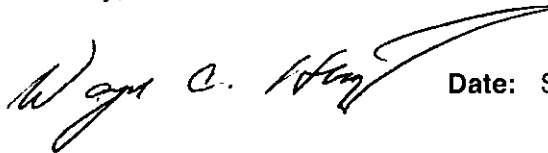
III. Permit Schedule

Permit Effective Date: 09/29/2016	
Submission Requirement	Due Date
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2018
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2020
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2022
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2024
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2026
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2028
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2030
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2032
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2034
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2036
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2038
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2040
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2042
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2044
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2046

Note: Remedial Action Protectiveness/Biennial Certification Forms are required to be submitted according to the schedule, and shall continue to be submitted until the Permit is terminated or modified.

Your Soil Remedial Action Permit under Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1 et seq. has been approved by the New Jersey Department of Environmental Protection.

Sincerely,



Date: September 28, 2016

Wayne C. Howitz, Assistant Director
Remediation Oversight Element

IV. Attachments:

A. Deed Notice

Deed Notice ID: DER1226568
Filed Deed Notice in the Middlesex County Clerk's Office
Book Number the Deed Notice is filed in: 6655
Page Numbers: 621-652
Date Filed: 01/23/2016
Block: 71 Lot: 37.01



11/23/2015 5:58:54 PM

MIDDLESEX COUNTY CLERK

Return To:

WILENTZ, GOLDMAN
90 WOODBRIDGE CTR DR
WDB, NJ, 07095

Index DEED BOOK
Book 06655 Page 0621
No. Pages 0032
Instrument DEED W/O ABSTRA
Date : 1/23/2015
Time : 11:01:41
Control # 201501230101
INST# DE 2015 000856

METUCHEN III, LLC

Employee ID MALTES

RECORDING	\$	175.00
DARM	\$	93.00
NJFRPA	\$	62.00
- - - - -	\$	.00
- - - - -	\$	.00
RECORDING	\$	3.00
	\$	.00
	\$	.00
	\$	.00
Total:	\$	333.00

STATE OF NEW JERSEY
MIDDLESEX COUNTY CLERK

PLEASE NOTE
DO NOT REMOVE THIS COVERSHEET
IT CONTAINS ALL RECORDING INFORMATION

ELAINE FLYNN
COUNTY CLERK



Cover sheet is part of Middlesex County filing record
Retain this page for future reference
Not part of the original submitted document

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TO ACCESS THE IMAGE OF
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HEREUNDER BY BOOK AND
PAGE NUMBER, USE THE
BOOK AND PAGE NUMBER
ABOVE.

DEED NOTICE

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: *Jeffrey W. Cappola*
Jeffrey W. Cappola, Esq.

Recorded by: _____
[Signature, Officer of County Recording Office]

[Print name below signature]

RECORDED
ELIANE H. STEIN
MIDDLESEX COUNTY CLERK
2015 JAN 23 AM 11:04
BOOK # 6655
PAGE # 621
OF PAGES 31

DEED NOTICE

This Deed Notice is made as of the 1-12-15 day of ~~December, 2014~~, by Metuchen III, LLC, a New Jersey limited liability company located at 8101 Glenbrook Road, Suite B, Bethesda, MD 20814 together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. Metuchen III, LLC, a New Jersey limited liability company located at 8101 Glenbrook Road, Suite B, Bethesda, MD 20814 is the owner in fee simple of certain real property designated as Block 71 Lots 37.01 on the tax map of the Borough of Metuchen, Middlesex County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site that includes this property is PI #: 024790; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").

2. REMEDIATION.

i. William Schnitzerling, LSRP License # 587821, has approved this Deed Notice as an institutional control for the Property, which is part of the remediation of the Property.

ii. N.J.A.C. 7:26C-7 requires the Owner, among other persons, to obtain a soil remedial action permit for the soil remedial action at the Property. That permit will contain the monitoring, maintenance and biennial certification requirements that apply to the Property.

3. SOIL CONTAMINATION. Metuchen III, LLC has remediated contaminated soil at the Property, such that soil contamination remains in certain areas of the Property that contains contaminants in concentrations that do not allow for the unrestricted use of the Property; this soil contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is

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a statutory requirement for this Deed Notice and engineering control, two foot soil cap, in accordance with N.J.S.A. 58:10B-13.

4. CONSIDERATION. In accordance with the remedial action for the site, which included the Property, and in consideration of the terms and conditions of that remedial action, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessees and operators of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of contamination remaining at concentrations that do not allow for unrestricted use, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property (the "Restricted Areas"); a narrative description of these restrictions is provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental officials.

5B. RESTRICTED LAND USES. The following statutory land use restrictions apply to the Restricted Areas:

i. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented; and

ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(12), prohibits the conversion of a landfill, with gas venting systems and/or leachate collection systems, to a single family residence or a child care facility without the Department's prior written approval.

5C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the Property; a narrative description of these engineering controls is provided in Exhibit C.

6A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at www.nj.gov/srp/forms within thirty (30) calendar days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the Restricted Area.

iii. The Owner and the subsequent owners shall provide written notice to the Department, on a form available from the Department at www.nj.gov/srp/forms, within thirty (30) calendar days after the owner's petition for or filing of any document initiating a rezoning of the Property to residential.

6B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessees and operators while each is an owner, lessee, or operator of the Property.

7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct invasive work or excavate within the Restricted Areas, of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

ii. Except as provided in Paragraph 7B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property which disturbs any engineering control at the Property without first obtaining a soil remedial action permit modification pursuant to N.J.A.C. 7:26C-7. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration.

iii. Notwithstanding subparagraph 7Aii., above, a soil remedial action permit modification is not required for any alteration, improvement, or disturbance provided that the owner, lessee or operator:

(A) Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;

(B) Restores any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;

(C) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(D) Ensures that human exposure to contamination in excess of the remediation standards does not occur; and

(E) Describes, in the next biennial certification the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance.

7B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or immediate environmental concern, see N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that that person complies with each of the following:

i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;

ii. Hires a Licensed Site Remediation Professional (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency;

iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;

iv. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;

v. Notifies the Department of Environmental Protection when the emergency or immediate environmental concern has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337; and

vi. Restores the engineering control to the pre-emergency conditions as soon as possible, and provides notification to the Department of Environmental Protection within sixty (60) calendar days after completion of the restoration of the engineering control, including: (a) the nature and likely cause of the emergency; (b) the potential discharges of or exposures to contaminants, if any, that may have occurred; (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment; (d) the measures completed or implemented to restore the engineering control; and (e) the changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future.

8. TERMINATION OF DEED NOTICE.

i. This Deed Notice may be terminated only upon filing of a Termination of Deed Notice, available at N.J.A.C. 7:26C Appendix C, with the office of the County Clerk/Register of Deeds of Middlesex County, New Jersey, expressly terminating this Deed Notice.

ii. Within thirty (30) calendar days after the filing of a Termination of Deed Notice, the owner of the property shall apply to the Department for termination of the soil remedial action permit pursuant to N.J.A.C. 7:26C-7.

9. ACCESS. The Owner, and the subsequent owners, lessees and operators agree to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessees and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

10. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.

ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C, and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C.

11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

12A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, USGS Quad map, Hagstrom County Maps);

ii. Exhibit A-2: Metes and Bounds Description - A tax map of lots and blocks as well as metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;

iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

12B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map - A separate map for each restricted area that includes:

(A) As-built diagrams of each engineering control, including caps, fences, slurry walls, (and, if any) ground water monitoring wells, extent of the ground water classification exception area, pumping and treatment systems that may be required as part of a ground water engineering control in addition to the deed notice

(B) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(C) Designation of all soil and sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2: Restricted Area Data Table - A separate table for each restricted area that includes either (A) or (B) through (F):

(A) Only for historic fill extending over the entire site or a portion of the site and for which analytical data are limited or do not exist, a narrative that states that historic fill is present at the site, a description of the fill material (e.g., ash, cinders, brick, dredge material), and a statement that such material may include, but is not limited to, contaminants such as PAHs and metals;

(B) Sample location designation from Restricted Area map (Exhibit B-1);

(C) Sample elevation based upon mean sea level;

(D) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;

(E) The restricted and unrestricted use standards for each contaminant in the table; and

(F) The remaining concentration of each contaminant at each sample location at each elevation.

12C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls as follows:

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i. Exhibit C-1: Deed Notice as Institutional Control: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:

(A) Description and estimated size of the Restricted Areas as described above;

(B) Description of the restrictions on the Property by operation of this Deed Notice; and

(C) The objective of the restrictions.

ii. Exhibit C-2: Two foot soil cap: Exhibit C-2 includes a narrative description of the two foot soil cap as follows:

(A) Description of the engineering control;

(B) The objective of the engineering control; and

(C) How the engineering control is intended to function.

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

ATTEST: Thomas Albert Metuchen III, LLC
By: Stuart Schooler
THOMAS ALBERT Stuart Schooler
AGENT [Signature]
[Print name and title]

STATE OF MARYLAND SS.:
COUNTY OF MONTGOMERY
JAN 12, 2015

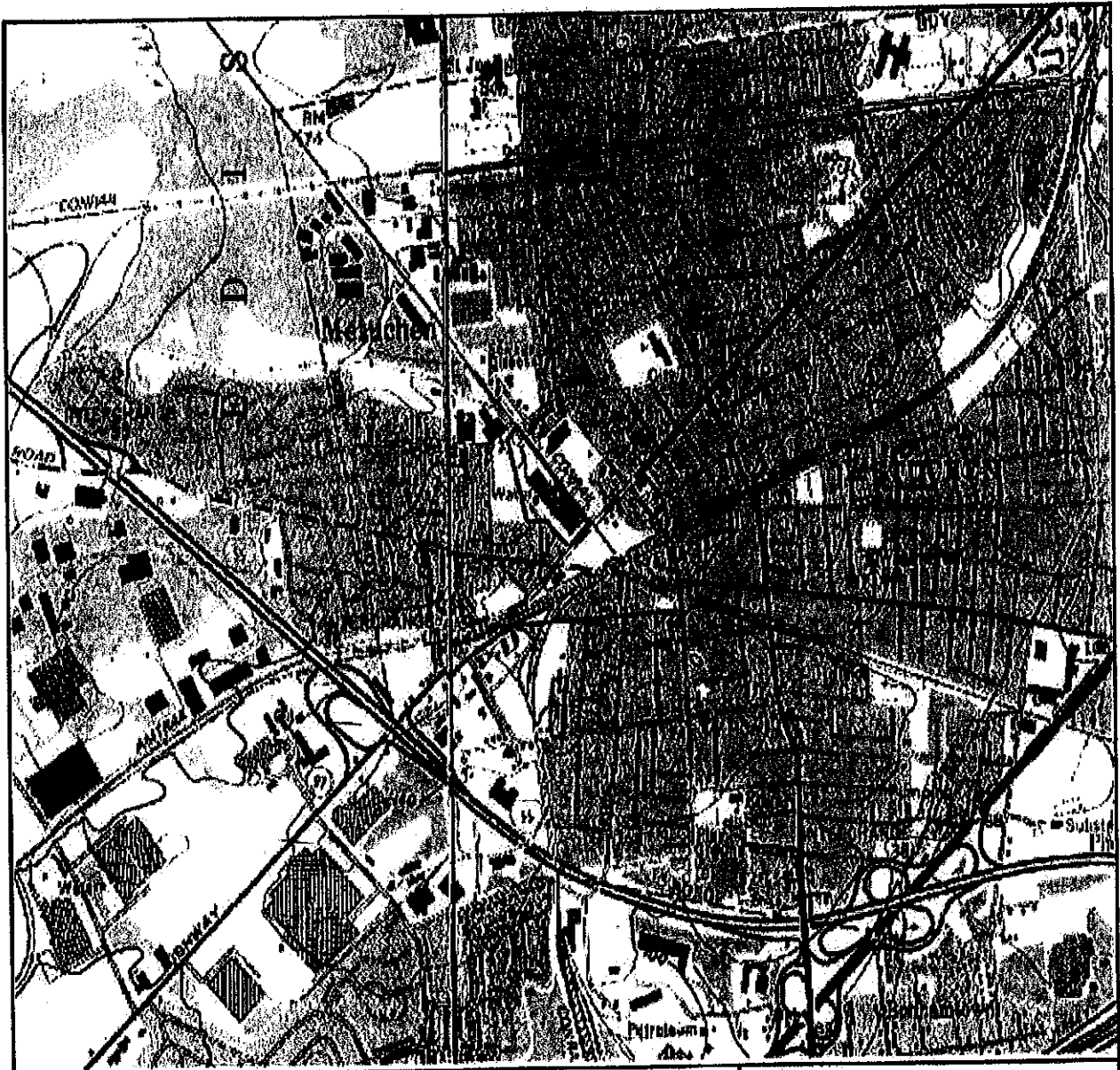
I certify that on ~~December~~, 2014, Stuart Schooler personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Managing Member of Metuchen III, LLC, the company named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper company officer who is the Managing Member of the limited liability company;
- (c) this document was signed and delivered by the company as its voluntary act and was duly authorized; and
- (d) this person signed this proof to attest to the truth of these facts.

Thomas Albert
[Signature]
THOMAS ALBERT
[Print name and title of attesting witness]

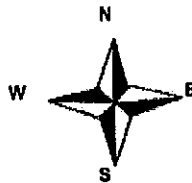
Signed and sworn before me on ~~December~~, 2014. ^{IT} JAN 12, 2015
Vallarie Threat, Notary Public
Vallarie Threat, Asst Property Manager
[Print name and title]

Exhibit A-1



LEGEND

 Site Location



Scale = 1:24,000
(1 Inch = 2000 Feet)

Source: 1994 USGS Perth Amboy, NJ 7.5 minute Quadrangle (Topographic)
and 1994 USGS Plainfield, NJ 7.5 minute Quadrangle (Topographic)



Environmental & Infrastructure, Inc.

FIGURE 1

**USGS TOPOGRAPHIC
SITE LOCATION MAP
Metuchen III, LLC**

**700 Middlesex Avenue
Metuchen, New Jersey**

Exhibit A-2

**METES AND BOUNDS DESCRIPTION
LOT 37.01, BLOCK 71
BOROUGH OF METUCHEN
MIDDLESEX COUNTY, NEW JERSEY**

BEGINNING AT AN IRON BAR WITH CAP FOUND AT THE NORTHWESTERLY TERMINUS OF THE CURVE CONNECTING THE NORTHWESTERLY LINE OF MIDDLESEX AVENUE (66 FOOT WIDE RIGHT OF WAY) WITH THE NORTHEASTERLY LINE OF FACTORY STREET (50 FOOT WIDE RIGHT OF WAY), AND FROM SAID BEGINNING POINT RUNNING THENCE;

1. ALONG THE NORTHEASTERLY LINE OF FACTORY STREET, NORTH 32 DEGREES- 36 MINUTES -30 SECONDS WEST, A DISTANCE OF 447.51 FEET TO AN IRON BAR WITH CAP FOUND, THENCE;
2. ALONG THE NORTHWESTERLY TERMINUS OF SAID FACTORY STREET, SOUTH 57 DEGREES -23 MINUTES -30 SECONDS WEST, A DISTANCE OF 50.00 FEET TO A POINT, THENCE;
3. ALONG THE WESTERLY LINE OF ADAMS STREET (50 FOOT WIDE RIGHT OF WAY) , SOUTH 13 DEGREES -53 MINUTES -30 SECONDS WEST, A DISTANCE OF 4.34 FEET TO AN IRON BAR WITH CAP FOUND, THENCE;
4. ALONG THE DIVIDING LINE BETWEEN LOT 37.01, BLOCK 71, AND LOT 71 (N/F LANDS OF VITAL MANAGEMENT & CONSULTING, LLC), LOT 80 (N/F OTHER LANDS OF VITAL MANAGEMENT & CONSULTING, LLC), BLOCK 70, AND THE NORTHERLY TERMINUS OF OLIVER STREET (50 FOOT WIDE RIGHT OF WAY), NORTH 76 DEGREES -06 MINUTES -30 SECONDS WEST, A DISTANCE OF 250.00 FEET TO A CONCRETE MONUMENT FOUND, THENCE;
5. ALONG THE DIVIDING LINE BETWEEN LOT 37.01 , BLOCK 71, AND LOT 125.07 (N/F LANDS OF THE BOROUGH OF METUCHEN I, LLC), BLOCK 69, NORTH 13 DEGREES -53 MINUTES - 30 SECONDS EAST, A DISTANCE OF 225.00 FEET TO AN IRON BAR WITH CAP FOUND, THENCE;
6. CONTINUING ALONG SAME, NORTH 01 DEGREE -04 MINUTES -47 SECONDS WEST, A DISTANCE OF 275.58 FEET TO AN IRON BAR WITH CAP FOUND, THENCE; PROCEEDING ALONG THE DIVIDING LINE BETWEEN LOT 37.01 AND LOT 37.02, BLOCK 71, THE FOLLOWING TWO (2) COURSES:
7. SOUTH 32 DEGREES -28 MINUTES -30 SECONDS EAST, A DISTANCE OF 453.12 FEET TO A POINT, THENCE;
8. NORTH 57 DEGREES - 31 MINUTES - 30 SECONDS EAST, A DISTANCE OF 288.63 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF LANDS NOW OR FORMERLY OF THE LEHIGH VALLEY RAILROAD COMPANY, THENCE;
9. ALONG SAID LINE, SOUTH 32 DEGREES -28 MINUTES -30 SECONDS EAST, A DISTANCE OF 551.35 FEET TO AN IRON PIN WITH CAP FOUND ON THE AFOREMENTIONED NORTHWESTERLY LINE OF MIDDLESEX AVENUE, THENCE;

10. ALONG SAID LINE, SOUTH 55 DEGREES -45 MINUTES -30 SECONDS WEST, A DISTANCE OF 368.52 FEET TO AN IRON PIN WITH CAP SET, THENCE;
11. ALONG THE AFOREMENTIONED CONNECTING CURVE TO THE RIGHT HAVING A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 91 DEGREES -38 MINUTES - 00 SECONDS, AND AN ARC LENGTH OF 31.99 FEET, ALSO BEARING A CHORD OF NORTH 78 DEGREES - 25 MINUTES -30 SECONDS WEST, A CHORD DISTANCE OF 28.68 FEET TO THE POINT AND PLACE OF BEGINNING.

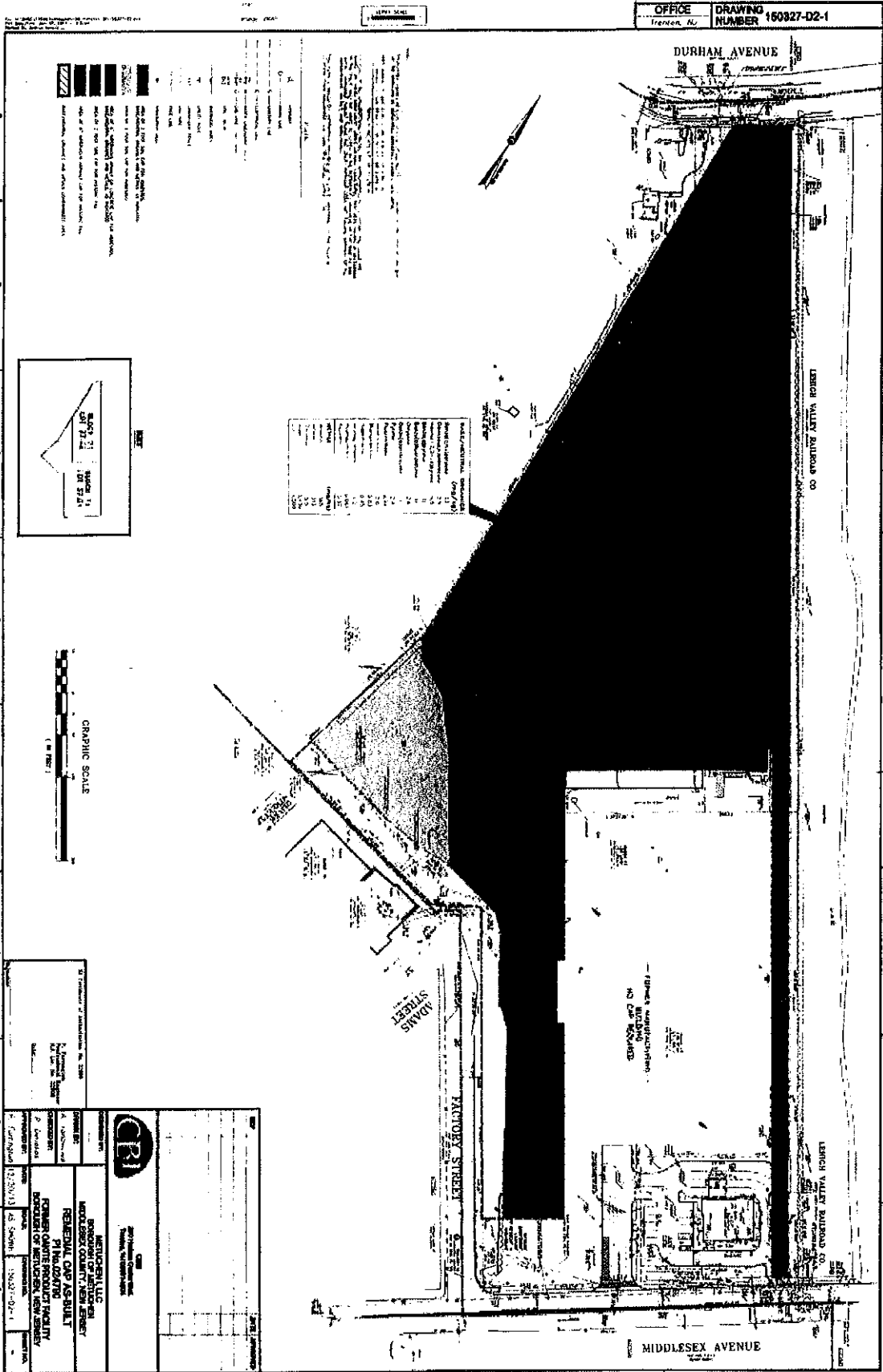
CONTAINING 287,378 SQUARE FEET OR 6.597 ACRES

Exhibit A-3

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Exhibit B-1

150927-02-1



OFFICE DRAWING
Trenton, N.J. NUMBER 150927-02-1

DURHAM AVENUE

LEHIGH VALLEY RAILROAD CO

LEHIGH VALLEY RAILROAD CO

MIDDLESEX AVENUE

ADAMS STREET

FACTORY STREET

- 1. ...
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NO.	DESCRIPTION	DATE
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		CRJ ENGINEERING 2000 ... Middletown, New Jersey	
PROJECT NO. 150927-02-1 SHEET NO. B-1		DATE: 12/27/54	
CLIENT: FEDERAL GOVT. PROJECT: FEDERAL ORDNANCE PLANT LOCATION: MIDDLETOWN, NEW JERSEY		DRAWN BY: ... CHECKED BY: ... APPROVED BY: ...	

Exhibit B-2

Exhibit B-2 Narrative Description of Historic Fill Area

In the previous soil investigation following the removal of debris in the eastern portion of Block 71, Lot 37.01, along the former railroad line spur, base/neutral organics and metals contaminants were detected in soil samples collected at the eastern property line. The base/neutral organics and metals contaminants in soil were suspected to be from historic fill material deposited during site/property development and/or on-site railroad line spur installation in this portion of the site. To further investigate the potential source of contaminants in soil as originating from historic fill, soil borings were advanced in this portion of the property. Two samples were collected from each boring and descriptive logs of the fill and soil encountered at each boring were completed. Samples were collected from the suspected historic fill material at grade and from the natural soil immediately below the suspected historic fill at the depth observed during advancement of each soil boring.

The fill materials observed in the soil borings were typical historic fill constituents: cinders, brick fragments, non-indigenous sands, etc. Analytical results for the samples collected at grade further indicated that the material is historic fill as the surficial soil boring samples had contaminants detected at relatively higher concentrations than the soil boring samples collected from the natural soil. Additionally, the soil boring samples collected from the naturally deposited soil did not have as many contaminants actually detected as the surficial soil boring samples collected from the suspected historic fill. The soil boring samples collected from the naturally deposited soil were at depths ranging from 5.0 to 10.5 feet below grade. The detected contaminants at grade were arsenic, beryllium, copper, lead, benzo(a)anthracene, benzo(b)fluoranthene and benzo(a)pyrene, typical in historic fill consisting of cinders, brick fragments, non-indigenous sands and so forth. Table 2, attached, provides a summary of the soil sampling analytical results for the soil boring samples.

Results of this soil boring investigation indicate historic fill is present in this portion of the property based on the following:

- ◆ The constituents of the surficial fill material observed from grade are typical historic fill materials vs. the naturally occurring soil observed at 5.0 to 10.5 feet below grade;
- ◆ The specific contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval are relatively higher in concentration vs. the decreased concentration of those detected in the naturally occurring soil boring samples collected at depths up to 10.0 to 10.5 feet below grade;
- ◆ The number of contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval are relatively greater vs. the number of those detected in the soil boring samples collected from the naturally occurring soil at depths up to 10.0 to 10.5 feet below grade.

These results indicate the contaminant source in surficial soil in this portion of the property is historic fill, evidently placed as a part of the development in this portion of the site/property.

Table 2

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

	1888-001	1888-002	1888-003	1888-004	1888-005	1888-006
Analytical Laboratory ID:	1888-001	1888-002	1888-003	1888-004	1888-005	1888-006
Sample ID:	A6 B-1	A6 B-1	A6 B-2	A6 B-2	A6 B-3	A6 B-3
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	9.0 to 9.5'	0 to 0.5'	7.5 to 8.0'	0 to 0.5'	7.0 to 7.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
METALS (mg/Kg)						
Antimony	14	ND	ND	ND	ND	ND
Arsenic	20	28.8	0.433	15.5	2.6	2.11
Beryllium	2	0.619	0.551	1.18	0.679	0.844
Cadmium	39	2.99	ND	0.748	ND	0.321
Chromium (trivalent)	120,000	20.6	15.4	35.7	15.7	31.1
Copper	600	114	7.29	684	10.5	39.5
Lead	400	339	7.76	234	16.4	40.9
Mercury	14	0.175	ND	0.254	0.0415	0.0449
Nickel	250	21.7	11.3	23.7	14.1	18.7
Selenium	63	ND	ND	ND	ND	ND
Silver	110	ND	ND	0.787	ND	ND
Thallium	2	0.126	ND	0.131	0.145	0.115
Zinc	1500	550	30.5	264	50.3	91.3

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit
J = detected at an estimated concentration below the analytical laboratory reporting limit.

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

Analytical Laboratory ID:	1888-001	1888-002	1888-003	1888-004	1888-005	1888-006
Sample ID:	A6 B-1	A6 B-1	A6 B-2	A6 B-2	A6 B-3	A6 B-3
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	9.0 to 9.5'	0 to 0.5'	7.5 to 8.0'	0 to 0.5'	7.0 to 7.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
BASE NEUTRAL ORGANICS (mg/Kg)						
Acenaphthene	3,400	ND	ND	ND	ND	ND
Acenaphthylene	None	ND	ND	ND	ND	ND
Anthracene	10,000	ND	ND	ND	0.381	ND
Benzidine	None	ND	ND	ND	ND	ND
Benzo(a)anthracene	0.9	1.2	ND	0.63	ND	1.4
Benzo(b)fluoranthene	0.9	1.04	ND	0.686	ND	1.19
Benzo(k)fluoranthene	0.9	0.448	ND	0.208 J	ND	0.507
Benzo(a)pyrene	0.66	0.742	ND	0.417	ND	0.918
Benzo(g,h,i)perylene	None	0.401	ND	0.214 J	ND	0.471
Bis(2-Chloroethyl)ether	0.66	ND	ND	ND	ND	ND
Bis(2-Chloroethoxy)methane	None	ND	ND	ND	ND	ND
Bis(2-Ethylhexyl)phthalate	49	ND	ND	ND	ND	ND
Bis (2-Chloroisopropyl) ether	2,300	ND	ND	ND	ND	ND
4-Bromophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Butyl Benzyl Phthalate	1,100	ND	ND	ND	ND	ND
2-Chloronaphthalene	None	ND	ND	ND	ND	ND
4-Chlorophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Chrysene	9	0.853	ND	0.435	ND	1.34
Dibenzo(a,h)anthracene	0.66	ND	ND	ND	ND	ND
Di-n-butylphthalate	5,700	ND	ND	ND	ND	ND
1,2-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,3-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,4-Dichlorobenzene	570	ND	ND	ND	ND	ND
3,3'-Dichlorobenzidine	2	ND	ND	ND	ND	ND
Diethylphthalate	10,000	ND	ND	ND	ND	ND
Dimethylphthalate	10,000	ND	ND	ND	ND	ND
2,4-Dinitrotoluene	1	ND	ND	ND	ND	ND
2,6-Dinitrotoluene	1	ND	ND	ND	ND	ND
Di-n-Octylphthalate	1,100	ND	ND	ND	ND	ND
1,2-Diphenylhydrazine	None	ND	ND	ND	ND	ND
Fluoranthene	2,300	1.28	ND	0.614	ND	2.42
Fluorene	2,300	ND	ND	ND	0.146 J	ND
Hexachlorobenzene	0.66	ND	ND	ND	ND	ND
Hexachlorobutadiene	1	ND	ND	ND	ND	ND
Hexachloroethane	6	ND	ND	ND	ND	ND
Hexachlorocyclopentadiene	400	ND	ND	ND	ND	ND
Indeno(1,2,3-cd)pyrene	0.9	0.35	ND	0.172 J	ND	0.358
Isophorone	1,100	ND	ND	ND	ND	ND
2-Methylnaphthalene	None	ND	ND	ND	ND	ND
Naphthalene	230	ND	ND	ND	ND	ND
Nitrobenzene	28	ND	ND	ND	ND	ND
N-Nitroso-dimethylamine	None	ND	ND	ND	ND	ND
N-Nitrosodi-n-propylamine	0.66	ND	ND	ND	ND	ND
N-Nitrosodiphenylamine	140	ND	ND	ND	ND	ND
Phenanthrene	None	0.496	ND	0.171 J	ND	1.54
Pyrene	1,700	1.86	ND	0.814	ND	2.65
1,2,4-Trichlorobenzene	68	ND	ND	ND	ND	ND

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

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**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

	Analytical Laboratory ID:	1888-007	1888-008	1888-009	1888-010	1888-011	1888-012
Sample ID:	A6 B-4	A6 B-4	A6 B-5	A6 B-5	A6 B-6	A6 B-6	A6 B-6
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	5.5 to 6.0'	0 to 0.5'	8.0 to 8.5'	
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)							
METALS (mg/Kg)							
Antimony	14	ND	ND	ND	ND	ND	ND
Arsenic	20	17.2	3.67	6.28	2.26	14.6	1.5
Beryllium	2	1.14	0.612	0.728	0.689	0.531	3.04
Cadmium	39	0.699	0.359	0.761	ND	1.52	ND
Chromium (trivalent)	120,000	29	91.3	28.9	18.5	16	25.4
Copper	600	363	31.6	74.5	9.96	105	10.8
Lead	400	892	54.6	286	13	337	19
Mercury	14	0.117	0.039	0.141	0.017	0.106	0.0919
Nickel	250	18.9	24.6	29.5	20.5	23.2	13.7
Selenium	63	ND	ND	ND	ND	ND	ND
Silver	110	ND	ND	ND	ND	ND	ND
Thallium	2	0.122	0.125	0.13	0.115	0.134	0.194
Zinc	1500	360	452	346	52	304	32.6

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

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**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

Analytical Laboratory ID:	1888-007	1888-008	1888-009	1888-010	1888-011	1888-012
Sample ID:	A6 B-4	A6 B-4	A6 B-5	A6 B-5	A6 B-6	A6 B-6
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	5.5 to 6.0'	0 to 0.5'	8.0 to 8.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
BASE NEUTRAL ORGANICS (mg/Kg)						
Acenaphthene	3,400	ND	ND	ND	ND	ND
Acenaphthylene	None	ND	ND	ND	ND	ND
Anthracene	10,000	ND	ND	ND	ND	ND
Benidine	None	ND	ND	ND	ND	ND
Benzo(a)anthracene	0.9	0.248	ND	0.425	ND	0.318
Benzo(b)fluoranthene	0.9	0.216	ND	0.458	ND	0.288
Benzo(k)fluoranthene	0.9	ND	ND	0.158 J	ND	ND
Benzo(a)pyrene	0.66	0.15 J	ND	0.308	ND	0.205 J
Benzo(g,h,i)perylene	None	ND	ND	0.179 J	ND	ND
Bis(2-Chloroethyl)ether	0.66	ND	ND	ND	ND	ND
Bis(2-Chloroethoxy)methane	None	ND	ND	ND	ND	ND
Bis(2-Ethylhexyl)phthalate	49	ND	ND	ND	ND	ND
Bis (2-Chloroisopropyl) ether	2,300	ND	ND	ND	ND	ND
4-Bromophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Butyl Benzyl Phthalate	1,100	ND	ND	ND	ND	ND
2-Chloronaphthalene	None	ND	ND	ND	ND	ND
4-Chlorophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Chrysene	9	0.142 J	ND	0.281	ND	0.187 J
Dibenzo(a,h)anthracene	0.66	ND	ND	ND	ND	ND
Di-n-butylphthalate	5,700	ND	ND	ND	ND	ND
1,2-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,3-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,4-Dichlorobenzene	570	ND	ND	ND	ND	ND
3,3'-Dichlorobenzidine	2	ND	ND	ND	ND	ND
Diethylphthalate	10,000	ND	ND	ND	ND	ND
Dimethylphthalate	10,000	ND	ND	ND	ND	ND
2,4-Dinitrotoluene	1	ND	ND	ND	ND	ND
2,6-Dinitrotoluene	1	ND	ND	ND	ND	ND
Di-n-Octylphthalate	1,100	ND	ND	ND	ND	ND
1,2-Diphenylhydrazine	None	ND	ND	ND	ND	ND
Fluoranthene	2,300	0.208 J	ND	0.425	ND	0.311
Fluorene	2,300	ND	ND	ND	ND	ND
Hexachlorobenzene	0.66	ND	ND	ND	ND	ND
Hexachlorobutadiene	1	ND	ND	ND	ND	ND
Hexachloroethane	6	ND	ND	ND	ND	ND
Hexachlorocyclopentadiene	400	ND	ND	ND	ND	ND
Indeno(1,2,3-cd)pyrene	0.9	ND	ND	ND	ND	ND
Isophorone	1,100	ND	ND	ND	ND	ND
2-Methylnaphthalene	None	ND	ND	ND	ND	ND
Naphthalene	230	ND	ND	ND	ND	ND
Nitrobenzene	28	ND	ND	ND	ND	ND
N-Nitroso-dimethylamine	None	ND	ND	ND	ND	ND
N-Nitrosodi-n-propylamine	0.66	ND	ND	ND	ND	ND
N-Nitrosodiphenylamine	140	ND	ND	ND	ND	ND
Phenanthrene	None	ND	ND	ND	ND	ND
Pyrene	1,700	0.275	ND	0.536	ND	0.385
1,2,4-Trichlorobenzene	68	ND	ND	ND	ND	ND

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

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**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

	Analytical Laboratory ID:	1888-013	1888-014	1888-015	1888-016	1888-017	1888-018
Sample ID:	A6 B-7	A6 B-7	A6 B-8	A6 B-8	A6 B-9	A6 B-9	A6 B-9
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	10.0 to 10.5'	0 to 0.5'	10.0 to 10.5'	10.0 to 10.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)							
METALS (mg/Kg)							
Antimony	14	ND	ND	ND	ND	ND	ND
Arsenic	20	6.91	2.72	17.6	2.12	3.82	14.5
Beryllium	2	0.641	0.036	0.394	0.831	1.11	1.28
Cadmium	39	0.609	ND	1.3	0.356	0.808	0.923
Chromium (trivalent)	120,000	20.2	15.1	115	31.3	1760	54.4
Copper	600	52.2	11.9	50.9	14.6	37.3	21.6
Lead	400	887	20.3	151	18.6	65.2	12.6
Mercury	14	0.126	0.045	0.223	ND	0.566	0.0591
Nickel	250	18.2	13	22.6	36.8	62.9	27.5
Selenium	63	ND	3.42	ND	ND	ND	ND
Silver	110	ND	ND	ND	ND	ND	ND
Thallium	2	0.116	0.183	0.165	0.151	0.136	ND
Zinc	1500	473	47.5	309	105	1270	92.4

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit

J = detected at an estimated concentration below the analytical laboratory reporting limit

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Table 2

Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary

Analytical Laboratory ID:	1888-013	1888-014	1888-015	1888-016	1888-017	1888-018
Sample ID:	A6 B-7	A6 B-7	A6 B-8	A6 B-8	A6 B-9	A6 B-9
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	10.0 to 10.5'	0 to 0.5'	10.0 to 10.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
BASE NEUTRAL ORGANICS (mg/Kg)						
Acenaphthene	3,400	ND	ND	ND	ND	ND
Acenaphthylene	None	ND	ND	0.21 J	ND	ND
Anthracene	10,000	ND	ND	0.156 J	ND	ND
Benzidine	None	ND	ND	ND	ND	ND
Benzo(a)anthracene	0.9	0.282	ND	0.319	ND	ND
Benzo(b)fluoranthene	0.9	0.211	ND	1.06	ND	ND
Benzo(k)fluoranthene	0.9	ND	ND	0.474	ND	ND
Benzo(a)pyrene	0.66	0.17 J	ND	0.687	ND	ND
Benzo(g,h,i)perylene	None	0.172 J	ND	0.284	ND	ND
Bis(2-Chloroethyl)ether	0.66	ND	ND	ND	ND	ND
Bis(2-Chloroethoxy)methane	None	ND	ND	ND	ND	ND
Bis(2-Ethylhexyl)phthalate	49	ND	ND	ND	189 J	ND
Bis (2-Chloroisopropyl) ether	2,300	ND	ND	ND	ND	ND
4-Bromophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Butyl Benzyl Phthalate	1,100	ND	ND	ND	ND	ND
2-Chloronaphthalene	None	ND	ND	ND	ND	ND
4-Chlorophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Chrysene	9	0.169 J	ND	0.708	ND	ND
Dibenzo(a,h)anthracene	0.66	ND	ND	ND	ND	ND
Di-n-butylphthalate	5,700	ND	ND	ND	ND	ND
1,2-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,3-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,4-Dichlorobenzene	570	ND	ND	ND	ND	ND
3,3'-Dichlorobenzidine	2	ND	ND	ND	ND	ND
Diethylphthalate	10,000	ND	ND	ND	ND	ND
Dimethylphthalate	10,000	ND	ND	ND	ND	ND
2,4-Dinitrotoluene	1	ND	ND	ND	ND	ND
2,6-Dinitrotoluene	1	ND	ND	ND	ND	ND
Di-n-Octylphthalate	1,100	ND	ND	ND	ND	ND
1,2-Diphenylhydrazine	None	ND	ND	ND	ND	ND
Fluoranthene	2,300	0.275	ND	1.24	ND	ND
Fluorene	2,300	ND	ND	ND	ND	ND
Hexachlorobenzene	0.66	ND	ND	ND	ND	ND
Hexachlorobutadiene	1	ND	ND	ND	ND	ND
Hexachloroethane	6	ND	ND	ND	ND	ND
Hexachlorocyclopentadiene	400	ND	ND	ND	ND	ND
Indeno(1,2,3-cd)pyrene	0.9	ND	ND	0.262	ND	ND
Isophorone	1,100	ND	ND	ND	ND	ND
2-Methylnaphthalene	None	ND	ND	0.141 J	ND	ND
Naphthalene	230	ND	ND	ND	ND	ND
Nitrobenzene	28	ND	ND	ND	ND	ND
N-Nitroso-dimethylamine	None	ND	ND	ND	ND	ND
N-Nitrosodi-n-propylamine	0.66	ND	ND	ND	ND	ND
N-Nitrosodiphenylamine	140	ND	ND	ND	ND	ND
Phenanthrene	None	ND	ND	0.594	ND	ND
Pyrene	1,700	0.326	ND	1.32	ND	ND
1,2,4-Trichlorobenzene	68	ND	ND	ND	ND	ND

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

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Exhibit C-1

The results of this soil boring investigation confirmed historic fill is present in this portion of the site based on the following:

- The constituents of the surficial fill material observed from grade were typical historic fill materials vs. the naturally occurring soil observed at 5.0 to 10.5 feet below grade;
- The specific contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval were relatively higher in concentration vs. the decreased concentration of those detected in the naturally occurring soil boring samples collected at depths up to 10.0 to 10.5 feet below grade;
- The number of contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval were relatively greater vs. the number of those detected in the soil boring samples collected from the naturally occurring soil at depths up to 10.0 to 10.5 feet below grade.

These results confirmed the contaminant source in surficial soil in this portion of the site is historic fill, evidently placed as a part of the development in this portion of the site/property.

Base/Neutral Organics and Metals in Soil

The western portion of the site was impacted by previous facility operations resulted in volatile organics, petroleum hydrocarbons, base/neutral organics and metals in soil. Soil remedial actions were previously completed in this area by excavation and subsequent on-site low temperature thermal desorption (LTTD) treatment or off-site transportation and disposal (T&D). Soil treated by LTTD was placed back on site in the general area from where it was removed by excavation. These remedial actions specifically addressed the volatile organics and petroleum hydrocarbon soil contamination in this portion of the site. As such, a portion of the base/neutral organics and metals contamination, documented by previous site investigations, is either no longer in the exact original location or has been disposed off-site because of the remedial actions.

There are base/neutral organics and metals soil sampling locations not within the excavation remedial action areas, which were not disturbed/affected by these remedial actions. These sampling locations provide the vertical and lateral delineation of base/neutral organics and metals contamination and their clean end-point, as required by the NJDEP. The blue hatched area on the attached as-built drawing depicts the area which contains the base/neutral organics and metals contamination under the remedial cap to the clean end-point for base/neutral organics and metals in soil. As a result of the LTTD treated soil, placed back on site in the general area from where it was removed, this entire hatched area is represented by the highest concentrations (worse case) of the base/neutral organics and metals in soil. As documented from previous soil investigations, the attached as-built drawing depicts the remaining base/neutral organics and metals contamination on site, including the fully delineated clean end point of base/neutral organics and metals.

Based on the contaminants associated with the deed notice consisting of transite asbestos, base/neutral organics, metals and an area with historic fill, there are three types of remedial caps on the site: two-foot soil cap; three-foot soil cap and asphalt cap within Block 71, Lot 37.01. The contaminants, their associated remedial caps and estimated respective sizes are as follows:

<u>Contaminant</u>	<u>Remedial Cap</u>	<u>Location</u>	<u>Estimated Size (Acres)</u>
Transite Asbestos, Base/Neutral Organics and Metals	Two-foot Soil Cap	Block 71, Lot 37.01	1.95
Transite Asbestos	Three-foot Soil Cap	Block 71, Lot 37.01	0.52
Historic Fill	Two-foot Soil Cap	Block 71, Lot 37.01	0.21
Historic Fill	Six-inch Asphalt Cap	Block 71, Lot 37.01	0.04

(B) Description of the restrictions on the Property by operation:

The restrictions to the property from the Deed Notice will result from the contaminants remaining in the soil beneath the protective caps in the various portions of the site property, as described above. These restrictions may affect how, where and the type of redevelopment that takes place on the respective portions of the site property. Wherever there is a restricted portion of the site property and a cap exists in that portion of the site property, measures will need to be taken to preserve the protectiveness provided by the existing cap.

(C) Objective of the restrictions:

The objective of the restrictions documented in the Deed Notice is to be protective of human health and the environment by notifying all present and future property owners of the remaining contaminants in the soil beneath the protective caps in the various portions of the site property.

Exhibit C-2

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Exhibit C-2
Narrative Description of Engineering Controls

(A) Description of the engineering control:

Based on the contaminants associated with the deed notice consisting of transite asbestos, base/neutral organics, metals and an area with historic fill, there are three types of remedial caps on the site: two-foot soil cap; three-foot soil cap and asphalt cap. The contaminants and their associated remedial caps are as follows:

<u>Contaminant</u>	<u>Remedial Cap</u>	<u>Location</u>
Transite Asbestos, Base/Neutral Organics and Metals	Two-foot Soil Cap	Block 71, Lot 37.01
Transite Asbestos	Three-foot Soil Cap	Block 71, Lot 37.01
Historic Fill	Two-foot Soil Cap	Block 71, Lot 37.01
Historic Fill	Six-inch Asphalt Cap	Block 71, Lot 37.01

(B) Objective of the engineering control:

There are three types of remedial caps on Block 71, Lot 37.01, which serve as engineering controls: two-foot soil cap; three-foot soil cap and asphalt cap. The objective of the engineering controls is to be protective of human health and the environment by providing a physical barrier to the remaining contaminants in the soil beneath the protective caps in the various portions of the site property.

(C) The intended function of the engineering control:

There are three types of remedial caps on the site, which serve as engineering controls: two-foot soil cap; three-foot soil cap and asphalt cap. The intended function of the engineering control is to be protective of human health and the environment by providing a physical barrier to the remaining contaminants in the soil beneath the protective caps in the various portions of the site property.



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE
Governor

BOB MARTIN
Commissioner

KIM GUADAGNO
Lt. Governor

Site Remediation and Waste Management Program
Remediation Oversight Element
Bureau of Remedial Action Permitting
401 E. State Street
P. O. Box 420
Mail Code 401-055
Trenton, NJ 08625-0420
Phone: (609) 984-2990

September 28, 2016

Stuart Schooler
Managing Member
Metuchen I, LLC
8101 Glenbrook Road, Floor 1, Suite B
Bethesda, MD 20814

RE: Soil Remedial Action Permit
Site: Oakley Specialized Services, Inc.
Address: 700 Middlesex
City: Metuchen Boro
County: Middlesex
SRP Program Interest #: 024790
Soil Remedial Action Permit #: RAP160002
Block: 71 Lot: 37.02

Dear Mr. Schooler:

Enclosed is a Soil Remedial Action Permit issued pursuant to the Site Remediation Reform Act, 58:10C-1 et seq. and the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-1 et seq. This permit becomes effective on 09/29/2016. Please note the referenced permit and program interest numbers and refer to them when corresponding with the Department.

The enclosed permit requires the permittee to conduct monitoring, maintenance and evaluation for compliance and effectiveness of the remedial action and its associated institutional control. The permit establishes all requirements necessary for demonstrating that the remedial action and control continue to be protective of public health, safety and the environment.

Requirement to Retain Licensed Site Remediation Professional

The Technical Requirements for Site Remediation (Technical Requirements) at N.J.A.C. 7:26E-1.8 define remediation to include a remedial action. The Technical Requirements further define remedial action such that "... A remedial action continues as long as an engineering control or an institutional control is needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met." Therefore, a person who is implementing a

remedial action that includes an engineering or institutional control is conducting remediation, and that person is required to hire a licensed site remediation professional (LSRP) pursuant to the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS; see N.J.A.C. 7:26C-2.3(a) and (b)).

At all times, an LSRP is required to be retained for a case that has a Deed Notice, Classification Exception Area, Soil Remedial Action Permit, and/or Ground Water Remedial Action Permit until the remedial action(s) is no longer needed to protect the public health and safety and the environment, and until all unrestricted use remediation standards are met. The LSRP must be retained to operate, maintain, and monitor the institutional and/or engineering controls at the site, to ensure that the remedial action(s) remains protective of public health and safety and the environment, and to ensure compliance with the requirements of the Deed Notice, Classification Exception Area, Soil Remedial Action Permit, and/or the Ground Water Remedial Action Permit. This includes but is not limited to site inspections, ground water sampling, biennial submission of a Soil and/or Ground Water Remedial Action Protectiveness/Biennial Certification Form and Report, responding to any activities involving the institutional and/or engineering controls at the site, and responding to any public inquiries regarding the current status of the site. It is the responsibility of the LSRP certifying the Remedial Action Permit application to inform the Responsible Entity of the requirement regarding LSRP retention for a case that has a Soil and/or Ground Water Remedial Action Permit.

An LSRP may be retained or dismissed for a case that has an approved Soil and/or Ground Water Remedial Action Permit through the New Jersey Department of Environmental Protection online portal (www.nj.gov/dep/online/) by choosing the "LSRP Retention" or "LSRP Release" submission type selection option within the "LSRP Notification of Retention or Dismissal" service, and choosing the "Remedial Action Permit" activity in the case selection page. Please note that the Bureau of Remedial Action Permitting records the LSRP Retention for pending Remedial Action Permit Applications so there is no need to perform this function online. Also note that the LSRP Comprehensive Report (datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=SRRA) now includes information pertaining to approved Soil and Ground Water Remedial Action Permits to which the LSRP is assigned.

Annual Fees

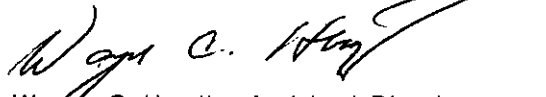
Please be aware that there are annual fees associated with this permit in accordance with N.J.A.C. 7:26C-4.6. These annual permit fees will be handled by invoicing the fee billing contact we have on record:

Stuart Schooler
Managing Member
Metuchen I, LLC
8101 Glenbrook Road, Floor 1, Suite B
Bethesda, MD 20814
Phone: (301) 656-1956
Email: stuart.schooler@themavengroup.us

Any changes to this contact should be brought to the Department's attention. Changes to fee billing contacts are updates and are not considered modifications to the permit.

The Department looks forward to future continued cooperation in working together to provide a healthy environment for the citizens of New Jersey and to protect its resources. Going forward, questions or comments regarding this permit should be addressed to the Bureau of Remedial Action Permitting at 609-984-2990, attention Robert Soboleski, Bureau Chief.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne C. Howitz", with a long, sweeping flourish extending to the right.

Wayne C. Howitz, Assistant Director
Remediation Oversight Element

Enclosure

cc: Lester Jones, Middlesex County Public Health Department
Middlesex County Clerk
Metuchen Borough Clerk
Crystal Leavey, LSRP

New Jersey Department of Environmental Protection



Bureau of Remedial Action Permitting
401 East State Street
P.O. Box 420
Mail Code 401-05S
Trenton, NJ 08625-0420
Phone #: 609-984-2990

**SOIL REMEDIAL ACTION PERMIT
Deed Notice with Engineering Control**

The New Jersey Department of Environmental Protection hereby grants you a Remedial Action Permit pursuant to N.J.S.A. 58:10C-1 et seq. and N.J.A.C. 7:26C-1 et seq. for the facility/activity named in this document. This permit is the regulatory mechanism used by the Department to help ensure your remedial action will be protective of human health and the environment.

This permit establishes the monitoring, maintenance, and evaluation requirements for determining the effectiveness of the deed notice's engineering control. Specifically, a September 27, 2016 telephone conversation with the licensed site remediation professional (LSRP), indicated that the engineering controls associated with the Deed Notice will be inspected on a semi-annual schedule.

Site: Oakley Specialized Services, Inc.

<u>Facility Address:</u> 700 Middlesex Ave. Metuchen Boro, NJ 08840 Middlesex County Block: 71 Lot: 37.02	<u>Program Interest#:</u> 024790 <u>Permit#:</u> RAP160002
<u>Person Responsible for Conducting the Remediation /-Property Owner -Permittee:</u> Stuart Schooler Managing Member METUCHEN I LLC 8101 Glenbrook Road, Floor 1, Suite B Bethesda, MD 20814 Phone: (301) 656-1956 Email: stuart.schooler@themavengroup.us	
X – Primary Responsibility for Permit Compliance	

Issuance Date:
09/28/2016

Effective Date:
09/29/2016

I. Authority

The Department is issuing this permit in accordance with N.J.S.A. 58:10C-1 et seq. and N.J.A.C. 7:26C-1et seq.

II. Permit Requirements

A. MONITORING REQUIREMENTS

1. The permittee shall conduct monitoring and maintenance pursuant to Exhibit C of the attached Deed Notice. [N.J.A.C. 7:26C- 7.8(a)2]
2. The permittee shall conduct periodic inspections of each engineering control to determine its integrity, operability, and effectiveness. [N.J.A.C. 7:26C- 7.8(b)2]
3. The permittee shall conduct periodic inspections of any excavations or disturbances that have resulted in unacceptable exposure to the soil contamination. The permittee shall maintain a detailed maintenance and evaluation log. [N.J.A.C. 7:26C- 7.8(b)]

B. REMEDIAL ACTION PROTECTIVENESS/BIENNIAL CERTIFICATION FORM

1. Reporting Requirements

- a. The permittee shall prepare and submit to the Department a Remedial Action Protectiveness/Biennial Certification Form every two years following the anniversary of the date of the effective date of this permit. The certification shall be submitted on the required form provided by the Department. Submit a Remedial Action Protectiveness/Biennial Certification Form biennially from the effective date of this permit. [N.J.A.C. 7:26C- 7.7(a)1]

2. Evaluation Requirements

- a. The permittee shall hire a Licensed Site Remediation Professional to prepare and certify that the remedial action continues to be protective of the public health and safety and the environment. [N.J.A.C. 7:26C- 1.5(a)2]
- b. The permittee shall conduct the remediation in accordance with all applicable statutes, rules, and guidance. [N.J.A.C. 7:26C- 1.2(a)]
- c. The permittee shall provide the results of the periodic inspections required under the monitoring requirements of this permit. [N.J.A.C. 7:26C- 7.8(c)]
- d. The Remedial Action Protectiveness/Biennial Certification Form shall include an evaluation of any actual or pending zoning or land use changes to determine if these changes are consistent with the use restrictions contained in the attached deed notice/declaration of environmental restriction. If the evaluation finds that the engineering/institutional controls are no longer protective of the public health and safety and the environment, the permittee shall implement appropriate remedial action to ensure that the engineering/institutional controls are protective of the public health and safety and the environment. [N.J.A.C. 7:26C- 7.8(b)1]
- e. The Remedial Action Protectiveness/Biennial Certification Form shall include a comparison of the laws, Remediation Standards, and other regulations applicable at the time the engineering or institutional control was established with any relevant subsequently promulgated or modified laws or regulations to determine whether the engineering or institutional control remains protective. The results shall be provided in table format, comparing of applicable laws, regulations, and standards. [N.J.A.C. 7:26C- 7.8(b)3]

C. FINANCIAL ASSURANCE REQUIREMENTS

1. Reporting Requirements - Letter of Credit

a. The permittee shall have the issuer of the Letter of Credit notify the Department, and the person providing the Letter of Credit by certified mail that, if the issuer of the Letter of Credit decides not to extend the letter of credit beyond the expiration date. Submit a written notification of lapse of Letter of Credit prior to 120 days before the letter of credit expiration date. [N.J.A.C. 7:26C- 5.7(a)4]

b. The permittee shall prepare an estimate of the future costs to operate, maintain, and inspect all engineering controls subject to this permit, and submit it to the Department. Submit engineering controls maintenance cost estimate with the Protectiveness/Biennial Certification biennially from the effective date of this permit. [N.J.A.C. 7:26C- 7.10(a)1]

2. Financial Assurance - Maintenance

a. The permittee shall maintain financial assurance in an amount equal to or greater than the most recent estimated full cost to operate, maintain, and inspect all engineering controls that are part of any remedial action over the life of the permit. [N.J.A.C. 7:26C- 7.7(a)3]

D. FEES

1. For each year hereafter on the anniversary of the effective date of this permit, the Department shall invoice the permittees the amount of the annual Remedial Action Permit Fee. [N.J.A.C. 7:26C- 4.6]

E. PERMIT TRANSFERS

1. The permittee shall, at least 60 days prior to the sale or transfer of the property, or transfer of the operation of the property, or termination of a lease, submit a Remedial Action Permit Transfer/Change of Ownership Application and pay the permit transfer fee to the Department. [N.J.A.C. 7:26C- 7.11(b)]

F. PERMIT MODIFICATIONS

1. Soil Permit Modifications

a. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after a statement that the permittee has completed a protectiveness evaluation required in its permit and has determined that the remedial action is not adequately protective of the public health and safety and of the environment, and stating the reasons for coming to this conclusion. [N.J.A.C. 7:26C- 7.12(b)1]

b. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after any person proposes to change the engineering controls applicable to the site, as described in the deed notice filed for the property. [N.J.A.C. 7:26C- 7.12(b)3]

c. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after the person responsible for conducting the remediation modifies the remedial action. [N.J.A.C. 7:26C- 7.12(b)4]

d. The permittee shall apply to have the Department modify a Remedial Action Permit within 30 days after the permittee changes its address. [N.J.A.C. 7:26C- 7.12(b)6]

G. PERMIT TERMINATIONS

1. A request for a permit termination can be filed by submitting a Remedial Action Permit Application to terminate the permit to the Department when the remedial action meets all applicable remediation standards without the need for the Remedial Action Permit and the remedial action is protective of the public health and safety and of the environment without the presence of the Remedial Action Permit. [N.J.A.C. 7:26C- 7.13]

H. FORM SUBMITTAL

1. Any forms, applications or documents required by this chapter that can be submitted in an electronic format shall be submitted electronically 90 days after the date that the Department informs the public in the New Jersey Register that the relevant electronic application is functional. [N.J.A.C. 7:26C- 1.6(c)]
2. All submissions required pursuant to this permit shall be made on forms approved and available from the Department. These forms and instructions for completing these forms can be found at <http://www.nj.gov/dep/srp/srra/forms>. [N.J.A.C. 7:26C- 1.6]

I. RESTRICTED LAND USES

1. Contaminated sites remediated to non-residential soil remediation standards that require the maintenance of engineering and/or institutional controls cannot be converted to a child care facility, public, private or charter school without the Department's prior approval, unless a pre-sumptive remedy is implemented pursuant to the Department's Presumptive Remedies for Soil Contamination at Schools, Child Care Centers, and Residences. [N.J.A.C. 7:26E- 5.3]

III. Permit Schedule

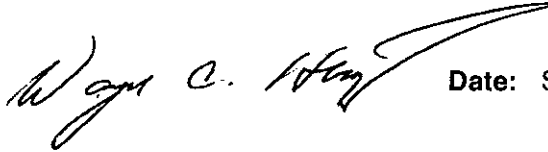
Permit Effective Date: 09/29/2016	
Submission Requirement	Due Date
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2018
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2020
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2022
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2024
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2026
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2028
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2030
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2032
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2034
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2036
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2038
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2040
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2042
Submit a Remedial Action Protectiveness/Biennial Certification Form	09/29/2044

Soil Remedial Action Permit #: RAP160002
 Site: Oakley Specialized Services, Inc.
 PI #: 024790, Block: 71 Lot: 37.02

Note: Remedial Action Protectiveness/Biennial Certification Forms are required to be submitted according to the schedule, and shall continue to be submitted until the Permit is terminated or modified.

Your Soil Remedial Action Permit under Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C-1 et seq. has been approved by the New Jersey Department of Environmental Protection.

Sincerely,



Date: September 28, 2016

Wayne C. Howitz, Assistant Director
Remediation Oversight Element

IV. Attachments:

A. Deed Notice

Deed Notice ID: DER1226089

Filed Deed Notice in the Middlesex County Clerk's Office

Book Number the Deed Notice is filed in: 06655

Page Numbers: 590--621

Date Filed: 01/23/2015

Block: 71 Lot: 37.02



MIDDLESEX COUNTY CLERK

Return To:

WILENTZ, GOLDMAN
90 WOODBRIDGE CTR DR
WDB, NJ, 07095

Index DEED BOOK

Book 06655 Page 0590

No. Pages 0031

Instrument DEED W/O ABSTRA

Date : 1/23/2015

Time : 10:58:23

Control # 201501230096

INST# DE 2015 000855

METUCHEN I, LLC

Employee ID MALTBS

RECORDING	\$	170.00
DARM	\$	90.00
NJPRPA	\$	60.00
- - - - -	\$	.00
- - - - -	\$	.00
RECORDING	\$	3.00
	\$	.00
	\$	.00
	\$	.00

Total: \$ 323.00

STATE OF NEW JERSEY
MIDDLESEX COUNTY CLERK

PLEASE NOTE
DO NOT REMOVE THIS COVERSHEET
IT CONTAINS ALL RECORDING INFORMATION

ELAINE FLYNN
COUNTY CLERK



Cover sheet is part of Middlesex County filing record
Retain this page for future reference
Not part of the original submitted document

DO NOT REMOVE THIS PAGE.
TO ACCESS THE IMAGE OF
THE DOCUMENT RECORDED
HEREUNDER BY BOOK AND
PAGE NUMBER, USE THE
BOOK AND PAGE NUMBER
ABOVE.

DEED NOTICE

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: *Jeffrey W. Cappola*
Jeffrey W. Cappola, Esq.

Recorded by: _____
[Signature, Officer of County Recording Office]

[Print name below signature]

RECORDED
ELAINE M. FLYNN
MIDDLESEX COUNTY CLERK
2015 JAN 23 AM 11:00
BOOK # 6655
PAGE # 590
OF PAGES 30

DEED NOTICE

This Deed Notice is made as of the 1-12-15 day of ~~December, 2014~~, by Metuchen I, LLC, a New Jersey limited liability company located at 8101 Glenbrook Road, Suite B, Bethesda, MD 20814 together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. Metuchen I, LLC, a New Jersey limited liability company located at 8101 Glenbrook Road, Suite B, Bethesda, MD 20814 is the owner in fee simple of certain real property designated as Block 71 Lots 37.02 on the tax map of the Borough of Metuchen, Middlesex County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site that includes this property is PI #: 024790; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").

2. REMEDIATION.

i. William Schnitzerling, LSRP License # 587821, has approved this Deed Notice as an institutional control for the Property, which is part of the remediation of the Property.

ii. N.J.A.C. 7:26C-7 requires the Owner, among other persons, to obtain a soil remedial action permit for the soil remedial action at the Property. That permit will contain the monitoring, maintenance and biennial certification requirements that apply to the Property.

3. SOIL CONTAMINATION. Metuchen I, LLC has remediated contaminated soil at the Property, such that soil contamination remains in certain areas of the Property that contains contaminants in concentrations that do not allow for the unrestricted use of the Property; this soil contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is

JD

a statutory requirement for this Deed Notice and engineering control, two foot soil cap, in accordance with N.J.S.A. 58:10B-13.

4. CONSIDERATION. In accordance with the remedial action for the site, which included the Property, and in consideration of the terms and conditions of that remedial action, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements that impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessees and operators of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of contamination remaining at concentrations that do not allow for unrestricted use, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property (the "Restricted Areas"); a narrative description of these restrictions is provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental officials.

5B. RESTRICTED LAND USES. The following statutory land use restrictions apply to the Restricted Areas:

i. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(10), prohibits the conversion of a contaminated site, remediated to non-residential soil remediation standards that require the maintenance of engineering or institutional controls, to a child care facility, or public, private, or charter school without the Department's prior written approval, unless a presumptive remedy is implemented; and

ii. The Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-12.g(12), prohibits the conversion of a landfill, with gas venting systems and/or leachate collection systems, to a single family residence or a child care facility without the Department's prior written approval.

5C. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the Property; a narrative description of these engineering controls is provided in Exhibit C.

6A. CHANGE IN OWNERSHIP AND REZONING.

i. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection on a form provided by the Department and available at www.nj.gov/srp/forms within thirty (30) calendar days after the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the Restricted Area.

iii. The Owner and the subsequent owners shall provide written notice to the Department, on a form available from the Department at www.nj.gov/srp/forms, within thirty (30) calendar days after the owner's petition for or filing of any document initiating a rezoning of the Property to residential.

6B. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessees and operators while each is an owner, lessee, or operator of the Property.

7A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. The Owner and all subsequent owners and lessees shall notify any person, including, without limitation, tenants, employees of tenants, and contractors, intending to conduct invasive work or excavate within the Restricted Areas, of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

ii. Except as provided in Paragraph 7B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property which disturbs any engineering control at the Property without first obtaining a soil remedial action permit modification pursuant to N.J.A.C. 7:26C-7. Nothing herein shall constitute a waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration.

iii. Notwithstanding subparagraph 7Aii., above, a soil remedial action permit modification is not required for any alteration, improvement, or disturbance provided that the owner, lessee or operator:

(A) Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;

(B) Restores any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;

(C) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(D) Ensures that human exposure to contamination in excess of the remediation standards does not occur; and

(E) Describes, in the next biennial certification the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance.

7B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, or immediate environmental concern, see N.J.S.A. 58:10C-2, any person may temporarily breach an engineering control provided that that person complies with each of the following:

i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;

ii. Hires a Licensed Site Remediation Professional (unless the Restricted Areas includes an unregulated heating oil tank) to respond to the emergency;

iii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;

iv. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;

v. Notifies the Department of Environmental Protection when the emergency or immediate environmental concern has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337; and

vi. Restores the engineering control to the pre-emergency conditions as soon as possible, and provides notification to the Department of Environmental Protection within sixty (60) calendar days after completion of the restoration of the engineering control, including: (a) the nature and likely cause of the emergency; (b) the potential discharges of or exposures to contaminants, if any, that may have occurred; (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment; (d) the measures completed or implemented to restore the engineering control; and (e) the changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future.

8. TERMINATION OF DEED NOTICE.

i. This Deed Notice may be terminated only upon filing of a Termination of Deed Notice, available at N.J.A.C. 7:26C Appendix C, with the office of the County Clerk/Register of Deeds of Middlesex County, New Jersey, expressly terminating this Deed Notice.

ii. Within thirty (30) calendar days after the filing of a Termination of Deed Notice, the owner of the property shall apply to the Department for termination of the soil remedial action permit pursuant to N.J.A.C. 7:26C-7.

9. ACCESS. The Owner, and the subsequent owners, lessees and operators agree to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if the subsequent owners, lessees and operators, during their ownership, tenancy, or operation, and the Owner fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

10. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.

ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C, and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11, and N.J.S.A. 58:10C.

11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

12A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, USGS Quad map, Hagstrom County Maps);

ii. Exhibit A-2: Metes and Bounds Description - A tax map of lots and blocks as wells as metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;

iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

12B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map - A separate map for each restricted area that includes:

(A) As-built diagrams of each engineering control, including caps, fences, slurry walls, (and, if any) ground water monitoring wells, extent of the ground water classification exception area, pumping and treatment systems that may be required as part of a ground water engineering control in addition to the deed notice

(B) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(C) Designation of all soil and sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2: Restricted Area Data Table - A separate table for each restricted area that includes either (A) or (B) through (F):

(A) Only for historic fill extending over the entire site or a portion of the site and for which analytical data are limited or do not exist, a narrative that states that historic fill is present at the site, a description of the fill material (e.g., ash, cinders, brick, dredge material), and a statement that such material may include, but is not limited to, contaminants such as PAHs and metals;

(B) Sample location designation from Restricted Area map (Exhibit B-1);

(C) Sample elevation based upon mean sea level;

(D) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;

(E) The restricted and unrestricted use standards for each contaminant in the table; and

(F) The remaining concentration of each contaminant at each sample location at each elevation.

12C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls as follows:

i. Exhibit C-1: Deed Notice as Institutional Control: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those described above, as follows:

(A) Description and estimated size of the Restricted Areas as described above;

(B) Description of the restrictions on the Property by operation of this Deed Notice;
and

(C) The objective of the restrictions.

ii. Exhibit C-2: Two foot soil cap: Exhibit C-2 includes a narrative description of the two foot soil cap as follows:

(A) Description of the engineering control;

(B) The objective of the engineering control; and

(C) How the engineering control is intended to function.

13. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

ATTEST: Thomas Albert Metuchen I, LLC
THOMAS ALBERT By: Stuart Schooler
AGENT [Print name and title] Stuart Schooler [Signature]

STATE OF MARYLAND SS.:
COUNTY OF MONTGOMERY JAN 12, 2015

I certify that on ~~December~~, 2014, Stuart Schooler personally came before me, and this person acknowledged under oath, to my satisfaction, that:

- (a) this person is the Managing Member of Metuchen I, LLC, the company named in this document;
- (b) this person is the attesting witness to the signing of this document by the proper company officer who is the Managing Member of the limited liability company;
- (c) this document was signed and delivered by the company as its voluntary act and was duly authorized; and
- (d) this person signed this proof to attest to the truth of these facts.

Thomas Albert
[Signature]
THOMAS ALBERT
[Print name and title of attesting witness]

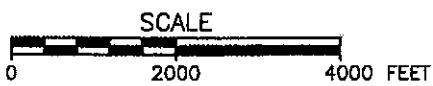
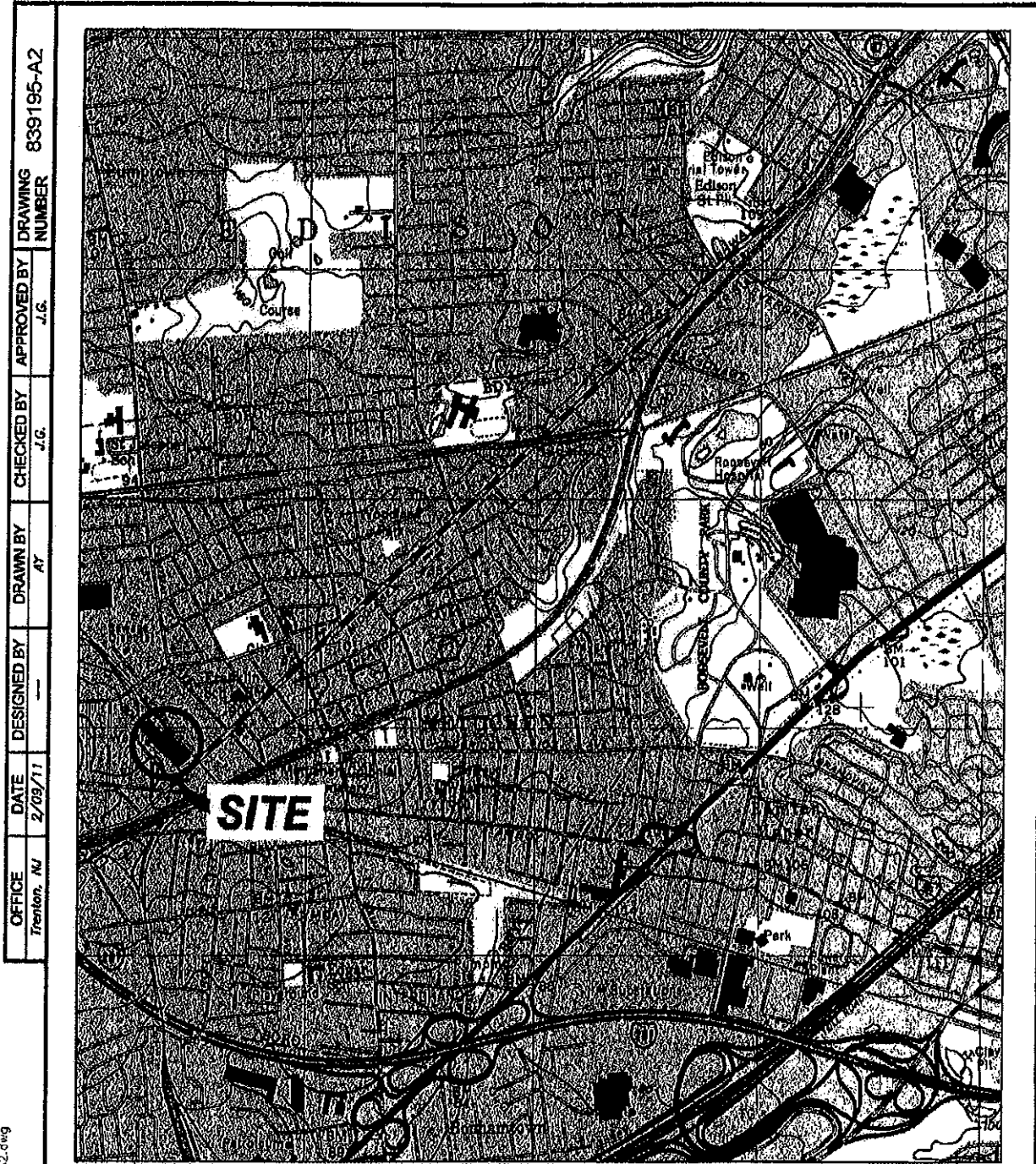
Signed and sworn before me on ~~December~~, 2014 JAN 12, 2015,
Valerie Threat, Notary Public
Valerie Threat, Asst. Property Manager
[Print name and title]

3/29/2014 5:59:58 PM

Exhibit A-1

ILLEGIBLE ORIGINAL
Middlesex County Clerk

File: H:\DWGS\839195-metuchen\839195-A2.dwg
 Plot Date/Time: Feb 04, 2012 - 4:22pm
 Plotted By: andrius.yanoravicius



REFERENCE:
 7.5 MIN SERIES PERTH AMBOY NJ-NY USGS QUADRANGLE
 LATITUDE: 40°-32'-30", LONGITUDE 74°-22'-30"



CBI
 200 Horizon Center Blvd.
 Trenton, NJ 08691-1904

FIGURE 1
 SITE LOCATION MAP
 METUCHEN, LLC
 METUCHEN, NEW JERSEY
 DECEMBER 2010

1/27/2025 10:25:15 AM

Exhibit A-2

**METES AND BOUNDS DESCRIPTION
LOT 37.02, BLOCK 71
BOROUGH OF METUCHEN
MIDDLESEX COUNTY, NEW JERSEY**

BEGINNING AT AN IRON BAR WITH CAP FOUND WHERE THE SOUTHERLY LINE OF DURHAM AVENUE (60 FOOT WIDE RIGHT OF WAY) IS INTERSECTED BY THE DIVIDING LINE BETWEEN LOT 37.02, BLOCK 71, AND LOT 125.07 (N/F LANDS OF THE BOROUGH OF METUCHEN), BLOCK 69, AND FROM SAID BEGINNING POINT RUNNING THENCE;

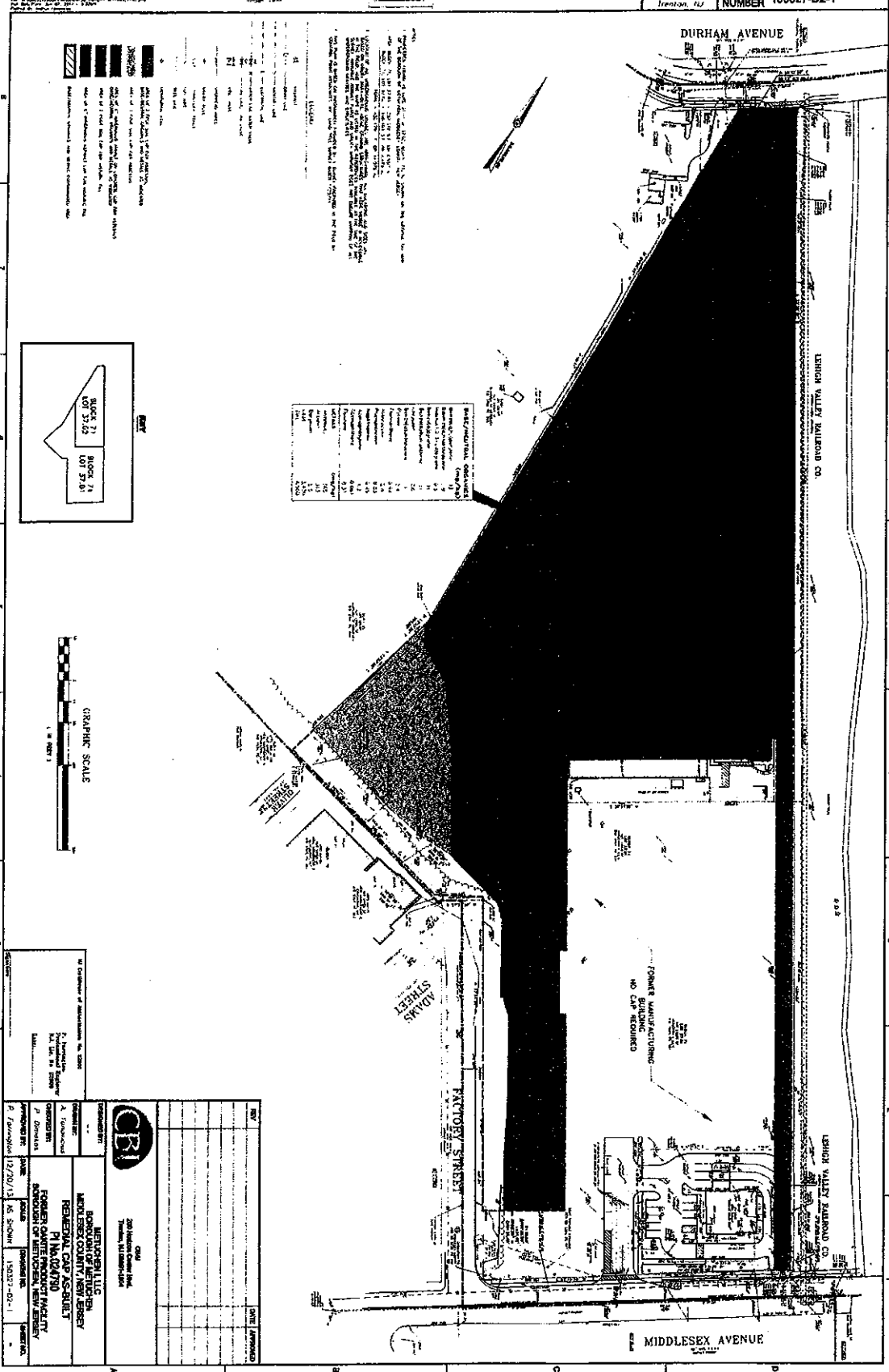
1. ALONG SAID SOUTHERLY LINE, NORTH 56 DEGREES -12 MINUTES -30 SECONDS EAST, A DISTANCE OF 69.82 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF LANDS NOW OR FORMERLY OF THE LEHIGH VALLEY RAILROAD COMPANY, THENCE;
2. ALONG SAID LINE, SOUTH 32 DEGREES - 28 MINUTES - 30 SECONDS EAST, A DISTANCE OF 813.29 FEET TO A POINT, THENCE; PROCEEDING ALONG THE DIVIDING LINE BETWEEN LOT 37.02 AND LOT 37.01, BLOCK 71, THE FOLLOWING TWO (2) COURSES'
3. SOUTH 57 DEGREES -31 MINUTES -30 SECONDS WEST, A DISTANCE OF 288.63 FEET TO A POINT, THENCE;
4. NORTH 32 DEGREES -28 MINUTES -30 SECONDS WEST, A DISTANCE OF 453. 12 FEET TO AND IRON BAR WITH CAP FOUND, THENCE;
5. ALONG THE AFOREMENTIONED DIVIDING LINE BETWEEN LOT 37.02, BLOCK 71, AND LOT 125.07, BLOCK 69, NORTH 01 DEGREE -04 MINUTES -47 SECONDS WEST, A DISTANCE OF 420.07 FEET TO THE POINT AND PLACE OF BEGINNING.

CONTAINING 195,101 SQUARE FEET OR 4.479 ACRES

Exhibit A-3

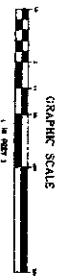
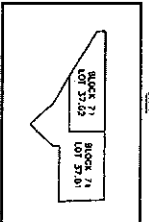
OFFICE
Trenton, NJ

DRAWING NUMBER
160327-D2-1



- 1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- 2. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 3. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 4. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 5. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 6. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 7. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 8. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 9. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.
- 10. ALL DIMENSIONS ARE TO BE MAINTAINED THROUGHOUT CONSTRUCTION.

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	Excavation	100	cu yd	1.00	100.00
2	Concrete	100	sq ft	1.00	100.00
3	Reinforcing Steel	100	lb	1.00	100.00
4	Formwork	100	sq ft	1.00	100.00
5	Gravel	100	cu yd	1.00	100.00
6	Asphalt	100	sq ft	1.00	100.00
7	Paint	100	gal	1.00	100.00
8	Electric	100	hr	1.00	100.00
9	Plumbing	100	hr	1.00	100.00
10	Mechanical	100	hr	1.00	100.00



IN COMPLIANCE WITH THE PROVISIONS OF THE
ACTING SUPERVISOR OF CONSTRUCTION

DATE OF INSPECTION: 12/20/11

BY: [Signature]

CRB

CONSTRUCTION REVIEW BOARD

12/20/11

160327-D2-1

NO.	DESCRIPTION	QTY	UNIT	PRICE	TOTAL
1	Excavation	100	cu yd	1.00	100.00
2	Concrete	100	sq ft	1.00	100.00
3	Reinforcing Steel	100	lb	1.00	100.00
4	Formwork	100	sq ft	1.00	100.00
5	Gravel	100	cu yd	1.00	100.00
6	Asphalt	100	sq ft	1.00	100.00
7	Paint	100	gal	1.00	100.00
8	Electric	100	hr	1.00	100.00
9	Plumbing	100	hr	1.00	100.00
10	Mechanical	100	hr	1.00	100.00

160327-D2-1

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Exhibit B-1

Exhibit B-2

Exhibit B-2 Narrative Description of Historic Fill Area

In the previous soil investigation following the removal of debris in the south-eastern portion of Block 71, Lot 37.02, along the former railroad line spur, base/neutral organics and metals contaminants were detected in soil samples collected at the eastern property line. The base/neutral organics and metals contaminants in soil were suspected to be from historic fill material deposited during site/property development and/or on-site railroad line spur installation in this portion of the site. To further investigate the potential source of contaminants in soil as originating from historic fill, soil borings were advanced in this portion of the property. Two samples were collected from each boring and descriptive logs of the fill and soil encountered at each boring were completed. Samples were collected from the suspected historic fill material at grade and from the natural soil immediately below the suspected historic fill at the depth observed during advancement of each soil boring.

The fill materials observed in the soil borings were typical historic fill constituents: cinders, brick fragments, non-indigenous sands, etc. Analytical results for the samples collected at grade further indicated that the material is historic fill as the surficial soil boring samples had contaminants detected at relatively higher concentrations than the soil boring samples collected from the natural soil. Additionally, the soil boring samples collected from the naturally deposited soil did not have as many contaminants actually detected as the surficial soil boring samples collected from the suspected historic fill. The soil boring samples collected from the naturally deposited soil were at depths ranging from 5.0 to 10.5 feet below grade. The detected contaminants at grade were arsenic, beryllium, copper, lead, benzo(a)anthracene, benzo(b)fluoranthene and benzo(a)pyrene, typical in historic fill consisting of cinders, brick fragments, non-indigenous sands and so forth. Table 2, attached, provides a summary of the soil sampling analytical results for the soil boring samples.

Results of this soil boring investigation indicate historic fill is present in this portion of the property based on the following:

- ◆ The constituents of the surficial fill material observed from grade are typical historic fill materials vs. the naturally occurring soil observed at 5.0 to 10.5 feet below grade;
- ◆ The specific contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval are relatively higher in concentration vs. the decreased concentration of those detected in the naturally occurring soil boring samples collected at depths up to 10.0 to 10.5 feet below grade;
- ◆ The number of contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval are relatively greater vs. the number of those detected in the soil boring samples collected from the naturally occurring soil at depths up to 10.0 to 10.5 feet below grade.

These results indicate the contaminant source in surficial soil in this portion of the property is historic fill, evidently placed as a part of the development in this portion of the site/property.

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

	Analytical Laboratory ID:	1888-001	1888-002	1888-003	1888-004	1888-005	1888-006
Sample ID:	A6 B-1	A6 B-1	A6 B-2	A6 B-2	A6 B-3	A6 B-3	A6 B-3
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	9.0 to 9.5'	0 to 0.5'	7.5 to 8.0'	0 to 0.5'	7.0 to 7.5'	
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)							
METALS (mg/Kg)							
Antimony	14	ND	ND	ND	ND	ND	ND
Arsenic	20	29.8	0.433	15.5	2.6	2.11	1.59
Beryllium	2	0.619	0.551	1.18	0.679	0.844	0.926
Cadmium	39	2.99	ND	0.748	ND	0.321	ND
Chromium (trivalent)	120,000	20.6	15.4	35.7	15.7	31.1	37.3
Copper	600	114	7.29	108	10.5	39.5	14.3
Lead	400	339	7.76	234	16.4	40.9	22.2
Mercury	14	0.175	ND	0.254	0.0415	0.0449	ND
Nickel	250	21.7	11.3	23.7	14.1	18.7	35
Selenium	63	ND	ND	ND	ND	ND	ND
Silver	110	ND	ND	0.787	ND	ND	ND
Thallium	2	0.125	ND	0.131	0.145	0.115	0.162
Zinc	1500	550	30.5	264	50.3	91.3	189

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.
 J = detected at an estimated concentration below the analytical laboratory reporting limit.
 N:\common\pdimakos\landbank\Table 2 for Exhibit B-2.xls

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

Analytical Laboratory ID:	1888-001	1888-002	1888-003	1888-004	1888-005	1888-006
Sample ID:	A6 B-1	A6 B-1	A6 B-2	A6 B-2	A6 B-3	A6 B-3
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	9.0 to 9.5'	0 to 0.5'	7.5 to 8.0'	0 to 0.5'	7.0 to 7.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
BASE NEUTRAL ORGANICS (mg/Kg)						
Acenaphthene	3,400	ND	ND	ND	ND	ND
Acenaphthylene	None	ND	ND	ND	ND	ND
Anthracene	10,000	ND	ND	ND	0.381	ND
Benzidine	None	ND	ND	ND	ND	ND
Benzo(a)anthracene	0.9	0.22	ND	0.63	ND	0.24
Benzo(b)fluoranthene	0.9	0.30	ND	0.586	ND	0.19
Benzo(k)fluoranthene	0.9	0.448	ND	0.208 J	ND	0.507
Benzo(a)pyrene	0.66	0.42	ND	0.417	ND	0.91
Benzo(g,h,i)perylene	None	0.401	ND	0.214 J	ND	0.471
Bis(2-Chloroethyl)ether	0.66	ND	ND	ND	ND	ND
Bis(2-Chloroethoxy)methane	None	ND	ND	ND	ND	ND
Bis(2-Ethylhexyl)phthalate	49	ND	ND	ND	ND	ND
Bis(2-Chloroisopropyl) ether	2,300	ND	ND	ND	ND	ND
4-Bromophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Butyl Benzyl Phthalate	1,100	ND	ND	ND	ND	ND
2-Chloronaphthalene	None	ND	ND	ND	ND	ND
4-Chlorophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Chrysene	9	0.853	ND	0.435	ND	1.34
Dibenzo(a,h)anthracene	0.66	ND	ND	ND	ND	ND
Di-n-butylphthalate	5,700	ND	ND	ND	ND	ND
1,2-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,3-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,4-Dichlorobenzene	570	ND	ND	ND	ND	ND
3,3'-Dichlorobenzidine	2	ND	ND	ND	ND	ND
Diethylphthalate	10,000	ND	ND	ND	ND	ND
Dimethylphthalate	10,000	ND	ND	ND	ND	ND
2,4-Dinitrotoluene	1	ND	ND	ND	ND	ND
2,6-Dinitrotoluene	1	ND	ND	ND	ND	ND
Di-n-Octylphthalate	1,100	ND	ND	ND	ND	ND
1,2-Diphenylhydrazine	None	ND	ND	ND	ND	ND
Fluoranthene	2,300	1.28	ND	0.614	ND	2.42
Fluorene	2,300	ND	ND	ND	0.146 J	ND
Hexachlorobenzene	0.66	ND	ND	ND	ND	ND
Hexachlorobutadiene	1	ND	ND	ND	ND	ND
Hexachloroethane	6	ND	ND	ND	ND	ND
Hexachlorocyclopentadiene	400	ND	ND	ND	ND	ND
Indeno(1,2,3-cd)pyrene	0.9	0.35	ND	0.172 J	ND	0.358
Isophorone	1,100	ND	ND	ND	ND	ND
2-Methylnaphthalene	None	ND	ND	ND	ND	ND
Naphthalene	230	ND	ND	ND	ND	ND
Nitrobenzene	28	ND	ND	ND	ND	ND
N-Nitroso-dimethylamine	None	ND	ND	ND	ND	ND
N-Nitrosodi-n-propylamine	0.66	ND	ND	ND	ND	ND
N-Nitrosodiphenylamine	140	ND	ND	ND	ND	ND
Phenanthrene	None	0.496	ND	0.171 J	ND	1.54
Pyrene	1,700	1.86	ND	0.814	ND	2.65
1,2,4-Trichlorobenzene	68	ND	ND	ND	ND	ND

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

Analytical Laboratory ID:	1888-007	1888-008	1888-009	1888-010	1888-011	1888-012
Sample ID:	A6 B-4	A6 B-4	A6 B-5	A6 B-5	A6 B-6	A6 B-6
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	5.5 to 6.0'	0 to 0.5'	8.0 to 8.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
METALS (mg/Kg)						
Antimony	14	ND	ND	ND	ND	ND
Arsenic	20	17.2	3.87	6.28	2.26	14.6
Beryllium	2	1.14	0.612	0.728	0.689	0.531
Cadmium	39	0.699	0.359	0.761	ND	1.52
Chromium (trivalent)	120,000	29	91.3	28.9	18.5	16
Copper	600	363	31.6	74.5	9.96	105
Lead	400	892	54.6	286	13	337
Mercury	14	0.117	0.039	0.141	0.017	0.106
Nickel	250	18.9	24.6	29.5	20.5	23.2
Selenium	63	ND	ND	ND	ND	ND
Silver	110	ND	ND	ND	ND	ND
Thallium	2	0.122	0.125	0.13	0.115	0.134
Zinc	1500	360	452	346	62	304

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

Analytical Laboratory ID:	1888-007	1888-008	1888-009	1888-010	1888-011	1888-012
Sample ID:	A6 B-4	A6 B-4	A6 B-5	A6 B-5	A6 B-6	A6 B-6
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	5.5 to 6.0'	0 to 0.5'	8.0 to 8.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
BASE NEUTRAL ORGANICS (mg/Kg)						
Acenaphthene	3,400	ND	ND	ND	ND	ND
Acenaphthylene	None	ND	ND	ND	ND	ND
Anthracene	10,000	ND	ND	ND	ND	ND
Benzidine	None	ND	ND	ND	ND	ND
Benzo(a)anthracene	0.9	0.246	ND	0.425	ND	0.318
Benzo(b)fluoranthene	0.9	0.216	ND	0.458	ND	0.288
Benzo(k)fluoranthene	0.9	ND	ND	0.158 J	ND	ND
Benzo(a)pyrene	0.66	0.15 J	ND	0.308	ND	0.205 J
Benzo(g,h,i)perylene	None	ND	ND	0.179 J	ND	ND
Bis(2-Chloroethyl)ether	0.66	ND	ND	ND	ND	ND
Bis(2-Chloroethoxy)methane	None	ND	ND	ND	ND	ND
Bis(2-Ethylhexyl)phthalate	49	ND	ND	ND	ND	ND
Bis (2-Chloroisopropyl) ether	2,300	ND	ND	ND	ND	ND
4-Bromophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Butyl Benzyl Phthalate	1,100	ND	ND	ND	ND	ND
2-Chloronaphthalene	None	ND	ND	ND	ND	ND
4-Chlorophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Chrysene	9	0.142 J	ND	0.281	ND	0.187 J
Dibenzo(a,h)anthracene	0.66	ND	ND	ND	ND	ND
Di-n-butylphthalate	5,700	ND	ND	ND	ND	ND
1,2-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,3-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,4-Dichlorobenzene	570	ND	ND	ND	ND	ND
3,3'-Dichlorobenzidine	2	ND	ND	ND	ND	ND
Diethylphthalate	10,000	ND	ND	ND	ND	ND
Dimethylphthalate	10,000	ND	ND	ND	ND	ND
2,4-Dinitrotoluene	1	ND	ND	ND	ND	ND
2,6-Dinitrotoluene	1	ND	ND	ND	ND	ND
Di-n-Octylphthalate	1,100	ND	ND	ND	ND	ND
1,2-Diphenylhydrazine	None	ND	ND	ND	ND	ND
Fluoranthene	2,300	0.208 J	ND	0.425	ND	0.311
Fluorene	2,300	ND	ND	ND	ND	ND
Hexachlorobenzene	0.66	ND	ND	ND	ND	ND
Hexachlorobutadiene	1	ND	ND	ND	ND	ND
Hexachloroethane	6	ND	ND	ND	ND	ND
Hexachlorocyclopentadiene	400	ND	ND	ND	ND	ND
Indeno(1,2,3-cd)pyrene	0.9	ND	ND	ND	ND	ND
Isophorone	1,100	ND	ND	ND	ND	ND
2-Methylnaphthalene	None	ND	ND	ND	ND	ND
Naphthalene	230	ND	ND	ND	ND	ND
Nitrobenzene	28	ND	ND	ND	ND	ND
N-Nitroso-dimethylamine	None	ND	ND	ND	ND	ND
N-Nitrosodi-n-propylamine	0.66	ND	ND	ND	ND	ND
N-Nitrosodiphenylamine	140	ND	ND	ND	ND	ND
Phenanthrene	None	ND	ND	ND	ND	ND
Pyrene	1,700	0.275	ND	0.536	ND	0.385
1,2,4-Trichlorobenzene	68	ND	ND	ND	ND	ND

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

	1888-013	1888-014	1888-015	1888-016	1888-017	1888-018	
Analytical Laboratory ID:	1888-013	1888-014	1888-015	1888-016	1888-017	1888-018	
Sample ID:	A6 B-7	A6 B-7	A6 B-8	A6 B-8	A6 B-9	A6 B-9	
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	10.0 to 10.5'	0 to 0.5'	10.0 to 10.5'	
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)							
METALS (mg/Kg)							
Antimony	14	ND	ND	ND	ND	ND	
Arsenic	20	6.91	2.72	17.6	2.12	3.82	14.5
Beryllium	2	0.641	0.836	0.394	0.831	1.11	1.28
Cadmium	39	0.809	ND	1.3	0.356	0.808	0.923
Chromium (trivalent)	120,000	20.2	15.1	115	31.3	1760	54.4
Copper	600	52.2	11.9	50.9	14.6	37.3	21.6
Lead	400	65.7	20.3	151	18.6	65.2	12.6
Mercury	14	0.126	0.045	0.223	ND	0.566	0.0591
Nickel	250	18.2	13	22.6	36.8	62.9	27.5
Selenium	63	ND	3.42	ND	ND	ND	ND
Silver	110	ND	ND	ND	ND	ND	ND
Thallium	2	0.116	0.183	0.165	0.151	0.136	ND
Zinc	1500	473	47.5	309	105	1270	92.4

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

Table 2

**Work Area 6 Historic Fill Delineation Soil Sampling
Analytical Results Summary**

Analytical Laboratory ID:	1888-013	1888-014	1888-015	1888-016	1888-017	1888-018
Sample ID:	A6 B-7	A6 B-7	A6 B-8	A6 B-8	A6 B-9	A6 B-9
Sample Date:	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00	3-Apr-00
Sample Depth:	0 to 0.5'	5.0 to 5.5'	0 to 0.5'	10.0 to 10.5'	0 to 0.5'	10.0 to 10.5'
NJDEP Residential Direct Contact Soil Cleanup Criteria (mg/Kg)						
BASE NEUTRAL ORGANICS (mg/Kg)						
Acenaphthene	3,400	ND	ND	ND	ND	ND
Acenaphthylene	None	ND	ND	0.21 J	ND	ND
Anthracene	10,000	ND	ND	0.156 J	ND	ND
Benizidine	None	ND	ND	ND	ND	ND
Benzo(a)anthracene	0.9	0.282	ND		ND	ND
Benzo(b)fluoranthene	0.9	0.211	ND		ND	ND
Benzo(k)fluoranthene	0.9	ND	ND	0.474	ND	ND
Benzo(a)pyrene	0.66	0.17 J	ND		ND	ND
Benzo(g,h,i)perylene	None	0.172 J	ND	0.294	ND	ND
Bis(2-Chloroethyl)ether	0.66	ND	ND	ND	ND	ND
Bis(2-Chloroethoxy)methane	None	ND	ND	ND	ND	ND
Bis(2-Ethylhexyl)phthalate	49	ND	ND	ND	189 J	ND
Bis (2-Chloroisopropyl) ether	2,300	ND	ND	ND	ND	ND
4-Bromophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Butyl Benzyl Phthalate	1,100	ND	ND	ND	ND	ND
2-Chloronaphthalene	None	ND	ND	ND	ND	ND
4-Chlorophenyl Phenyl Ether	None	ND	ND	ND	ND	ND
Chrysene	9	0.169 J	ND	0.708	ND	ND
Dibenzo(a,h)anthracene	0.66	ND	ND	ND	ND	ND
Di-n-butylphthalate	5,700	ND	ND	ND	ND	ND
1,2-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,3-Dichlorobenzene	5,100	ND	ND	ND	ND	ND
1,4-Dichlorobenzene	570	ND	ND	ND	ND	ND
3,3'-Dichlorobenzidine	2	ND	ND	ND	ND	ND
Diethylphthalate	10,000	ND	ND	ND	ND	ND
Dimethylphthalate	10,000	ND	ND	ND	ND	ND
2,4-Dinitrotoluene	1	ND	ND	ND	ND	ND
2,6-Dinitrotoluene	1	ND	ND	ND	ND	ND
Di-n-Octylphthalate	1,100	ND	ND	ND	ND	ND
1,2-Diphenylhydrazine	None	ND	ND	ND	ND	ND
Fluoranthene	2,300	0.275	ND	1.24	ND	ND
Fluorene	2,300	ND	ND	ND	ND	ND
Hexachlorobenzene	0.66	ND	ND	ND	ND	ND
Hexachlorobutadiene	1	ND	ND	ND	ND	ND
Hexachloroethane	6	ND	ND	ND	ND	ND
Hexachlorocyclopentadiene	400	ND	ND	ND	ND	ND
Indeno(1,2,3-cd)pyrene	0.9	ND	ND	0.262	ND	ND
Isophorone	1,100	ND	ND	ND	ND	ND
2-Methylnaphthalene	None	ND	ND	0.141 J	ND	ND
Naphthalene	230	ND	ND	ND	ND	ND
Nitrobenzene	28	ND	ND	ND	ND	ND
N-Nitroso-dimethylamine	None	ND	ND	ND	ND	ND
N-Nitrosodi-n-propylamine	0.66	ND	ND	ND	ND	ND
N-Nitrosodiphenylamine	140	ND	ND	ND	ND	ND
Phenanthrene	None	ND	ND	0.594	ND	ND
Pyrene	1,700	0.326	ND	1.32	ND	ND
1,2,4-Trichlorobenzene	68	ND	ND	ND	ND	ND

Shading = exceedance of the NJDEP Residential Soil Criteria.

ND = analyzed for but not detected at or above the analytical laboratory reporting limit.

J = detected at an estimated concentration below the analytical laboratory reporting limit.

Exhibit C-1

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Exhibit C-1

Narrative Description of Institutional Controls

(A) Description and estimated size of the restricted Areas:

Transite Asbestos in Soil

Due to the historic manufacturing operations at the site, transite board, an asbestos containing material (acm), has been mixed into the surficial soil in portions of the site. As a result, capping of the site has been completed in these areas, as follows:

- A two-foot soil cap has been placed over the acm/acm soil in the western portion of Block 71, Lot 37.02;
- A two-foot soil cap has been placed over the acm/acm soil in the northern portion of Block 71, Lot 37.02;
- A six-inch concrete cap, associated with the building floor, has been placed over the acm/acm soil in central portion of Block 71, Lot 37.02;
- A six-inch asphalt cap has been placed over the acm/acm soil in northern and eastern portions of Block 71, Lot 37.02.

Historic Fill

A railroad spur previously extended into the site on the south-eastern portion of Block 71, Lot 37.02. Following the removal of debris in this portion of the property, base/neutral organics and metals contaminants were detected in the initial soil samples collected from this area. The base/neutral organics and metals contaminants in soil were suspected to be from historic fill material deposited during site/property development and/or on-site railroad spur installation in this portion of the site.

To confirm the potential source of base/neutral organics and metals contaminants in soil as originating from historic fill, nine soil borings were advanced in this area of the site. Two samples were collected from each boring and descriptive logs of the fill and soil encountered at each boring were completed. Samples were collected from the suspected historic fill material at grade and from the natural soil immediately below the suspected historic fill at the depth observed during advancement of each soil boring. The fill materials observed in the soil borings were typical historic fill constituents: cinders, brick fragments, non-indigenous sands, etc.

Analytical results for the samples collected at grade further indicated that the material was historic fill as the surficial soil boring samples had contaminants detected at significantly higher concentrations than the soil boring samples collected from the natural soil. Additionally, the soil boring samples collected from

the naturally deposited soil did not have as many contaminants actually detected as the surficial soil boring samples collected from the suspected historic fill. The soil boring samples collected from the naturally deposited soil were at depths ranging from 5.0 to 10.5 feet below grade. The detected contaminants at grade were arsenic, beryllium, copper, lead, benzo(a)anthracene, benzo(b)fluoranthene and benzo(a)pyrene, typical in historic fill consisting of cinders, brick fragments, non-indigenous sands and so forth.

The results of this soil boring investigation confirmed historic fill is present in this portion of the site based on the following:

- The constituents of the surficial fill material observed from grade are typical historic fill materials vs. the naturally occurring soil observed at 5.0 to 10.5 feet below grade;
- The specific contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval are relatively higher in concentration vs. the decreased concentration of those detected in the naturally occurring soil boring samples collected at depths up to 10.0 to 10.5 feet below grade;
- The number of contaminants detected in the soil boring samples collected at the surficial zero to six-inch interval are relatively greater vs. the number of those detected in the soil boring samples collected from the naturally occurring soil at depths up to 10.0 to 10.5 feet below grade.

These results confirmed the contaminant source in surficial soil in the south-eastern portion of Block 71, Lot 37.02 is historic fill, evidently placed as a part of the development in this portion of the site/property.

Base/Neutral Organics and Metals in Soil

The western portion of the site was impacted by previous facility operations resulted in volatile organics, petroleum hydrocarbons, base/neutral organics and metals in soil. Soil remedial actions were previously completed in this area by excavation and subsequent on-site low temperature thermal desorption (LTTD) treatment or off-site transportation and disposal (T&D). Soil treated by LTTD was placed back on site in the general area from where it was removed by excavation. These remedial actions specifically addressed the volatile organics and petroleum hydrocarbon soil contamination in this portion of the site. As such, a portion of the base/neutral organics and metals contamination, documented by previous site investigations, is either no longer in the exact original location or has been disposed off-site because of the remedial actions.

There are base/neutral organics and metals soil sampling locations not within the excavation remedial action areas, which were not disturbed/affected by these remedial actions. These sampling locations provide the vertical and lateral delineation of base/neutral organics and metals contamination and their clean end-point, as required by the NJDEP. The blue hatched area on the attached as-built drawing depicts the area which contains the base/neutral organics and metals contamination under the remedial cap

to the clean end-point for base/neutral organics and metals in soil. As a result of the LTTD treated soil, placed back on site in the general area from where it was removed, this entire hatched area is represented by the highest concentrations (worse case) of the base/neutral organics and metals in soil. As documented from previous soil investigations, the attached as-built drawing depicts the remaining base/neutral organics and metals contamination on site, including the fully delineated clean end point of base/neutral organics and metals.

Based on the contaminants associated with the deed notice consisting of transite asbestos, base/neutral organics, metals and an area with historic fill, there are three types of remedial caps on the site: two-foot soil cap; asphalt cap and concrete cap (associated with a building). The contaminants, their associated remedial caps and estimated respective sizes are as follows:

<u>Contaminant</u>	<u>Remedial Cap</u>	<u>Location</u>	<u>Estimated Size (Acres)</u>
Transite Asbestos, Base/Neutral Organics and Metals	Two-foot Soil Cap	Block 71, Lot 37.02	0.80
Transite Asbestos, Base/Neutral Organics and Metals	Six-inch Asphalt or Concrete Cap	Block 71, Lot 37.02	3.58
Historic Fill	Two-foot Soil Cap	Block 71, Lot 37.02	0.002

(B) Description of the restrictions on the Property by operation:

The restrictions to the property from the Deed Notice will result from the contaminants remaining in the soil beneath the protective caps in the various portions of the site property, as described above. These restrictions may affect how, where and the type of redevelopment that takes place on the respective portions of the site property. Wherever there is a restricted portion of the site property and a cap exists in that portion of the site property, measures will need to be taken to preserve the protectiveness provided by the existing cap.

(C) Objective of the restrictions:

The objective of the restrictions documented in the Deed Notice is to be protective of human health and the environment by notifying all present and future property owners of the remaining contaminants in the soil beneath the protective caps in the various portions of the site property.

Exhibit C-2

Exhibit C-2

Narrative Description of Engineering Controls

(A) Description of the engineering control:

Based on the contaminants associated with the deed notice consisting of transite asbestos, base/neutral organics, metals and an area with historic fill, there are three types of remedial caps on the site: two-foot soil cap; asphalt cap and concrete cap (associated with a building). The contaminants, and their associated remedial caps are as follows:

<u>Contaminant</u>	<u>Remedial Cap</u>	<u>Location</u>
Transite Asbestos, Base/Neutral Organics and Metals	Two-foot Soil Cap	Block 71, Lot 37.02
Transite Asbestos, Base/Neutral Organics and Metals	Six-inch Asphalt or Concrete Cap	Block 71, Lot 37.02
Historic Fill	Two-foot Soil Cap	Block 71, Lot 37.02

(B) Objective of the engineering control:

There are three types of remedial caps on Block 71, Lot 37.02, which serve as engineering controls: two-foot soil cap; asphalt cap and concrete cap (associated with a building). The objective of the engineering controls is to be protective of human health and the environment by providing a physical barrier to the remaining contaminants in the soil beneath the protective caps in the various portions of the site property.

(C) The intended function of the engineering control:

There are three types of remedial caps on the site, which serve as engineering controls: two-foot soil cap; asphalt cap and concrete cap (associated with a building). The intended function of the engineering control is to be protective of human health and the environment by providing a physical barrier to the remaining contaminants in the soil beneath the protective caps in the various portions of the site property.

EXHIBIT J
RESPONSE ACTION OUTCOME FOR SOILS



CB&I
200 Horizon Center
Trenton, NJ 08691
Tel: +1 609.584.8900
Fax: +1 609.588.6300
www.CBI.com

Mr. Stuart Schooler
Managing Member
Metuchen I, LLC
c/o The Maven Group, LLC
8101 Glenbrook Road, Suite B
Bethesda, Maryland 20814

November 8, 2016

Re: Response Action Outcome

Remedial Action Type: *Restricted Use with Permit Requirements*

Scope of Remediation: *ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Entire Site*

Case Name: Oakley Specialized Services, Inc.

Address: 700 Middlesex

Municipality: Metuchen Boro

County: Middlesex

Block: 71 Lot: 37.01 & 37.02

Preferred ID: 024790

ISRA Transaction: Cessation

ISRA Case # E88967, E88996, E89654 and E89852

Dear Mr. Schooler:

As a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New Jersey, I hereby issue this Response Action Outcome for the remediation of the *industrial establishment as defined according to N.J.A.C. 7:26B* specifically referenced above. I personally reviewed and accepted all of the referenced remediation and based upon this work, it is my professional opinion that this remediation has been completed in compliance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), that is protective of public health, safety and the environment. Also, full payment has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4.

This remediation includes the completion of a *Preliminary Assessment, Site Investigation, Remedial Investigation and Remedial Action* as defined pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E),

My decision in this matter is made upon the exercise of reasonable care and diligence and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time these professional services are performed.

As required pursuant to N.J.A.C. 7:26C-6.2(b)2ii, a copy of all records related to the remediation that occurred at this location is being simultaneously filed with the New Jersey Department of Environmental Protection (Department). These records contain all information upon which I based my decision to issue this Response Action Outcome.

By operation of law a Covenant Not to Sue pursuant to N.J.S.A. 58:10B -13.2 applies to this remediation. The Covenant Not to Sue is subject to any conditions and limitations contained herein. The Covenant Not to Sue remains effective only as long as the real property referenced above continues to meet the conditions of this Response Action Outcome and applicable permits.

CONDITIONS

Pursuant to N.J.S.A. 58:10B-12o, **Metuchen I, LLC** and any other person who is liable for the cleanup and removal costs, and remains liable pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. shall inform the Department in writing, on a form available from the Department, within 14 calendar days after its name or address changes. Any notices you submit pursuant to this paragraph shall reference the above case numbers and shall be sent to:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

Any such name or address change may also trigger a transfer or modification of the remedial action permit pursuant to N.J.A.C. 7:26C-7.11 and 7.12.

- Based on my professional opinion you have obtained all applicable permit(s) and authorization(s) to ensure this remedial action remains protective of public health, safety and the environment into the future provided that you, and any other persons responsible for conducting remediation, remain in full compliance with the terms and conditions of those permit(s) and authorization(s). The designated remedial action permit number(s) is/are **RAP16001**, effective **September 29, 2016** and **RAP16002**, effective **September 29, 2016**.

NOTICES

Well Decommissioning

Pursuant to N.J.A.C. 7:9D-3 any wells installed as part of this remediation that will no longer be used for remediation have been properly decommissioned. If any wells have been properly decommissioned, the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. Pursuant to N.J.S.A. 58:4A, any monitoring wells remaining onsite shall be properly decommissioned prior to the termination of the applicable remedial action permit. A New Jersey licensed well driller shall decommission the well(s) in accordance with the requirements of N.J.A.C. 7:9D-3 and submit the decommissioning report on your behalf to the Bureau of Water Allocation and Well Permitting. More information about regulations regarding the maintenance and decommissioning of wells in New Jersey can be found at www.nj.gov/dep/watersupply. For a list of New Jersey licensed well drillers, click on the "reports" button in the left column and select "access the well permit reports." Questions can be emailed to wellpermitting@dep.state.nj.us.

Building Interiors Not Addressed (Non-Child Care)

Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. As a result, any risks to human health presented by any building interior or equipment remains. A complete building interior evaluation should be completed before any change in use or re-occupancy is considered.

Soils Only Response Action Outcome when Ground Water Contamination remains from that Area(s) of Concern or Site

This Response Action Outcome only applies to the soils at the referenced location. By issuing this Response Action Outcome, I have relied on both the implementation of the remedial action for soil and on the ground water data to support the determination that soil contamination is no longer affecting ground water. Please be advised that if changes in future ground water data no longer support this conclusion, additional soil remediation may be necessary. Also, any redevelopment on this site should take into consideration the potential for vapor intrusion from the ground water contamination. Please note that you may have an affirmative obligation, pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1.3, to remediate the remaining contamination, within specific regulatory and mandatory timeframes and within the statutory timeframe specified at N.J.S.A. 58:10C-27.

In concluding that this remediation has been completed, I am offering no opinions concerning whether either primary restoration (restoring natural resources to their pre-discharge condition) or compensatory restoration (compensating the citizens of New Jersey for the lost interim value of the natural resources) has been completed.

Pursuant to N.J.S.A. 58:10C-25, the Department may audit this Response Action Outcome and associated documentation up to three years following issuance. Based on a finding by the Department that a Response Action Outcome is not protective of public health, safety and the environment, the Department can invalidate the Response Action Outcome. Other justifications for the Department's invalidation of this Response Action Outcome are listed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6, including, but not limited to, a Department audit following issuance of this document may be initiated at any time if: a) undiscovered contamination is found that was not addressed by the Response Action Outcome, b) if the Site Remediation Professional Licensing Board conducts an investigation of the Licensed Site Remediation Professional issuing the Response Action Outcome or, c) if the license of that person is suspended or revoked.

Thank you for your attention to these matters. If you have any questions, please contact me at 609-588-6154.

Sincerely,



Crystal L. Leavey
Licensed Site Remediation Professional #590956

**cc: Local, County Environmental Health Act Agency and Regional Health Department(s)
Mayor/Borough Council, Borough of Metuchen
Municipal Clerk
NJDEP Bureau of Case Assignment and Initial Notice**

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APTIM
200 Horizon Center
Trenton, NJ 08691
Tel: +1 609.584.8900
Fax: +1 609.588.6300

March 22, 2019

Mr. Stuart Schooler
Managing Member
Metuchen I, LLC
c/o The Maven Group, LLC
8101 Glenbrook Road, Suite B
Bethesda, Maryland, 20814

Re: This correspondence amends and supplements the Response Action Outcome dated November 8, 2016

Remedial Action Type: Restricted Use with Permit Requirements

Scope of Remediation: Areas of Concern: Soils Only for Block: 71 Lot: 37.01 & 37.02

Case Name: Oakley Specialized Services, Inc. & Epic Industries

Address: 700 Middlesex Avenue

Municipality: Metuchen Boro

County: Middlesex

Block(s): 71 Lot(s): 37.01 & 37.02

Preferred ID: 024790

ISRA Transaction: Cessation, Stock Transfer

ISRA Case # E88967, E88996, E89654, and E89852

Dear Mr. Schooler:

This correspondence amends the Response Action Outcome issued on November 8, 2016, which was issued by CB&I Environmental & Infrastructure, Inc. n/k/a Aptim Environmental & Infrastructure, LLC which remains in full force and effect, by correcting the following administrative errors:

- The Scope of Remediation has been amended to include "soils only" and now reads:
"Scope of Remediation: Areas of Concern: Soils Only for Block: 71 Lot: 37.01 & 37.02"
- The following language has been added to the "Re:" header section:
"Case Name: Oakley Specialized Services, Inc. & Epic Industries"
- The following language has been added to the "Re:" header section:
"ISRA Transaction: Cessation, Stock Transfer"
- Paragraph 1 has been amended to remove the following language:
"industrial establishment as defined according to N.J.A.C. 7:26B"

And now reads:

"As a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New Jersey, I hereby issue this Response Action Outcome for the remediation of the

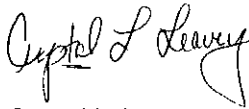
area(s) of concern specifically referenced above. I personally reviewed and accepted all of the referenced remediation and based upon this work, it is my professional opinion that this remediation has been completed in compliance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), that is protective of public health, safety and the environment. Also, full payment has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4."

- The *Well Decommissioning Notice* has been removed

Please be advised this correspondence, with the above amendments and supplements, corrects administrative errors identified in the original Response Action Outcome issued on November 8, 2016. This correspondence should be attached to the original Response Action Outcome and be maintained as part of your environmental records for the above reference site.

Thank you for your attention to these matters. If you have any questions, please contact me at (609) 588-6154.

Sincerely,



Crystal L. Leavey
Licensed Site Remediation Professional #590956

Attachment(s): Original Response Action Outcome

cc: Local, County Environmental Health Act Agency and Regional Health Department
Mayor/Borough Council, Boro of Metuchen
Municipal Clerk
NJDEP – BIR (Electronic Copies Only)



CB&I
200 Horizon Center
Trenton, NJ 08691
Tel: +1 609.584.8900
Fax: +1 609.588.6300
www.CBI.com

Mr. Stuart Schooler
Managing Member
Metuchen I, LLC
c/o The Maven Group, LLC
8101 Glenbrook Road, Suite B
Bethesda, Maryland 20814

November 8, 2016

Re: Response Action Outcome

Remedial Action Type: *Restricted Use with Permit Requirements*

Scope of Remediation: *ISRA Industrial Establishment as defined according to N.J.A.C. 7:26B - Entire Site*

Case Name: Oakley Specialized Services, Inc.

Address: 700 Middlesex

Municipality: Metuchen Boro

County: Middlesex

Block: 71 **Lot:** 37.01 & 37.02

Preferred ID: 024790

ISRA Transaction: Cessation

ISRA Case # E88967, E88996, E89654 and E89852

Dear Mr. Schooler:

As a Licensed Site Remediation Professional authorized pursuant to N.J.S.A. 58:10C to conduct business in New Jersey, I hereby issue this Response Action Outcome for the remediation of the *industrial establishment as defined according to N.J.A.C. 7:26B* specifically referenced above. I personally reviewed and accepted all of the referenced remediation and based upon this work, it is my professional opinion that this remediation has been completed in compliance with the Administrative Requirements for the Remediation of Contaminated Sites (N.J.A.C. 7:26C), that is protective of public health, safety and the environment. Also, full payment has been made for all Department fees and oversight costs pursuant to N.J.A.C. 7:26C-4.

This remediation includes the completion of a *Preliminary Assessment, Site Investigation, Remedial Investigation and Remedial Action* as defined pursuant to the Technical Requirements for Site Remediation (N.J.A.C. 7:26E),

My decision in this matter is made upon the exercise of reasonable care and diligence and by applying the knowledge and skill ordinarily exercised by licensed site remediation professionals in good standing practicing in the State at the time these professional services are performed.

As required pursuant to N.J.A.C. 7:26C-6.2(b)2ii, a copy of all records related to the remediation that occurred at this location is being simultaneously filed with the New Jersey Department of Environmental Protection (Department). These records contain all information upon which I based my decision to issue this Response Action Outcome.

By operation of law a Covenant Not to Sue pursuant to N.J.S.A. 58:10B -13.2 applies to this remediation. The Covenant Not to Sue is subject to any conditions and limitations contained herein. The Covenant Not to Sue remains effective only as long as the real property referenced above continues to meet the conditions of this Response Action Outcome and applicable permits.

CONDITIONS

Pursuant to N.J.S.A. 58:10B-12o, **Metuchen I, LLC** and any other person who is liable for the cleanup and removal costs, and remains liable pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. shall inform the Department in writing, on a form available from the Department, within 14 calendar days after its name or address changes. Any notices you submit pursuant to this paragraph shall reference the above case numbers and shall be sent to:

New Jersey Department of Environmental Protection
Bureau of Case Assignment and Initial Notice
Mail Code 401-05H
401 East State Street, 5th floor
PO Box 420
Trenton, New Jersey 08625-0420

Any such name or address change may also trigger a transfer or modification of the remedial action permit pursuant to N.J.A.C. 7:26C-7.11 and 7.12.

Based on my professional opinion you have obtained all applicable permit(s) and authorization(s) to ensure this remedial action remains protective of public health, safety and the environment into the future provided that you, and any other persons responsible for conducting remediation, remain in full compliance with the terms and conditions of those permit(s) and authorization(s). The designated remedial action permit number(s) is/are **RAP16001**, effective **September 29, 2016** and **RAP16002**, effective **September 29, 2016**.

NOTICES

Well Decommissioning

Pursuant to N.J.A.C. 7:9D-3 any wells installed as part of this remediation that will no longer be used for remediation have been properly decommissioned. If any wells have been properly decommissioned, the well driller's well decommissioning report has been submitted to the Bureau of Water Allocation and Well Permitting. Pursuant to N.J.S.A. 58:4A, any monitoring wells remaining onsite shall be properly decommissioned prior to the termination of the applicable remedial action permit. A New Jersey licensed well driller shall decommission the well(s) in accordance with the requirements of N.J.A.C. 7:9D-3 and submit the decommissioning report on your behalf to the Bureau of Water Allocation and Well Permitting. More information about regulations regarding the maintenance and decommissioning of wells in New Jersey can be found at www.nj.gov/dep/watersupply. For a list of New Jersey licensed well drillers, click on the "reports" button in the left column and select "access the well permit reports." Questions can be emailed to wellpermitting@dep.state.nj.us.

Building Interiors Not Addressed (Non-Child Care)

Please be advised that the remediation that is covered by this Response Action Outcome does not address the remediation of hazardous substances that may exist in building interiors or equipment, including, but not limited to, radon, asbestos and lead. As a result, any risks to human health presented by any building interior or equipment remains. A complete building interior evaluation should be completed before any change in use or re-occupancy is considered.

Soils Only Response Action Outcome when Ground Water Contamination remains from that Area(s) of Concern or Site

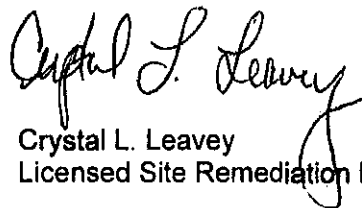
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In concluding that this remediation has been completed, I am offering no opinions concerning whether either primary restoration (restoring natural resources to their pre-discharge condition) or compensatory restoration (compensating the citizens of New Jersey for the lost interim value of the natural resources) has been completed.

Pursuant to N.J.S.A. 58:10C-25, the Department may audit this Response Action Outcome and associated documentation up to three years following issuance. Based on a finding by the Department that a Response Action Outcome is not protective of public health, safety and the environment, the Department can invalidate the Response Action Outcome. Other justifications for the Department's invalidation of this Response Action Outcome are listed in the Administrative Requirements for the Remediation of Contaminated Sites at N.J.A.C. 7:26C-6, including, but not limited to, a Department audit following issuance of this document may be initiated at any time if: a) undiscovered contamination is found that was not addressed by the Response Action Outcome, b) if the Site Remediation Professional Licensing Board conducts an investigation of the Licensed Site Remediation Professional issuing the Response Action Outcome or, c) if the license of that person is suspended or revoked.

Thank you for your attention to these matters. If you have any questions, please contact me at 609-588-6154.

Sincerely,



Crystal L. Leavey
Licensed Site Remediation Professional #590956

**cc: Local, County Environmental Health Act Agency and Regional Health Department(s)
Mayor/Borough Council, Borough of Metuchen
Municipal Clerk
NJDEP Bureau of Case Assignment and Initial Notice**

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RESOLUTION 2021-256

*Borough of Metuchen
County of Middlesex
State of New Jersey*

**RESOLUTION AUTHORIZING EXECUTION OF A REDEVELOPMENT
AGREEMENT WITH METUCHEN III, LLC FOR
BLOCK 71, A PORTION OF LOT 37.01 AND LOT 37.02**

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1, et seq., as amended and supplemented (the “Redevelopment Law”), provides a process for municipalities to participate in the redevelopment and improvement of areas in need of rehabilitation or redevelopment; and

WHEREAS, pursuant to Resolution No. 2015-147, adopted on June 15, 2015, the Mayor and Council of the Borough of Metuchen (the “Borough Council”) designated certain properties within the Borough, including a portion the property identified on the Official Tax Map of the Borough of Metuchen (the “Borough”) as Block 71, Lot 37.01, as a Non-Condernation Area in Need of Redevelopment in accordance with the Redevelopment Law; and

WHEREAS, by way of Ordinance No. 2018-24, adopted on October 15, 2018, the Borough Council adopted the “Oakite Site Redevelopment Plan, Borough of Metuchen, New Jersey, Block 71, Lot 37.01” dated September 2018, (the “Redevelopment Plan”), which sets forth, inter alia, the plans for the development, revitalization, rehabilitation, and redevelopment of the Redevelopment Area; and

WHEREAS, by way of Resolution 2020-50, adopted on February 3, 2020 (the “Rehabilitation Resolution”), the Borough Council designated the entirety of the Borough (the “Rehabilitation Area”) as an “Area in Need of Rehabilitation” pursuant to the Redevelopment Law; and

WHEREAS, by way of Ordinance 2020-15, adopted on September 13, 2021, the Borough Council adopted an amendment to the Redevelopment Plan entitled the “Amended Oakite Site Redevelopment Plan”, dated August 18, 2021, (the “Amended Redevelopment Plan”), which supersedes the Redevelopment Plan and sets forth the plans for the development, revitalization, rehabilitation, and redevelopment of both Block 71, a portion of Lot 37.01 and Lot 37.02 (the “Redevelopment Area”); and

WHEREAS, the Redevelopment Law, N.J.S.A. 40A:12A-8(f), authorizes the Borough to arrange or contract with a redeveloper for the planning, construction, or undertaking of any project or redevelopment work in an area designated as an area in need of redevelopment or rehabilitation; and

WHEREAS, the Borough Council has negotiated a Redevelopment Agreement with Metuchen III, LLC, (the “Redevelopment Agreement”), which calls for, inter alia, the undertaking of preliminary site preparation and remediation work; the obtaining of governmental approvals;

the financing and completion of remediation; the financing, construction, and completion of certain site improvements; the development of an extended roadway over Block 71, Lot 37.01, connecting Lots 37.01 and 37.02, referred to in the Amended Redevelopment Plan as the "Mid-Block Connector Roadway"; the construction of a coffee shop with a drive-thru; and the construction of a daycare center in accordance with the Amended Redevelopment Plan and as more particularly described in the Redevelopment Agreement; and

WHEREAS, the Borough Council considers it to be in the best interest of the Borough to enter into the Redevelopment Agreement with respect to the Redevelopment Area.

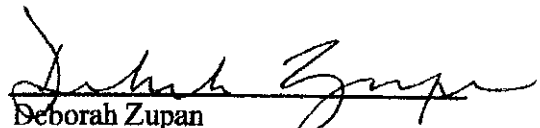
NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Metuchen, County of Middlesex, and State of New Jersey:

1. That the Borough Council does hereby authorize the execution of the Redevelopment Agreement between the Borough of Metuchen and Metuchen III, LLC.
2. That the Borough Council does hereby authorize the Mayor and/or Borough Administrator and the Borough Clerk to execute said Redevelopment Agreement on behalf of the Borough of Metuchen, subject to the approval of the Borough Administrator, Borough Auditor, Borough Solicitor, and Borough Redevelopment Counsel.

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately upon adoption.

COUNCILMEMBER	YES	NO	NV	AB	COUNCILMEMBER	YES	NO	NV	AB
DELIA	X				KOSKOSKI				X
HIRSCH	X				RASMUSSEN	X			
KANDEL	X				RUBIN	X			
MOTION	RASMUSSEN				SECOND	KANDEL			
X - INDICATES VOTE		AB- ABSENT			NV- NOT VOTING				

I hereby certify the foregoing to be a true copy of a resolution adopted by the Borough Council of the Borough of Metuchen, Middlesex County, New Jersey at a regular meeting held on November 8, 2021.


 Deborah Zupan
 Acting Borough Clerk