

REDEVELOPMENT PLAN

CRANFORD CROSSING

**Township of Cranford
Union County, New Jersey**

Prepared by

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INTRODUCTION

One of the primary challenges of the Township of Cranford (the "Township") has been the revitalization of its Special Improvement District (the "SID"). This goal and policies to effectuate this goal have been consistently identified and discussed in Township planning documents since the 1979 Master Plan.

The Township Committee has determined that one of the most effective planning and implementation strategies in its revitalization efforts is the use of the redevelopment process in accordance with State Statute, the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.). The first step in the process is the designation of "an area in need of redevelopment." The Township Committee authorized the Cranford Planning Board to undertake an investigation to determine whether certain properties (known as the Roundbank Redevelopment Area) are "an area in need of redevelopment." The Township Committee adopted resolutions in December 1998 and February 1999 which formally declared the Roundbank Redevelopment Area located in the SID as "an area in need of redevelopment."

This report is written pursuant to Section 40A:12A-7 of the Local Redevelopment and Housing Law (the "LRHL") which provides that "no redevelopment projects shall be undertaken or carried out except in accordance with a Redevelopment Plan adopted by ordinance of the municipal governing body upon its finding that the specifically delineated project area is located in an area in need of redevelopment or an area in need of rehabilitation or in both..."

STATUTORY REQUIREMENTS

According to State statute, the Redevelopment Plan shall include an outline for the planning, development, redevelopment or rehabilitation of the project area sufficient to indicate:

Its relationship to definitive local objectives as to appropriate land uses, density of population and improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements;

Proposed land uses and building requirements in the project area;

Adequate provision for the temporary and permanent relocation as necessary of residents in the project area including an estimate of the extent to which decent, safe and sanitary dwelling units affordable to displaced residents will be available to them in the existing local housing market;

An identification of any property within the Redevelopment Area which is proposed to be acquired in accordance with the Redevelopment Plan;

Any significant relationship of the Redevelopment Plan to:

- the Master Plans of contiguous municipalities;
- the Master Plan of the County in which the municipality is located; and
- the State Development and Redevelopment Plan adopted pursuant to the "State Planning Act" PL 1985, C398 (C52:18A-196 et al.).

AREA DESCRIPTION

The Roundbank Redevelopment Area, now known as Cranford Crossing (hereinafter "the Redevelopment Area") as adopted by the Township Committee, consists of two properties, Block 476, Lot 2 and Block 474, Lot 4.01, as identified on the current municipal tax duplicates.

As identified on Map 1, the Redevelopment Area is located along South Avenue West, Walnut Avenue and the New Jersey Transit railroad right-of-way. The area is located near the approximate geographic center of the Township in the SID and is within walking and parking distance of the Cranford train station.

RELATIONSHIP TO DEFINITIVE LOCAL OBJECTIVES

One of the key objectives of the Township of Cranford is conserving and improving the economic vitality of the SID. The revitalization of the SID is specifically identified in the 1995 Township Reexamination Report as a land use objective. Policies in the 1995 Reexamination Report related to the SID include:

- Conserving the economic vitality of the CBD
- Reinforcing the existing pattern of retail sales
- Providing a parking strategy for accommodating commuters, office workers and retail users in the CBD

An approach which has been successfully used in redevelopment efforts throughout the State is the creation of public/private partnerships. The Township has determined that this approach can best address the revitalization of the SID. This public/private partnership includes the development of additional retail, office and residential uses and the construction of a structured public parking facility.

To reinforce the overall goal of revitalization of the SID, the following objectives are specifically related to the Redevelopment Plan (hereinafter referred to as "the Plan") for the Redevelopment Area. These objectives relate to appropriate land uses, density of population, improved traffic and public transportation, public utilities, recreational and community facilities and other public improvements.

1. To improve utilization of land which could be effectively and efficiently used for the community benefit.
2. To provide additional retail uses for residents.
3. To strengthen the retail presence along Walnut Avenue and South Avenue
4. To encourage the use of space above the first floor for retail services, office and residential uses.
5. To improve business opportunities through promotion of new economic activities.
6. To enhance opportunities for pedestrian movement and connections so that a more pedestrian oriented environment is created.
7. To improve the streetscape through street furniture, paving, lighting, landscaping, pedestrian linkages and parking improvements.
8. To promote circulation improvements which will provide safe and efficient flow of vehicular traffic and enhance the viability of the SID.
9. To redevelop land occupied by obsolete commercial structures.
10. To more efficiently address the parking needs of the Township commuters, shoppers, residents and office workers.
11. To promote the development of additional residential units.

RELATIONSHIP OF PLAN TO THE TOWNSHIP LAND DEVELOPMENT REGULATIONS

The Area shall be redeveloped in accordance with the standards detailed in the Plan. In order to implement the Plan consistent with the goals and objectives herein, the Plan supersedes the use, bulk and design standards provisions of the Township Land Development Ordinance (Chapter 136). Other Township regulations affecting development that are in conflict are superseded by this Plan; however, existing engineering standards, definitions and sections of Article V (Zoning) not covered by this Plan shall apply.

Any deviation from standards of this Plan that result in a "d" variance pursuant to N.J.S.A. 40:55D-70d shall be addressed as an amendment to the Plan rather than via variance relief through the Township Zoning Board of Adjustment. "c" variance relief pursuant to N.J.S.A. 40:55D-70c may be addressed by the Township Planning Board and shall be submitted through the normal site plan and subdivision procedures as identified by N.J.S.A. 40:55D, et seq.

STANDARDS

Land Uses

It is the intent of the Plan to encourage the development and redevelopment of the area for commercial uses and other uses compatible with the SID development. As such, the following principal permitted, conditional and accessory uses are appropriate for the Redevelopment Area:

Principal Permitted Uses

- Banks and financial institutions (not including drive-thru facilities)
- Child care centers
- Dwellings
- Hotels
- Institutional and public uses
- Office (professional, business and administrative, including data processing and computer firms) second floor above.
- Parking facilities
- Public and private garages
- Retail services, second floor or above
- Retail trade
- Restaurants (not including drive-thru facilities)

Conditional Uses

- Retail services, first floor

Accessory Uses

- Customary accessory uses
- Parking facilities
- Signs

Conditional Use Standards

Retail Services

1. Retail services shall be permitted on the first floor in space measuring less than 1,000 square feet only.
2. Space shall be measured from the interior wall surface of the walls encompassing the retail service.
3. First floor retail services shall not be required to provide off-street parking.

BUILDING AND PARKING REQUIREMENTS

The following requirements shall apply:

Dwellings:

1. Residences shall be permitted only on the second floor or above.
2. Pedestrian ingress and egress for individual residences shall be separate from non-residential uses.
3. Each one bedroom dwelling unit shall have a minimum floor area of 750 square feet and each two bedroom dwelling unit shall have a minimum floor area of 1,000 square feet.
4. No more than 60 dwelling units shall be permitted in the redevelopment area.

Minimum lot area: none

Minimum yards: none

Maximum floor area ratio (FAR) for entire redevelopment area exclusive of the parking structure: 2.25.

Maximum height of principal and accessory structures: 65 feet; however, these standards shall not apply to building appurtenances designed exclusively for ornamental purposes such as church spires, cupolas or towers. Height restrictions in the Land Development Ordinance shall not apply.

Maximum impervious lot coverage for the entire redevelopment area: 100 percent.

Parking: Parking will be accommodated by a municipal parking (including a structured parking facility) in the redevelopment area. At least 92 parking spaces will be designated as public spaces for permit and meter parking and at least 1.5 parking spaces per dwelling unit shall be provided for in the parking facility.

DESIGN STANDARDS

These design standards shall be applied with the use, building and parking requirements defined in the Plan. The design standards are intended to reinforce the physical, visual and spatial characteristics of the CBD.

Streetscape, parking (except required number of spaces), lighting, signage and landscape design should be consistent with the design standards in Section 136-23 of the Land Development Ordinance. In addition, the following standards shall apply:

New buildings shall be oriented at the front and relate to public streets and plazas, both functionally and visually. The primary orientation of a building shall not be towards a parking lot.

The first level of a parking deck shall be oriented to the pedestrian. This can be accomplished by incorporating commercial space at sidewalk level or by screening with architectural or landscape material at street level.

The appearance of the side and rear elevations of buildings is important, especially if parking is provided next to the buildings. It may be desirable to develop alternative entries. Therefore, guidelines for the fronts of buildings shall also apply to the rear and sides where visible.

Loading docks and bays shall be placed in the back or side of buildings and shall not be visible to the average pedestrian or from adjacent properties. Loading areas shall be suitably buffered and screened to minimize impacts of noise, lighting, glare and visibility.

Fire escapes shall be prohibited on the front facade of any building.

The type, shape, pitch, texture and color of a roof shall be architecturally compatible with the building style, material, colors and details. New rooftop elements (e.g. HVAC, skylights, antennas) shall be screened from the public right-of-way.

Signage shall be consistent with the standards detailed in section 136-23H(10) of the Land Development Ordinance; however, the standard which requires new buildings constructed within the SID to evoke the Victorian architectural period, shall not apply.

Street and on-site lighting shall be compatible with the architecture of the building and related to the building features.

All benches, trash receptacles and other street or site furniture shall be compatible with the architecture of the building and shall compliment to the building features.

PROPOSED CONCEPT PLAN

The Township has been actively discussing and formulating an implementation strategy for the Redevelopment Area. The Concept Plan shall not be binding on either the Township or the Planning Board. The evaluation of any proposal submitted under the Redevelopment Plan shall be based upon the Sections of this Redevelopment Plan entitled "Relationship of Plan to the Township Land Development

Regulations", "Standards", "Building and Parking Requirements" and "Design Standards". The Concept Plan proposes a mixed use development which generally includes the following:

- Approximately 24,000 square feet of retail space on the first floor.
- Maximum of 60 residential units on the second, third and fourth floors occupying approximately 85,000 square feet .

The Redevelopment Plan currently contains Municipal parking Lot #2 which is a surface lot with a total of 92 spaces. The spaces are allocated among those for residents and non-residents who work in the Township, shoppers and commuters. The Concept Plan proposes a 4-level parking facility which will accommodate approximately 310 vehicles.

South Union Avenue is proposed for modification of the right-of-way. The Cranford Hotel will be factored into the overall Concept Plan. Streetscape, lighting and landscape design will be consistent with the design standards for the Special Improvement District.

RELOCATION

The required amount of relocation necessary to fully implement the Redevelopment Plan is expected to be minimal or non-existent given the nature of the parcels.

PROPERTY TO BE ACQUIRED

The Township plans to continue working with affected property owners and businesses to promote private redevelopment of the parcels within the Redevelopment Area and does not anticipate exercising its condemnation powers on any properties in the Redevelopment Area.

RELATIONSHIP TO MASTER PLANS

The Plan is consistent with the Master Plan of the Township of Cranford, the master plans of adjacent municipalities, the Union County Master Plan and Strategic Plan and the State Development and Redevelopment Plan (SDRP).

Township of Cranford

The March 1995 Master Plan Reexamination Report describes the revitalization of the SID as an important goal. This was identified in the 1979 Cranford Master Plan and the 1988 Master Plan Reexamination Report. Revitalization policies and implementation strategies associated with the SID are detailed in the 1995 Reexamination Report as follows:

Conserve the economic vitality of the central business district so that the core of Cranford remains healthy and that the periphery of the CBD remains healthy.

The Cranford Downtown Management Corporation (DMC) was authorized in 1986 to implement a master plan to revitalize the CBD. The DMC was the first New Jersey District Management Corporation incorporated to run the State's first Special Improvement District (SID). The Redevelopment Area is located within the SID. Since 1986, the DMC has been implementing a multi-million dollar efforts to improve the physical, visual and marketing position of Cranford's SID. This Plan reinforces these revitalization efforts.

Given... existing economic conditions and trade patterns, look to consolidating, improving and limiting redevelopment of the CBD as opposed to massive expansion proposals.

As noted in the Reexamination Report, the Land Development Ordinance carefully identified the CBD boundaries and provided specific retail, office and residential opportunities. The ordinance was amended in 1983 to create a B-1-0 zone within the CBD which was intended to increase flexibility of tenancy. A portion of the Redevelopment Area is located in the B-1 zone and the remaining area is located in the B-1-0 zone.

Provide a parking strategy for accommodating commuters, office workers and retail users in the Central Business District

The Township has been proactive in addressing its CBD parking issues. There is recognition that commuter parking and retail shoppers needs must both be addressed. Township parking lots have been upgraded and reconfigured since 1989. The Municipal Parking Lot #2, which is part of the Redevelopment Area, is surface lot with a total of 92 spaces allocated among shoppers, commuters and residents and non-residents who work in the Township. As previously noted, the Plan proposes a 4-level deck to accommodate commuter, shopper and residential parking needs.

Adjacent Municipalities

The Township of Cranford is bordered by the Borough of Roselle, the Borough of Roselle Park, the Borough of Kenilworth, the Township of Springfield, the Town of Westfield, the Borough of Garwood, the Township of Clark, Winfield Township and the City of Linden. None of these communities directly abut the Redevelopment Area since the Redevelopment Area is located in the geographic center of the Township. The primary goal of the Redevelopment Plan is the continued revitalization of the CBD which is consistent with the efforts of adjacent municipalities in revitalizing the CBD areas and will not have any impact on adjacent municipalities other than to indirectly reinforce their revitalization efforts.

Union County Master Plan

The September, 1998 Union County Master Plan identifies neighborhood and general commercial areas throughout the County. The Plan notes that commercial areas "occur along major roadways and are clustered within town centers and center cities." The Land Use Plan map designates the existing Cranford CBD as commercial consistent with its historical function as a center.

Further, the 1995 Strategic Plan for Union County specifically identifies neighborhood and general commercial areas throughout the County. The Plan notes that commercial areas "occur along major roadways and are clustered within town centers and center cities." The Land Use Plan map designates the existing Cranford CBD as commercial consistent with its historical function as a center.

Further, the 1995 Strategic Plan for Union County specifically identifies the following goal and objective:

Goal: Recapture expanded purchasing power and retain a greater share of retail spending in Union County

Objective: Revitalize the downtown shopping areas of Union County municipalities.

Finally, the South Avenue Corridor Study completed in 1998 recognizes the commercial nature of South Avenue.

State Development and Redevelopment Plan

The State Development and Redevelopment Plan (SDRP) adopted June 12, 1992, readopted in March, 2001, designates the Township of Cranford as part of the Metropolitan Planning Area (PA1). According to the SDRP, most of the communities within this planning area are fully developed or almost fully developed with much of the new growth occurring through redevelopment.

The following policy objectives are intended as guidelines for planning within communities located in the Metropolitan Planning Area:

Land Use: Guide new development and redevelopment to ensure efficient and beneficial utilization of scarce land while capitalizing on the inherent public facility and service efficiencies of the concentrated development patterns.

Housing: Preserve the existing housing stock through maintenance and rehabilitation and provide a variety of housing choices through development and redevelopment.

Economic Development: promote economic development by encouraging redevelopment efforts such as an infill and land assembly, public/private partnerships and infrastructure improvements.

Transportation: Capitalize on the high-density settlement patterns that encourage the use of public transit systems and alternative modes of transportation to improve travel among major population centers, employment centers and transportation terminals.

Natural Resource Conservation: Reclaim environmentally damaged sites and mitigate future negative impacts, particularly to waterfronts, scenic vistas, any remaining wildlife habitats and to Critical Environmental/Historic Sites generally. Give special emphasis to addressing air quality concerns; provide open space and recreational amenities.

Recreation: provide maximum recreational opportunities by concentrating on the maintenance and rehabilitation of existing parks and open space while expanding the system through redevelopment and reclamation projects.

Historic Preservation: Integrate historic preservation with redevelopment efforts in a way that will not compromise either the historic resource of the area's need to redevelop.

Public Facilities and Services: Complete, repair or replace existing infrastructure systems to eliminate deficiencies and enable future development and redevelopment efforts.

Intergovernmental Coordination: Provide for the regionalization of as many public services as feasible and economical, and coordinate the efforts of State, county and municipal governments to ensure sound redevelopment, by encouraging private sector investment and providing supportive government regulations, innovative tax policies and other governmental policies and programs.

These objectives are consistent with those of the Plan. The focus of both the State Plan and the Township Master Plan is to revitalize and redevelop existing "centers" such as the Cranford SID. Specifically, the State Plan encourages infill redevelopment of mature settled communities to promote economic development. This translates to revitalization of the SID in the Township. Furthermore, the State Plan acknowledges the benefits of public transportation and its relationship to more intense development patterns. The Redevelopment Plan capitalizes on its strategic location in proximity to the Cranford train station.

ADMINISTRATIVE AND PROCEDURAL REQUIREMENTS

Amending the Redevelopment Plan

Upon compliance with the requirements of applicable law, the Township Committee may amend, revise or modify the Plan, as circumstances may make such changes appropriate.

Duration of Plan

The Plan, as amended, shall be in full force and effect for a period of thirty (30) years from the date of approval of this Plan by the Township Committee.

Conveyance of Land

The Township may sell, lease, or otherwise convey to a redeveloper for redevelopment, subject to the restrictions, controls and requirements of the Plan, all or any portion of the land within the Redevelopment Area which becomes available to disposal by the Township as a result of public action under this Plan.

The Township may also use its redevelopment powers pursuant to the LHRL to enter into other agreements with the designated redeveloper in connection with the construction of any aspect of the Plan.

Financing

The Township may use its redevelopment powers pursuant to the LHRL to provide financing for any aspect of the Plan. This may include (1) direct financing secured by the revenues from any portion of the project undertaken pursuant to the Plan or by the general taxing power of the Township, or (2) making of any loans to the designated redeveloper, or (3) the extension of credit to the designated redeveloper in such form as the Township determines is appropriate. The extension of credit shall not include a guaranty by the Township of any debt.

Criteria And Procedures For Redeveloper Selection and Implementation of Redevelopment Plan

The following restrictions and controls on redevelopment are hereby imposed in connection with the selection of a redeveloper and shall apply notwithstanding the provisions of any zoning or building ordinance or other regulations now or hereafter in force.

The redeveloper will be obligated to carry out the specified improvements in accordance with the Redevelopment Plan.

The redeveloper, its successors or assigns shall devote land within the Redevelopment Area to the uses specified in the Redevelopment Plan.

Until the completion of the improvements, the redeveloper will not be permitted to sell, lease, or otherwise transfer or dispose of property within the Redevelopment Area without prior written consent of the Township Committee except that this condition shall not apply to any lender to the redeveloper in connection to the Plan.

Upon completion of the required improvements, the conditions determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist, and the land and improvements hereon shall no longer be subject to eminent domain as result of those determinations.

No covenant, agreement, lease, conveyance or other instrument shall be effected or executed by the redevelopers, the Township Committee, or the successors, lessees, or assigns of either of them, by which land in the Redevelopment Area is restricted as to sale, lease, or occupancy upon the basis of race, color, creed, religion, ancestry, national origin, sex or marital status.

Neither the redeveloper nor the Township Committee, nor the successors, lessees, or assigns or either of them shall discriminate upon the basis of race, creed, religion, ancestry, national origin, sex or marital status in the sale, lease or rental or in the use and occupancy of land or improvements erected or to be erected thereon, or any part thereof, in the Redevelopment Area.

DRAFT
8/13/01

SECOND AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT
BY AND BETWEEN
THE TOWNSHIP OF CRANFORD
AND
CRANFORD BUILDING ASSOCIATES, L.L.C.

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THIS SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT (“Agreement”) made and restated this ___ day _____, 2001 by and between

THE TOWNSHIP OF CRANFORD, a municipal corporation of the State of New Jersey, having its offices at 8 Springfield Avenue, Cranford, New Jersey 07016-2199 (hereinafter called the “Township”)

AND

CRANFORD BUILDING ASSOCIATES, L.L.C., a limited liability company of the State of New Jersey, having its offices at 26 Columbia Turnpike, Florham Park, New Jersey (hereinafter called the “Redeveloper”), as assignee of **FIRST STATES PROPERTIES No. 20, LLC**, a limited liability company of the Commonwealth of Pennsylvania having its offices at 1725 The Fairway, Jenkintown, Pennsylvania 19046 (hereinafter called the “First States”).

WITNESSETH:

WHEREAS, capitalized terms used herein shall have the meaning given to them above, below or in Section 1.01; and

WHEREAS, all Block and Lot references used in this Agreement shall refer to Blocks and Lots appearing on the official tax maps of the Township; and

WHEREAS, the Township Committee of the Township of Cranford, in the County of Union, New Jersey, following the recommendation of the Township Planning Board has determined by resolution adopted on December 22, 1998 that the Roundbank Property constitutes an “area in need of redevelopment” pursuant to the provisions of the Act; and

WHEREAS, the Township, following the recommendation of the Township Planning Board, has determined by resolution adopted on January 23, 1999 that the Commercial Property and the Parking Property together also constitute an “area in need of redevelopment” pursuant to the provisions of the Act; and

WHEREAS, pursuant to the above referenced actions of the Township Committee, the Roundbank Property, the Commercial Property and the Parking Property constitute the Redevelopment Area; and

WHEREAS, pursuant to the Act, the Township has determined to act as the “redevelopment entity” (as such term is defined at N.J.S.A. 40A:12A-3) for the Redevelopment Area and to exercise the powers contained in the Act to facilitate the redevelopment of the Redevelopment Area; and

WHEREAS, pursuant to the Act, the Township, together with the Township Planning Board, prepared a comprehensive site plan for the use and redevelopment of the Redevelopment Area (the “Original Redevelopment Plan”); and

WHEREAS, on April 21, 1999, the Township Planning Board adopted a resolution recommending the approval of the Original Redevelopment Plan for the Redevelopment Area, with certain additional recommendations as to parking; and

WHEREAS, on May 11, 1999, the Township approved the Original Redevelopment Plan; and

WHEREAS, on December 14, 1999, the Township approved an amended and restated Original Redevelopment Plan and designated (a) Cranford Crossing Community Development Corporation (the “Corporation”) as the “redeveloper” (as such term is defined at N.J.S.A. 40A:12A-3) of the Parking Property and (b) First States as the “redeveloper” of the Roundbank Property and the Commercial Property; and

WHEREAS, on April 21, 2000 the Township and First States entered into an amended and restated Redevelopment Agreement (the “Original Redevelopment Agreement”) for the purposes of setting forth in detail their respective undertakings, rights and obligations in connection with, among

other things, the construction and financing of the Project and the Parking Facility in the Redevelopment Area in accordance with the Redevelopment Plan and applicable law.

WHEREAS, in accordance with the Redevelopment Plan, on April 21, 2000, the Township conveyed title to the Commercial Property and an easement for the Private Component to First States to facilitate the construction, ownership and operation of Mixed Use Development I; and

WHEREAS, on April 21, 2000, First States executed certain loan documents in connection with the financing of the Project; and

WHEREAS, to assist in such financing, on April 21, 2000, the Township extended its credit by guaranteeing the financing of the Project; and

WHEREAS, First States had determined to (a) assign all of its rights, title and interest to the Original Redevelopment Agreement to Monogram Building and Design Corp. which shall, in turn, assign all of its rights, title and interest to the Original Redevelopment Agreement to the Redeveloper; (b) satisfy all of its obligations under the Redeveloper's Note (as such term was defined in the Original Redevelopment Agreement); and (c) terminate all of the loan documents, including the Township guaranty of the financing for the Project; and

WHEREAS, the Township has by ordinance finally adopted on September ____, 2001 designated the Redeveloper as the "redeveloper" of the Roundbank Property, the Commercial Property and Parking Property; and

WHEREAS, the Township and the Redeveloper have determined to enter into this Agreement for the purpose of (a) setting forth in detail the parties' respective undertakings, rights, and obligations in connection with, among other things, the construction and financing of the Project

in the Redevelopment Area in accordance with the Redevelopment Plan and applicable law and (b) superceding and replacing the Original Redevelopment Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby covenant and agree each with the other as follows:

ARTICLE 1.

DEFINITIONS AND DESCRIPTION OF REDEVELOPMENT AREA,
PROJECT, PARKING FACILITY AND TOWNSHIP OBLIGATIONS.

Section 1.01. Definitions. As used in this Agreement the following terms set forth in this Section shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation”. The words “agree,” “agreements,” “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed,” except or unless the context may otherwise specify. All references to Sections Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement.

“**Act**” shall mean the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

“**Amended Declaration of Restrictions**” shall be the amended and restated declaration of redevelopment agreement restrictions, release of right of reverter and termination of easement recorded on the date hereof on all of the parcels within the Redevelopment Area in substantially the form attached hereto as Exhibit A.

“**Certificate of Commencement**” shall mean a written acknowledgment by the Township that it has satisfied the Township Obligations.

“**Certificate of Completion**” shall mean a written acknowledgment by the Township, pursuant to Section 2.07, that the Redeveloper has completed construction of the Project and the

Parking Facility (excluding the tenant improvements for any unleased portions of the Project) in accordance with the requirements of this Agreement.

“Certificate of Occupancy” shall be as defined in Section 92-1 et seq. of the Township municipal code and the applicable provisions of the Uniform Construction Code.

“Commencement Date” shall be 30 days after the receipt by the Redeveloper of (i) all Project Governmental Approvals required prior to the commencement of construction of the Project and the Parking Facility and the expiration of any applicable appeal periods without the filing of a lawsuit challenging such Project Government Approvals (In the event such a lawsuit is filed, the Commencement Date shall be extended until such lawsuit has been successfully defended and all appeal rights have expired.) and (ii) the Certificate of Commencement.

“Commercial Property” shall mean a parcel of land known as Block 474, Lot 4.03.

“Completion Date” shall mean the date on which the Redeveloper receives the Certificate of Completion as provided for in Section 2.07.

“Construction Period” shall mean the period of time which commences on the Commencement Date and ends on the Completion Date.

“Guarantor” shall mean _____.

“Guaranty” shall mean the agreement executed on the date hereof between the Township and the Guarantor in substantially the form attached hereto as Exhibit B.

“ISRA” shall be as defined in Section 1.05.

“Mixed Use Development I” shall mean approximately 13,000 square feet of retail space on the first floor and not more than 30 market rate apartments on the second, third and fourth floors located on the Commercial Property.

“Mixed Use Development II” shall mean approximately 11,000 square feet of retail space on the first floor and not more than 30 market rate apartments on the second, third and fourth floors located on the Roundbank Property.

“Parking Facility” shall mean the construction of a facility consisting of a foundation, retaining wall, entrance ramp and four-story parking deck, comprising approximately 310 parking spaces (subject to the Township’s configuration and striping of spaces) on the Parking Property and the property to be acquired from New Jersey Transit as described in Paragraph (a) of the definition of Township Obligations, including the modification of the right-of-way of South Union Avenue and the cost of the acquisition of title to or an easement in the property owned by New Jersey Transit and excluding the Private Component.

“Parking Facility Construction Agreement” shall mean the agreement executed on the date hereof between the Redeveloper and the Township for the construction of the Parking Facility in substantially the form attached hereto as Exhibit C.

“Parking Property” shall mean a parcel of land known as Block 474, Lot 4.02.

“Prevailing Wage Law” shall be as defined in Section 1.03.1.

“Project” shall mean Mixed Use Development I and Mixed Use Development II.

“Project Governmental Approvals” shall mean all government approvals including, without limitation: site plans for the obtaining of final site plan approvals; construction plans and specifications for the obtaining of building permits for the proposed construction; environmental approvals; sewerage capacity approvals and any and all other necessary permits, licenses, consents and approvals that may be required in connection with the construction of Mixed Use Development I, Mixed Use Development II or the Parking Facility or as may be required under the Municipal Land

Use Law N.J.S.A. 40:55D-1 et seq. or as may be required by Union County and/or New Jersey Transit Corporation.

“Redeveloper Application” shall mean the Application for Designation as Redeveloper submitted by the Redeveloper to the Township relating to the Redevelopment Area dated June 19, 2001.

“Redevelopment Area” shall mean the Roundbank Property, the Commercial Property, and the Parking Property.

“Redevelopment Plan” shall mean the plan for the redevelopment of the Redevelopment Area adopted by the Township on May 11, 1999 as amended on December 14, 1999 and September ____, 2001.

“Roundbank Property” shall mean the land commonly known as Block 476, Lot 2.

“State” shall mean the State of New Jersey.

“Tax Agreement” shall mean the agreement between the Township and the Redeveloper providing for the payment in lieu of taxes computed pursuant to application of Section 10(c) of the Five Year Tax Abatement and Exemption Law, N.J.S.A. 40A:21-1 et seq.

“Township Obligations” shall mean (i) the acquisition by the Township of an easement from New Jersey Transit or title to the property located along the northern border of the Parking Property for the construction of the Parking Facility and (ii) the obtaining, with the assistance of the Redeveloper, of administrative approvals from the State Department of Transportation for the modification of the South Union Avenue into a two directional road (to the east of the Parking Facility entrance), including the location of a left turn lane into the Parking Facility.

“Township Planning Board” shall mean the planning board of the Township.

Section 1.02. Title to Property in the Redevelopment Area.

Section 1.02.1 The Redeveloper represents that it has fee simple absolute title to the Roundbank Property and the Commercial Property.

Section 1.02.2 The Township represents that it has fee simple absolute title to the Parking Property.

Section 1.03. Status of the Project and the Parking Facility.

Section 1.03.1 The Township and the Redeveloper agree that this Agreement does not constitute a “public works contract” as defined in P.L. 1975, c. 127 (N.J.S.A. 10:5-31) and the Project does not constitute “public work” as defined in N.J.S.A. 34:11-56.26(5) (the “**Prevailing Wage Law**”).

Section 1.03.2 The Township and the Redeveloper further acknowledge that the Parking Facility Construction Agreement shall constitute a “public works contract” as defined in P.L. 1975, c. 127 (N.J.S.A. 10:5-31) and the Parking Facility shall constitute a “public work” as defined in the Prevailing Wage Law.

Section 1.04. Township Obligations.

Section 1.04.1 The Township covenants to undertake all reasonable actions, at the Township's cost and expense, to satisfy the Township Obligations within 120 days of the execution of this Agreement.

Section 1.04.2 The Redeveloper agrees that the Township shall not in any way be held in default or otherwise liable under this Agreement if the Township Obligations shall fail to be satisfied for any reason other than as a result of the Township's gross negligence in undertaking, or failure to reasonably undertake, all actions for the satisfaction of the Township Obligations.

Section 1.05. ISRA Compliance. The Redeveloper acknowledges that as of the date hereof all requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. (“**ISRA**”), relating to the Roundbank Property and the Commercial Property have been met.

ARTICLE 2.

PROJECT GOVERNMENTAL APPROVALS, CONSTRUCTION OF
PROJECT AND PARKING FACILITY, TAXES AND ASSESSMENTS,
INSURANCE AND INDEMNIFICATION AND CERTIFICATES
OF OCCUPANCY AND COMPLETION.

Section 2.01. Project Governmental Approvals. The Redeveloper represents that applications for the Project Governmental Approvals have been or will be prepared and filed including a resubmission of the revised Project to the Planning Board. Following receipt of the Project Government Approvals, the Redeveloper shall immediately submit the approved plans to the appropriate construction and permitting officials of the Township. All of the Project Governmental Approval applications shall be in conformity with the Redevelopment Plan, this Agreement, and any and all Federal, State, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto.

Section 2.02. The Project. The Redeveloper agrees to, at its cost and expense, construct the Project in accordance the Redevelopment Plan, this Agreement and all Project Government Approvals related thereto and provide the Guaranty to the Township.

Section 2.03. The Parking Facility. The Redeveloper agrees to, at the Township's cost and expense, construct the Parking Facility in accordance with the terms of the Parking Facility Construction Agreement, the Redevelopment Plan, this Agreement, and all Project Governmental Approvals. The Redeveloper shall receive a fee for the management of the construction of the Parking Facility as described in the Parking Facility Construction Agreement. The Township agrees to grant an easement to the Redeveloper for 75 parking spaces in the Parking Facility. In exchange for such easement, the Redeveloper shall pay the Township an annual amount which shall be equal to the prorata cost (75 parking spaces as a percentage of the total number of parking spaces) for the

applicable year of (a) the debt service on bonds (having a final maturity of not less than 25 years from their date of issuance with approximately level annual debt service payments) or notes (during the construction of such parking facility) issued to finance or refinance the construction, reconstruction or repair of the Parking Facility (including all costs authorized to be included pursuant to N.J.S.A. 40A:2-20) plus (b) the operation and maintenance expenses related to such Parking Facility provided that, if the bonds or notes issued for the prorata costs of such 75 parking spaces must be issued on a taxable basis, the Redeveloper shall be responsible for such increased borrowing costs. The Township agrees to hold the remaining parking spaces in the Parking Facility open for use by the public.

The Redeveloper agrees to provide the Township 90 days prior written notice before closing the existing municipal parking lot on the Commercial Property and the Parking Property for construction. The Redeveloper further agrees to allow the Township to have continued quiet use and enjoyment of such municipal parking lot pending commencement of the construction of the Project and the Parking Facility for no fee. The Township shall provide maintenance and insurance for the existing municipal parking lot until it is closed for the construction of the Parking Facility. Construction of the Parking Facility shall be completed within 18 months of the closing of the existing municipal parking lot. In the event the Redeveloper fails to meet such deadline it shall reimburse the Township at the rate of \$110 for each day such Parking Facility remains incomplete following such 18 month period unless such delay is caused by the Township or is an enforced delay as described in Section 7.01.

Section 2.04. Compliance Schedule. The Redeveloper agrees to commence construction of the Project and the Parking Facility no later than the Commencement Date. The Redeveloper

further agrees that the Completion Date shall be no later than 24 months following the Commencement Date.

Section 2.05. Payment in Lieu of Taxes/Special Improvement District Assessment. The parties agree that the Project shall be a “redevelopment project” as defined in the Act. In accordance with this designation, the Township and the Redeveloper agree to execute the Tax Agreement prior to the end of the Construction Period. Upon the end of the Construction Period, the Township will be entitled to receive payments in lieu of taxes for a five year period. After such five year period expires, the Project shall be taxed as any other real property situate in the Township. During the Construction Period, the Project shall be taxed as vacant land. The Redeveloper shall pay the special improvement district assessment for the Project as and when required by law.

Section 2.06. Insurance and Indemnification. The Redeveloper agrees to secure, and to maintain in effect until substantial completion of the Project and the Parking Facility, (i) liability insurance in the amount of Five Million Dollars (\$5,000,000.00) naming the Township as an insured party and insuring it against the claims of third parties arising from the construction and installation of the Project and/or the Parking Facility and (ii) workers compensation insurance. The Redeveloper further agrees to indemnify and hold harmless the Township and its respective members, officers, employees and agents against any and all claims by third parties, including but not limited to workers, employees and agents of the Redeveloper and unrelated third parties, which claims may arise from the construction, installation, maintenance and functioning of the Project and/or the Parking Facility and other Project or Parking Facility-related improvements, or any other activities of the Redeveloper in the Redevelopment Area, unless caused by negligence of the Township, or its members, officers, employees or agents. The Redeveloper shall provide to the Township proof of

such insurance prior to the Commencement Date and the insurance certificate shall contain a provision that it shall not be cancelled for any reason except after 30 days written notice to the Township.

Section 2.07. Certificates of Occupancy and Certificate of Completion. Upon completion of the construction of each structure constituting the Project (exclusive of the tenant improvements for any unleased portions of the Project) in accordance with the Project Governmental Approvals and applicable building codes and ordinances, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for said structure. The Certificate of Occupancy, when issued, shall constitute evidence that Redeveloper has fully performed its obligations under this Agreement as to said structure. In addition, if requested by the Redeveloper, when Certificates of Occupancy have been issued, and the Project has otherwise been fully completed, the Redeveloper may seek a comprehensive Certificate of Occupancy for the entire Project. Following the issuance of all of the Certificates of Occupancy and the satisfaction of the terms and conditions of this Agreement, the Township agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project and the Parking Facility (excluding tenant improvements for any unleased portions of the Project) in accordance with the requirements of this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Project and the Parking Facility within the dates for the completion of same. If the Township shall fail or refuse to provide the Certificate of Completion within 30 days

after written request by the Redeveloper, the Township shall provide the Redeveloper with a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to complete the Project and the Parking Facility (excluding tenant improvements for any unleased portions of the Project) in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to the Certificate of Completion provided that the Township may not refuse to issue a Certificate of Completion based upon items which were previously the subject of a Certificate of Occupancy.

ARTICLE 3.

COVENANTS AND RESTRICTIONS.

Section 3.01. Covenants and Restrictions. On the date hereof, the Amended Declaration of Restrictions shall be recorded in the office of the Union County Clerk on all of the property in the Redevelopment Area and such Amended Declaration of Restrictions shall be included in any deeds conveying portions of the Redevelopment Area.

Section 3.02. Description of Covenants. The covenants to be imposed upon the Redeveloper, its successors and assigns, and recorded in the Amended Declaration of Restrictions, shall set forth that the Redeveloper and its successors and assigns shall:

- (i) Devote the Redevelopment Area to the uses specified in the Redevelopment Plan, and the zoning ordinance, if applicable, and shall not devote the Redevelopment Area to any other use(s);
- (ii) Commence the construction of the Project and the Parking Facility within the period of time described herein and in the Parking Facility Construction Agreement;
- (iii) Not have any authority to sell, lease or otherwise transfer the Redevelopment Area or the Project, or any part thereof except as permitted hereunder;
- (iv) Not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any buildings or structures erected or to be erected thereon, or any part thereof;
- (v) In the sale, lease or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Redevelopment Area or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and the Redeveloper, its successors and assigns, shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status.

Section 3.03. Redevelopment Area Upon Completion. Upon redevelopment of the Redevelopment Area and completion of the Project, the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist.

Section 3.04. Effect and Term of Covenants. It is intended and agreed, and the Amended Declaration of Restrictions provides, that the agreements and covenants set forth in Section 3.02 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, and any successor in interest to the Redevelopment Area, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Redevelopment Area or any part thereof. It is further intended and agreed that the agreements and covenants set forth herein shall remain in effect for a period of 30 years from the date hereof or until the expiration of the Redevelopment Plan, whichever date occurs sooner (at which time such agreements and covenants shall cease and terminate) and that the agreements and the covenants provided in Section 3.02 shall remain in effect without limitation as to time. However, such agreements and covenants shall be binding on the Redeveloper itself, each successor in interest to the Redevelopment Area, 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 Redevelopment Area, the buildings and structures thereon or any part thereof.

Section 3.05. Enforcement by Township. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed (and the Amended Declaration of Restrictions shall so state) that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.02 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Township for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Township 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.

ARTICLE 4.

PROHIBITION AGAINST SPECULATIVE DEVELOPMENT AND TRANSFERS.

Section 4.01. Prohibition Against Speculative Development. Because of the importance of the development of the Redevelopment Area to the general welfare of the community, the Redeveloper represents and agrees that the Redevelopment Area and the Redeveloper's undertakings pursuant to this Agreement are, and will be used for the purpose of the redevelopment of the Redevelopment Area as provided herein and not for speculation in land holding.

Section 4.02. Prohibition Against Transfers. The Redeveloper further represents and agrees that except as permitted herein, the Redeveloper has not made or created, and that during the Construction Period and for so long as the Redeveloper is permitted to make payments in lieu of taxes, it will not, make or create, or permit to be made or created, any sale, conveyance or transfer in any other mode or form of the Redevelopment Area, or any building or structure thereon or any part thereof or any interest therein, without the prior written approval of the Township, except for the transfers identified in Section 4.03. In the event of any attempted transfer in violation of the restriction in Section 4.02, the Township shall be entitled to the ex parte issuance of an injunction restraining such transfer, and the Redeveloper shall reimburse the Township for their legal fees and related expenses in conjunction with any such legal action. Upon the recording of the Declaration of Restrictions in the Office of the Union County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

Section 4.03. Acceptable Transfers. The following transfers are exceptions to the prohibition set forth in Section 4.02 and shall not require prior approval by the Township:

- (i) mortgage, lien, encumbrance or transfer for the benefit of a lender;

- (ii) leases to tenants of individual units in the Project,
- (iii) utility and other development easements; or
- (iv) any contract or agreement with respect to any of the foregoing exceptions.
- (v) transfers amongst members of the Redeveloper, their immediate family and/or trustees for their benefit.

Section 4.04. Conditions of Transfer. The Township shall be entitled to require, as conditions to the approval of any transfer provided for in Section 4.02 that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the Township, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper; and

(ii) Any proposed transferee, by instrument in writing satisfactory to the Township and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Township, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject; and

(iii) All instruments and other legal documents involved in effecting such transfer shall be submitted for review to the Township and the Township shall indicate their approval or disapproval to the Redeveloper in writing; and

(iv) Any transfer approved by the Township shall release the Redeveloper from any further obligation under this Agreement from and after the closing of the approved transfer, except as to any liability or obligation of the Redeveloper incurred prior to such transfer and except as otherwise provided herein or in the approval by the Township; and

(v) The Redeveloper and its transferees shall comply with such other reasonable conditions as the Township may find necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

ARTICLE 5.

EVENTS OF DEFAULT/ REMEDIES.

5.01. Events of Default. During the Construction Period, each of the following shall constitute an Event of Default:

(i) The Redeveloper or its successor in interest shall default in or violate its obligations with respect to the construction of the Project or Parking Facility in a material respect (including the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work (unless such suspension arises out of a delay as a result of any pending or threatened administrative procedures or litigation that interferes with the Redeveloper's obligation to begin or complete the construction of the Project or the Parking Facility), and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within 90 days (180 days if the default is with respect to the date for completion of the improvements) after written demand by the Township to do so or such longer period if incapable of cure within such period, provided that the Redeveloper has commenced and is diligently prosecuting such cure; or

(ii) The Redeveloper or its successor in interest shall fail to pay any real estate taxes, assessments, or make payments in lieu of taxes on the Project, the Roundbank Property, or the Commercial Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this 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, assessments, or payments in lieu of taxes shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Township, made for such

payment, removal, or discharge, including a bond, within 90 days after written demand by the Township to do so; or

(iii) There is a violation of the terms of this Agreement or the Parking Facility Construction Agreement, or there is, in violation of this Agreement, any transfer of the fee title to the Roundbank Property or the Commercial Property and such violation shall not be cured within 30 days after written demand served upon the Redeveloper by the Township, unless extended in writing or such violation cannot be cured within such 30 day period and the Redeveloper is acting diligently to cure such violation.

Section 5.02. Township's Remedies. Upon the occurrence of any Event of Default, the Township shall have the right at its sole and absolute discretion, upon 90 days' written notice to the Redeveloper and any mortgagee of the Redeveloper, to (i) terminate this Agreement, solely as it relates to the Redeveloper, (ii) execute against the Guaranty, (iii) purchase and take title to the Roundbank Property and/or the Commercial Property and the improvements thereon for a purchase price equal to \$1.00 (One Dollar), all as subject to the rights and obligations of any mortgagee, and/or (iv) pursue any other remedies provided for in the Parking Facility Construction Agreement or available at law or in equity. The Redeveloper agrees to execute a sales contract of the Roundbank Property and/or the Commercial Property immediately upon the Township's election to purchase and take title to the Roundbank Property and/or Commercial Property pursuant to Section 5.02(iii).

ARTICLE 6.

REDEVELOPER REPRESENTATIONS AND COVENANTS.

Section 6.01. The Redeveloper hereby makes the following representations and covenants:

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

(ii) It is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary resolutions have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper's behalf.

(iii) The Redeveloper has made the appropriate filings with the State and is authorized to do business with the State.

(iv) It owns or controls, or will, by actions contemplated by this Agreement, own or control all of the lands upon which the Project shall be constructed.

(v) To the best of its knowledge, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which (a) questions the validity of this Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement; or (b) 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 pursuant to the terms of this Agreement.

(vi) Its execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any partnership and/or stockholder agreement of the Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which the Redeveloper is a party.

(vii) It will use its best efforts to ensure the completion of the Project within the time periods specified in this Agreement.

(viii) All information and statements included in the Redeveloper Application submitted by the Redeveloper is true and correct in all respects. The Redeveloper acknowledges that the facts and representations contained in the Redeveloper Application are a material factor in the decision of the Township to designate the Redeveloper as the “redeveloper” of the Redevelopment Area.

ARTICLE 7.

DELAYS.

Section 7.01. For the purposes of any of the provisions of this Agreement, neither the Township nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or in default with respect to its obligations hereunder because of any enforced delay in the performance of such obligations arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts or omissions of the other parties (including litigation by third parties), fires, floods, epidemics, quarantine restrictions, strikes, freight, energy shortages, embargoes, unusual or severe weather, or delays of subcontractors due to any of the foregoing such causes, and actions or inactions by any Federal, state or local governmental or quasi-governmental agency, board or office with respect to the Project Governmental Approvals or the development of the Project (including, without limitation, a failure of the Township to perform in accordance with the terms of this Agreement), if such actions or inactions are not caused by the Redeveloper. It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Township or the Redeveloper shall be extended for the period of the enforced delay.

ARTICLE 8.

MISCELLANEOUS.

Section 8.01. Waivers. No waiver made by any party with respect to any obligation of any other party under this Agreement shall be considered a waiver of any rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

Section 8.02. Implementation of Agreement and Redevelopment Plan. The parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions of this Agreement and the Redevelopment Plan.

Section 8.03. Provisions Not Merged with the Deeds. None of the provisions of this Agreement are intended to, or shall be merged by reason of, the deeds transferring title to any portion of the Redevelopment Area from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 8.04. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section 8.04.

TOWNSHIP OF CRANFORD

Marlena A. Schmid, Administrator
Township of Cranford
8 Springfield Avenue
Cranford, New Jersey 07016-2199

with a copy to:

Robert Renaud, Esq.
Palumbo & Renaud
190 North Avenue East
Cranford, NJ 07016

REDEVELOPER

Cranford Building Associates, L.L.C.
26 Columbia Turnpike
Florham Park, New Jersey 07932
Attention: Jeffrey Freireich

with a copy to:

Alan Hammer, Esq.
Brach, Eichler, Silver, Bernstein, Hammer & Gladstone
101 Eisenhower Parkway
Roseland, New Jersey 07068

Section 8.05. Title of Articles and Sections. The titles of the several Articles and Sections of this Agreement, as set forth in the Table of Contents or at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.06. Severability. The validity of any Articles and Section, clause or provision of this Agreement shall not affect the validity of the remaining Articles and Section, clauses or provisions hereof.

Section 8.07. Successors Bound. This Agreement shall be binding upon the respective parties hereto and their successors and assigns.

Section 8.08. Governing Law. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

Section 8.9. Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

Section 8.10. Exhibits. Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

Section 8.11. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof and supercedes and replaces the Original Redevelopment Agreement.

Section 8.12. Effective Date. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date first written above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

TOWNSHIP OF CRANFORD

(Seal)

By: _____
The Honorable George J. Jom
Mayor, Township of Cranford

Attest:

Rosalie Hellenbrecht, Township Clerk

By: _____
Name: _____
Title: _____

WITNESS:

By: _____
Name: _____
Title: _____

EXHIBIT A

AMENDED AND RESTATED DECLARATION OF REDEVELOPMENT
AGREEMENT RESTRICTION, TERMINATION OF EASEMENT
AGREEMENTS ACROSS PRIVATE COMPONENT AND RELEASE OF RIGHT
OF REVERTER

EXHIBIT B

GUARANTY OF COMPLETION

EXHIBIT C

PARKING FACILITY CONSTRUCTION AGREEMENT

DRAFT
~~{7/24/01}~~ [8/13/01]

SECOND AMENDED AND RESTATED
REDEVELOPMENT AGREEMENT
BY AND BETWEEN
THE TOWNSHIP OF CRANFORD
AND
CRANFORD BUILDING ASSOCIATES, L.L.C.

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THIS SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT
("Agreement") made and restated this ___ day _____, 2001 by and between

THE TOWNSHIP OF CRANFORD, a municipal corporation of the State of New Jersey, having its offices at 8 Springfield Avenue, Cranford, New Jersey 07016-2199 (hereinafter called the "Township")

AND

CRANFORD BUILDING ASSOCIATES, L.L.C., a limited liability company of the State of New Jersey, having its offices at 26 Columbia Turnpike, Florham Park, New Jersey (hereinafter called the "Redeveloper"), as assignee of **FIRST STATES PROPERTIES No. 20, LLC**, a limited liability company of the Commonwealth of Pennsylvania having its offices at 1725 The Fairway, Jenkintown, Pennsylvania 19046 (hereinafter called the "First States").

WITNESSETH:

WHEREAS, capitalized terms used herein shall have the meaning given to them above, below or in Section 1.01; and

WHEREAS, all Block and Lot references used in this Agreement shall refer to Blocks and Lots appearing on the official tax maps of the Township; and

WHEREAS, the Township Committee of the Township of Cranford, in the County of Union, New Jersey, following the recommendation of the Township Planning Board has determined by resolution adopted on December 22, 1998 that the Roundbank Property constitutes an "area in need of redevelopment" pursuant to the provisions of the Act; and

WHEREAS, the Township, following the recommendation of the Township Planning Board, has determined by resolution adopted on January 23, 1999 that the Commercial Property and the Parking Property together also constitute an "area in need of redevelopment" pursuant to the provisions of the Act; and

WHEREAS, pursuant to the above referenced actions of the Township Committee, the Roundbank Property, the Commercial Property and the Parking Property constitute the Redevelopment Area; and

WHEREAS, pursuant to the Act, the Township has determined to act as the “redevelopment entity” (as such term is defined at N.J.S.A. 40A:12A-3) for the Redevelopment Area and to exercise the powers contained in the Act to facilitate the redevelopment of the Redevelopment Area; and

WHEREAS, pursuant to the Act, the Township, together with the Township Planning Board, prepared a comprehensive site plan for the use and redevelopment of the Redevelopment Area (the “Original Redevelopment Plan”); and

WHEREAS, on April 21, 1999, the Township Planning Board adopted a resolution recommending the approval of the Original Redevelopment Plan for the Redevelopment Area, with certain additional recommendations as to parking; and

WHEREAS, on May 11, 1999, the Township approved the Original Redevelopment Plan; and

WHEREAS, on December 14, 1999, the Township approved an amended and restated Original Redevelopment Plan and designated (a) Cranford Crossing Community Development Corporation (the “Corporation”) as the “redeveloper” (as such term is defined at N.J.S.A. 40A:12A-3) of the Parking Property and (b) First States as the “redeveloper” of the Roundbank Property and the Commercial Property; and

WHEREAS, on April 21, 2000 the Township and First States entered into an amended and restated Redevelopment Agreement (the “Original Redevelopment Agreement”) for the purposes of setting forth in detail their respective undertakings, rights and obligations in connection with, among

other things, the construction and financing of the Project and the Parking Facility in the Redevelopment Area in accordance with the Redevelopment Plan and applicable law.

WHEREAS, in accordance with the Redevelopment Plan, on April 21, 2000, the Township conveyed title to the Commercial Property and an easement for the Private Component to First States to facilitate the construction, ownership and operation of Mixed Use Development I; and

WHEREAS, on April 21, 2000, First States executed certain loan documents in connection with the financing of the Project; and

WHEREAS, to assist in such financing, on April 21, 2000, the Township extended its credit by guaranteeing the financing of the Project; and

WHEREAS, First States had determined to (a) assign all of its rights, title and interest to the Original Redevelopment Agreement to Monogram Building and Design Corp. which shall, in turn, assign all of its rights, title and interest to the Original Redevelopment Agreement to the Redeveloper; (b) satisfy all of its obligations under the Redeveloper's Note (as such term was defined in the Original Redevelopment Agreement); and (c) terminate all of the loan documents, including the Township guaranty of the financing for the Project; and

WHEREAS, the Township has by ordinance finally adopted on September ____, 2001 designated the Redeveloper as the "redeveloper" of the Roundbank Property, the Commercial Property and Parking Property; and

WHEREAS, the Township and the Redeveloper have determined to enter into this Agreement for the purpose of (a) setting forth in detail the parties' respective undertakings, rights, and obligations in connection with, among other things, the construction and financing of the Project

in the Redevelopment Area in accordance with the Redevelopment Plan and applicable law and (b) superceding and replacing the Original Redevelopment Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, the parties hereto do hereby covenant and agree each with the other as follows:

ARTICLE 1.

DEFINITIONS AND DESCRIPTION OF REDEVELOPMENT AREA,
PROJECT, PARKING FACILITY AND TOWNSHIP OBLIGATIONS.

Section 1.01. Definitions. As used in this Agreement the following terms set forth in this Section shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation”. The words “agree,” “agreements,” “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed,” except or unless the context may otherwise specify. All references to Sections Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement.

“Act” shall mean the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

“**Amended Declaration of Restrictions**” shall be the amended and restated declaration of redevelopment agreement restrictions, release of right of reverter and termination of easement recorded on the date hereof on all of the parcels within the Redevelopment Area [in substantially the form attached hereto as Exhibit A.

“**Certificate of Commencement**” shall mean a written acknowledgment by the Township that it has satisfied the Township Obligations.

“**Certificate of Completion**” shall mean a written acknowledgment by the Township, pursuant to Section 2.07, that the Redeveloper has completed construction of the Project and the

Parking Facility (excluding the tenant improvements for any unleased portions of the Project) in accordance with the requirements of this Agreement.

“Certificate of Occupancy” shall be as defined in Section 92-1 et seq. of the Township municipal code and the applicable provisions of the Uniform Construction Code.

“Commencement Date” shall be 30 days after the receipt by the Redeveloper of (i) all Project Governmental Approvals required prior to the commencement of construction of the Project and the Parking Facility and the expiration of any applicable appeal periods without the filing of a lawsuit challenging such Project Government Approvals (In the event such a lawsuit is filed, the Commencement Date shall be extended until such lawsuit has been successfully defended and all appeal rights have expired.) and (ii) the Certificate of Commencement.

“Commercial Property” shall mean a parcel of land known as Block 474, Lot 4.03.

“Completion Date” shall mean the date on which the Redeveloper receives the Certificate of Completion as provided for in Section 2.07.

“Construction Period” shall mean the period of time which commences on the Commencement Date and ends on the Completion Date.

“Guarantor” shall mean _____.

“Guaranty” shall mean the agreement [executed on the date hereof] between the Township and the Guarantor in substantially the form attached hereto as Exhibit ~~(A)~~ [B].

“ISRA” shall be as defined in Section 1.05.

“Mixed Use Development I” shall mean approximately 13,000 square feet of retail space on the first floor and [not more than] 30 market rate apartments on the second, third and fourth floors located on the Commercial Property.

“**Mixed Use Development II**” shall mean approximately 11,000 square feet of retail space on the first floor and [not more than] 30 market rate apartments on the second, third and fourth floors located on the Roundbank Property.

“**Parking Facility**” shall mean the construction of a facility consisting of a foundation, ~~{an}~~ [retaining wall,] entrance ramp and ~~{a}~~ four-story parking deck, comprising approximately 310 parking spaces (subject to the Township’s configuration and striping of spaces) on the Parking Property and the property to be acquired from New Jersey Transit as described in Paragraph (a) of the definition of Township Obligations, including the modification of the right-of-way of South Union Avenue and the cost of the acquisition of title to or an easement in the property owned by New Jersey Transit and excluding the Private Component.

“**Parking Facility Construction Agreement**” shall mean the agreement executed on the date hereof between the Redeveloper and the Township for the construction of the Parking Facility [in substantially the form attached hereto as Exhibit C].

“**Parking Property**” shall mean a parcel of land known as Block 474, Lot 4.02.

“**Prevailing Wage Law**” shall be as defined in Section 1.03.1.

“**Project**” shall mean Mixed Use Development I and Mixed Use Development II.

“**Project Governmental Approvals**” shall mean all government approvals including, without limitation: site plans for the obtaining of final site plan approvals; construction plans and specifications for the obtaining of building permits for the proposed construction; environmental approvals; sewerage capacity approvals and any and all other necessary permits, licenses, consents and approvals that may be required in connection with the construction of Mixed Use Development I, Mixed Use Development II or the Parking Facility or as may be required under the Municipal Land

Use Law N.J.S.A. 40:55D-1 et seq. or as may be required by [Union County and/or] New Jersey Transit Corporation.

“Redeveloper Application” shall mean the Application for Designation as Redeveloper submitted by the Redeveloper to the Township relating to the Redevelopment Area dated June 19, 2001.

“Redevelopment Area” shall mean the Roundbank Property, the Commercial Property, and the Parking Property.

“Redevelopment Plan” shall mean the plan for the redevelopment of the Redevelopment Area adopted by the Township on May 11, 1999 as amended on December 14, 1999 and [September] ____, 2001.

“Roundbank Property” shall mean the land commonly known as Block 476, Lot 2.

“State” shall mean the State of New Jersey.

“Tax Agreement” shall mean the agreement between the Township and the Redeveloper providing for the payment in lieu of taxes computed pursuant to application of Section 10(c) of the Five Year Tax Abatement and Exemption Law, N.J.S.A. 40A:21-1 et seq.

“Township Obligations” shall mean (i) the acquisition by the Township of an easement from New Jersey Transit or title to the property located along the northern border of the Parking Property for the construction of the Parking Facility and (ii) the obtaining, with the assistance of the Redeveloper, of administrative approvals from the State Department of Transportation for the modification of the South Union Avenue into a two directional road (to the east of the Parking Facility entrance), including the location of a left turn lane into the Parking Facility.

“Township Planning Board” shall mean the planning board of the Township.

Section 1.02. Title to Property in the Redevelopment Area.

Section 1.02.1 The Redeveloper represents that it has fee simple absolute title to the Roundbank Property and the Commercial Property. [

]Section 1.02.2 The Township represents that it has fee simple absolute title to the Parking Property.

Section 1.03. Status of the Project and the Parking Facility.

Section 1.03.1 The Township and the Redeveloper agree that this Agreement does not constitute a “public works contract” as defined in P.L. 1975, c. 127 (N.J.S.A. 10:5-31) and the Project does not constitute “public work” as defined in N.J.S.A. 34:11-56.26(5) (the “**Prevailing Wage Law**”).

Section 1.03.2 The Township and the Redeveloper further acknowledge that the Parking Facility Construction Agreement shall constitute a “public works contract” as defined in P.L. 1975, c. 127 (N.J.S.A. 10:5-31) and the Parking Facility shall constitute a “public work” as defined in the Prevailing Wage Law.

Section 1.04. Township Obligations.

Section 1.04.1 The Township covenants to undertake all reasonable actions, at the Township's cost and expense, to satisfy the Township Obligations within 120 days of the execution of this Agreement.

Section 1.04.2 The Redeveloper agrees that the Township shall not in any way be held in default or otherwise liable under this Agreement if the Township Obligations shall fail to be satisfied for any reason other than as a result of the Township's gross negligence in undertaking, or failure to reasonably undertake, all actions for the satisfaction of the Township Obligations.

Section 1.05. ISRA Compliance. The Redeveloper acknowledges that as of the date hereof all requirements of the Industrial Site Recovery Act, N.J.S.A. 13:1K-6 et seq. (“**ISRA**”), relating to the Roundbank Property and the Commercial Property have been met.

ARTICLE 2.

PROJECT GOVERNMENTAL APPROVALS, CONSTRUCTION OF
PROJECT AND PARKING FACILITY, TAXES AND ASSESSMENTS,
INSURANCE AND INDEMNIFICATION AND CERTIFICATES
OF OCCUPANCY AND COMPLETION.

Section 2.01. Project Governmental Approvals. The Redeveloper represents that applications for the Project Governmental Approvals have been or will be prepared and filed including a resubmission of the revised Project to the Planning Board. Following receipt of the Project Government Approvals, the Redeveloper shall immediately submit the approved plans to the appropriate construction and permitting officials of the Township. All of the Project Governmental Approval applications shall be in conformity with the Redevelopment Plan, this Agreement, and any and all Federal, State, county, and municipal statutes, laws, ordinances, rules and regulations applicable thereto.

Section 2.02. The Project. The Redeveloper agrees to, at its cost and expense, construct the Project in accordance the Redevelopment Plan, this Agreement and all Project Government Approvals related thereto and provide the Guaranty to the Township.

Section 2.03. The Parking Facility. The Redeveloper agrees to, at the Township's cost and expense, construct the Parking Facility in accordance with the terms of the Parking Facility Construction Agreement, the Redevelopment Plan, this Agreement, and all Project Governmental Approvals. The Redeveloper shall receive ~~{payment of the Redeveloper's}~~ [a] fee for the management of the construction of the Parking Facility ~~{in the amount of \$285,000, which sum shall be payable monthly during the construction of the Parking Facility on a percentage of completion basis}~~ as ~~{further}~~ described in the Parking Facility Construction Agreement ~~{plus the~~

~~reimbursement of certain out-of-pocket administrative expenses associated with the construction of the Parking Facility, not to exceed 8.5% of the Cost of Work (as such terms are defined in the Parking Facility Construction Agreement)}~~. The Township agrees to grant an easement to the Redeveloper for 75 parking spaces in the Parking Facility. In exchange for such easement, the Redeveloper shall pay the Township an annual amount which shall be equal to the prorata cost (75 parking spaces as a percentage of the total number of parking spaces) for the applicable year of (a) the debt service on bonds (having a final maturity of not less than 25 years from their date of issuance with approximately level annual debt service payments) or notes (during the construction of such parking facility) issued to finance or refinance the construction, reconstruction or repair of the Parking Facility (including all costs authorized to be included pursuant to N.J.S.A. 40A:2-20) plus (b) the operation and maintenance expenses related to such Parking Facility provided that, if the bonds or ~~(note)~~ [notes] issued for the prorata costs of such 75 parking spaces must be issued on a taxable basis, the Redeveloper shall be responsible for such increased borrowing costs. The Township agrees to hold the remaining parking spaces in the Parking Facility open for use by the public.

The Redeveloper agrees to provide the Township 90 days prior written notice before closing the existing municipal parking lot on the Commercial Property and the Parking Property for construction. The Redeveloper further agrees to allow the Township to have continued quiet use and enjoyment of such municipal parking lot pending commencement of the construction of the Project and the Parking Facility for no fee. The Township shall provide maintenance and insurance for the existing municipal parking lot until it is closed for the construction of the Parking Facility. Construction of the Parking Facility shall be completed within 18 months of the closing of the existing municipal parking lot. In the event the Redeveloper fails to meet such deadline it shall

reimburse the Township at the rate of \$110 for each day such Parking Facility remains incomplete following such 18 month period unless such delay is caused by the Township or is an enforced delay as described in Section 7.01.

Section 2.04. Compliance Schedule. The Redeveloper agrees to commence construction of the Project and the Parking Facility no later than the Commencement Date. The Redeveloper further agrees that the Completion Date shall be no later than 24 months following the Commencement Date.

Section 2.05. Payment in Lieu of Taxes/Special Improvement District Assessment. The parties agree that the Project shall be a “redevelopment project” as defined in the Act. In accordance with this designation, the Township and the Redeveloper agree to execute the Tax Agreement prior to the end of the Construction Period. Upon the end of the Construction Period, the Township will be entitled to receive payments in lieu of taxes for a five year period. After such five year period expires, the Project shall be taxed as any other real property situate in the Township. During the Construction Period, the Project shall be taxed as vacant land. The Redeveloper shall pay the special improvement district assessment for the Project as and when required by law.

Section 2.06. Insurance and Indemnification. The Redeveloper agrees to secure, and to maintain in effect until substantial completion of the Project and the Parking Facility, (i) liability insurance in the amount of Five Million Dollars (\$5,000,000.00) naming the Township as an insured party and insuring it against the claims of third parties arising from the construction and installation of the Project and/or the Parking Facility and (ii) workers compensation insurance. The Redeveloper further agrees to indemnify and hold harmless the Township and its respective members, officers, employees and agents against any and all claims by third parties, including but not limited to

workers, employees and agents of the Redeveloper and unrelated third parties, which claims may arise from the construction, installation, maintenance and functioning of the Project and/or the Parking Facility and other Project or Parking Facility-related improvements, or any other activities of the Redeveloper in the Redevelopment Area, unless caused by negligence of the Township, or its members, officers, employees or agents. The Redeveloper shall provide to the Township proof of such insurance prior to the Commencement Date and the insurance certificate shall contain a provision that it shall not be cancelled for any reason except after 30 days written notice to the Township.

Section 2.07. Certificates of Occupancy and Certificate of Completion. Upon completion of the construction of each structure constituting the Project (exclusive of the tenant improvements for any unleased portions of the Project) in accordance with the Project Governmental Approvals and applicable building codes and ordinances, the Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for said structure. The Certificate of Occupancy, when issued, shall constitute evidence that Redeveloper has fully performed its obligations under this Agreement as to said structure. In addition, if requested by the Redeveloper, when Certificates of Occupancy have been issued, and the Project has otherwise been fully completed, the Redeveloper may seek a comprehensive Certificate of Occupancy for the entire Project. Following the issuance of all of the Certificates of Occupancy and the satisfaction of the terms and conditions of this Agreement, the Township agrees to issue a Certificate of Completion, in proper form for recording, which shall acknowledge that the Redeveloper has performed all of its duties and obligations under this Agreement and has completed construction of the Project and the Parking Facility (excluding tenant improvements for any unleased portions of the Project) in

accordance with the requirements of this Agreement. The Certificate of Completion shall constitute a recordable conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement and the Redevelopment Plan with respect to the obligations of the Redeveloper to construct the Project and the Parking Facility within the dates for the completion of same. If the Township shall fail or refuse to provide the Certificate of Completion within 30 days after written request by the Redeveloper, the Township shall provide the Redeveloper with a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to complete the Project and the Parking Facility (excluding tenant improvements for any unleased portions of the Project) in accordance with the provisions of this Agreement or is otherwise in default under this or any other applicable agreement and what reasonable measures or acts will be necessary in the opinion of the Township in order for the Redeveloper to be entitled to the Certificate of Completion provided that the Township may not refuse to issue a Certificate of Completion based upon items which were previously the subject of a Certificate of Occupancy.

ARTICLE 3.

COVENANTS AND RESTRICTIONS.

Section 3.01. Covenants and Restrictions. On the date hereof, the Amended Declaration of Restrictions shall be recorded in the office of the Union County Clerk on all of the property in the Redevelopment Area and such Amended Declaration of Restrictions shall be included in any deeds conveying portions of the Redevelopment Area.

Section 3.02. Description of Covenants. The covenants to be imposed upon the Redeveloper, its successors and assigns, and recorded in the Amended Declaration of Restrictions, shall set forth that the Redeveloper and its successors and assigns shall:

- (i) Devote the Redevelopment Area to the uses specified in the Redevelopment Plan, and the zoning ordinance, if applicable, and shall not devote the Redevelopment Area to any other use(s);
- (ii) [Commence the construction of the Project and the Parking Facility within the period of time described herein and in the Parking Facility Construction Agreement;
- (iii) Not have any authority to sell, lease or otherwise transfer the Redevelopment Area or the Project, or any part thereof except as permitted hereunder;
- (iv) Not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any buildings or structures erected or to be erected thereon, or any part thereof;
- ~~{(iii)}~~[(v)] In the sale, lease or occupancy of the Project, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the Redevelopment Area or any building or structure erected or to be erected thereon is restricted upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familial status, and the Redeveloper, its successors and assigns, shall comply with all State and local laws prohibiting discrimination or segregation by reason of age, race, color, creed, religion, ancestry, national origin, sex or familial status.

Section 3.03]. Redevelopment Area Upon Completion. Upon redevelopment of the Redevelopment Area and completion of the Project, the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist.

Section 3.04]. Effect and Term of Covenants. It is intended and agreed, and the Amended Declaration of Restrictions provides, that the agreements and covenants set forth in Section 3.02 shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Township, its successors and assigns, and any successor in interest to the Redevelopment Area, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Redevelopment Area or any part thereof. It is further intended and agreed that the agreements and covenants set forth herein shall remain in effect for a period of 30 years from the date hereof or until the expiration of the Redevelopment Plan, whichever date occurs sooner (at which time such agreements and covenants shall cease and terminate) and that the agreements and the covenants provided in ~~(Sections 3.02(ii) and (iii))~~ [Section 3.02] shall remain in effect without limitation as to time. However, such agreements and covenants shall be binding on the Redeveloper itself, each successor in interest to the Redevelopment Area, 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 Redevelopment Area, the buildings and structures thereon or any part thereof.

Section ~~3.04~~ [3.05]. Enforcement by Township. In amplification, and not in restriction of the provisions of this Article 3, it is intended and agreed (and the Amended Declaration of Restrictions shall so state) that the Township and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in Section 3.02 both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants shall run in favor of the Township for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Township has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Township 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.

ARTICLE 4.

PROHIBITION AGAINST SPECULATIVE DEVELOPMENT AND TRANSFERS.

Section 4.01. Prohibition Against Speculative Development. Because of the importance of the development of the Redevelopment Area to the general welfare of the community ~~{and the public aids that have been made available by law for the purpose of making such development possible}~~, the Redeveloper represents and agrees that the Redevelopment Area and the Redeveloper's undertakings pursuant to this Agreement are, and will be used for the purpose of the redevelopment of the Redevelopment Area as provided herein and not for speculation in land holding.

Section 4.02. Prohibition Against Transfers. The Redeveloper further represents and agrees that except as permitted herein, the Redeveloper has not made or created, and that during the Construction Period and for so long as the Redeveloper is permitted to make payments in lieu of taxes, it will not, make or create, or permit to be made or created, any sale, conveyance or transfer in any other mode or form of the Redevelopment Area, or any building or structure thereon or any part thereof or any interest therein, without the prior written approval of the Township, except for the transfers identified in Section 4.03. In the event of any attempted transfer in violation of the restriction in Section 4.02, the Township shall be entitled to the ex parte issuance of an injunction restraining such transfer, and the Redeveloper shall reimburse the Township for their legal fees and related expenses in conjunction with any such legal action. Upon the recording of the Declaration of Restrictions in the Office of the Union County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

Section 4.03. Acceptable Transfers. The following transfers are exceptions to the prohibition set forth in Section 4.02 and shall not require prior approval by the Township:

- (i) mortgage, lien, encumbrance or transfer for the benefit of a lender;
- (ii) leases to tenants of individual units in the Project,
- (iii) utility and other development easements; or
- (iv) any contract or agreement with respect to any of the foregoing exceptions.
- (v) transfers amongst members of the Redeveloper, their immediate family and/or trustees for their benefit.

Section 4.04. Conditions of Transfer. The Township shall be entitled to require, as conditions to the approval of any transfer provided for in Section 4.02 that:

(i) Any proposed transferee shall have the qualifications and financial responsibility, as reasonably determined by the Township, necessary and adequate to fulfill the obligations undertaken in this Agreement by the Redeveloper; and

(ii) Any proposed transferee, by instrument in writing satisfactory to the Township and in recordable form, shall, for itself and its successors and assigns, and expressly for the benefit of the Township, have expressly assumed all of the obligations of the Redeveloper under this Agreement and agreed to be subject to all the conditions and restrictions to which the Redeveloper is subject; and

(iii) All instruments and other legal documents involved in effecting such transfer shall be submitted for review to the Township and the Township shall indicate their approval or disapproval to the Redeveloper in writing; and

(iv) Any transfer approved by the Township shall release the Redeveloper from any further obligation under this Agreement from and after the closing of the approved transfer, except

as to any liability or obligation of the Redeveloper incurred prior to such transfer and except as otherwise provided herein or in the approval by the Township; and

(v) The Redeveloper and its transferees shall comply with such other reasonable conditions as the Township may find necessary in order to achieve and safeguard the purposes of the Redevelopment Plan.

ARTICLE 5.

EVENTS OF DEFAULT/ REMEDIES.

5.01. Events of Default. During the Construction Period, each of the following shall constitute an Event of Default:

(i) The Redeveloper or its successor in interest shall default in or violate its obligations with respect to the construction of the Project or Parking Facility in a material respect (including the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work (unless such suspension arises out of a delay as a result of any pending or threatened administrative procedures or litigation that interferes with the Redeveloper's obligation to begin or complete the construction of the Project or the Parking Facility), and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within 90 days (180 days if the default is with respect to the date for completion of the improvements) after written demand by the Township to do so or such longer period if incapable of cure within such period, provided that the Redeveloper has commenced and is diligently prosecuting such cure; or

(ii) The Redeveloper or its successor in interest shall fail to pay any real estate taxes, assessments, or make payments in lieu of taxes on the Project, the Roundbank Property, or the Commercial Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this 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, assessments, or payments in lieu of taxes shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Township, made for such

payment, removal, or discharge, including a bond, within 90 days after written demand by the Township to do so; or

(iii) There is a violation of the terms of this Agreement or the Parking Facility Construction Agreement, or there is, in violation of this Agreement, any transfer of the fee title to the Roundbank Property or the Commercial Property and such violation shall not be cured within 30 days after written demand served upon the Redeveloper by the Township, unless extended in writing [or such violation cannot be cured within such 30 day period and the Redeveloper is acting diligently to cure such violation].

Section 5.02. Township's Remedies. Upon the occurrence of any Event of Default, the Township shall have the right at its sole and absolute discretion, upon 90 days' written notice to the Redeveloper and any mortgagee of the Redeveloper, to (i) terminate this Agreement, solely as it relates to the Redeveloper, (ii) execute against the Guaranty, (iii) purchase and take title to the Roundbank Property and/or the Commercial Property and the improvements thereon for a purchase price equal to ~~(\$1)~~ [\$1.00 (One Dollar)], all as subject to the rights and obligations of any mortgagee, and/or (iv) pursue any other remedies provided for in the Parking Facility Construction Agreement or available at law or in equity. The Redeveloper agrees to execute a sales contract of the Roundbank Property and/or the Commercial Property immediately upon the Township's election to purchase and take title to the Roundbank Property and/or Commercial Property pursuant to Section 5.02(iii).

ARTICLE 6.

REDEVELOPER REPRESENTATIONS AND COVENANTS.

Section 6.01. The Redeveloper hereby makes the following representations and covenants:

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

(ii) It is duly organized and a validly existing legal entity under the laws of the State of New Jersey and all necessary resolutions have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on the Redeveloper's behalf.

(iii) The Redeveloper has made the appropriate filings with the State and is authorized to do business with the State.

(iv) It owns or controls, or will, by actions contemplated by this Agreement, own or control all of the lands upon which the Project shall be constructed.

(v) To the best of its knowledge, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which (a) questions the validity of this Agreement or any action or act taken or to be taken by the Redeveloper pursuant to this Agreement; or (b) 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 pursuant to the terms of this Agreement.

(vi) Its execution and delivery of this Agreement and its performance hereunder will not constitute a violation of any partnership and/or stockholder agreement of the Redeveloper or of any agreement, mortgage, indenture, instrument or judgment, to which the Redeveloper is a party.

(vii) It will use its best efforts to ensure the completion of the Project within the time periods specified in this Agreement.

(viii) All information and statements included in the Redeveloper Application submitted by the Redeveloper is true and correct in all respects. The Redeveloper acknowledges that the facts and representations contained in the Redeveloper Application are a material factor in the decision of the Township to designate the Redeveloper as the “redeveloper” of the Redevelopment Area.

ARTICLE 7.

DELAYS.

Section 7.01. For the purposes of any of the provisions of this Agreement, neither the Township nor the Redeveloper, as the case may be, nor any successor in interest, shall be considered in breach of, or in default with respect to its obligations hereunder because of any enforced delay in the performance of such obligations arising from causes beyond its reasonable control and without its fault or negligence, including, but not restricted to, acts of God, acts of the public enemy, acts or omissions of the other parties (including litigation by third parties), fires, floods, epidemics, quarantine restrictions, strikes, freight, energy shortages, embargoes, unusual or severe weather, or delays of subcontractors due to any of the foregoing such causes, and actions or inactions by any Federal, state or local governmental or quasi-governmental agency, board or office with respect to the Project Governmental Approvals or the development of the Project (including, without limitation, a failure of the Township to perform in accordance with the terms of this Agreement), if such actions or inactions are not caused by the Redeveloper. It is the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Township or the Redeveloper shall be extended for the period of the enforced delay.

ARTICLE 8.

MISCELLANEOUS.

Section 8.01. Waivers. No waiver made by any party with respect to any obligation of any other party under this Agreement shall be considered a waiver of any rights of the party making the waiver beyond those expressly waived in writing and to the extent thereof.

Section 8.02. Implementation of Agreement and Redevelopment Plan. The parties hereto agree to cooperate with each other and to provide all necessary and reasonable documentation, certificates, consents in order to satisfy the terms and conditions of this Agreement and the Redevelopment Plan ~~{of this Agreement}~~.

Section 8.03 Provisions Not Merged with the Deeds. None of the provisions of this Agreement are intended to, or shall be merged by reason of, the deeds transferring title to any portion of the Redevelopment Area from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Agreement.

Section 8.04. Notices and Demands. A notice, demand or other communication under this Agreement by any party to the other shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (and receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section 8.04.

TOWNSHIP OF CRANFORD

Marlena A. Schmid, Administrator
Township of Cranford
8 Springfield Avenue
Cranford, New Jersey 07016-2199

with a copy to:

Robert Renaud, Esq.
Palumbo & Renaud
190 North Avenue East
Cranford, NJ 07016

REDEVELOPER

Cranford Building Associates, L.L.C.
26 Columbia Turnpike
Florham Park, New Jersey 07932
Attention: Jeffrey Freireich

with a copy to:

Alan Hammer, Esq.
Brach, Eichler, Silver, Bernstein, Hammer & Gladstone
101 Eisenhower Parkway
Roseland, New Jersey 07068

Section 8.05. Title of Articles and Sections. The titles of the several Articles and Sections of this Agreement, as set forth in the Table of Contents or at the heads of said Articles and Sections, are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

Section 8.06. Severability. The validity of any Articles and Section, clause or provision of this Agreement shall not affect the validity of the remaining Articles and Section, clauses or provisions hereof.

Section 8.07. Successors Bound. This Agreement shall be binding upon the respective parties hereto and their successors and assigns.

Section 8.08. Governing Law. This Agreement shall be governed by and construed by the laws of the State of New Jersey.

Section 8.9. Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute but one and the same instrument.

Section 8.10. Exhibits. Any and all Exhibits annexed to this Agreement are hereby made a part of this Agreement by this reference thereto.

Section 8.11. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto, supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof and supercedes and replaces the Original Redevelopment Agreement.

Section 8.12. Effective Date. Anything herein contained to the contrary notwithstanding, the effective date of this Agreement shall be the date first written above.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

TOWNSHIP OF CRANFORD

(Seal)

By: _____
The Honorable George J. Jorn
Mayor, Township of Cranford

Attest:

Rosalie Hellenbrecht, Township Clerk

By: _____
Name: _____
Title: _____

WITNESS:

By: _____
Name: _____
Title: _____

EXHIBIT A

AMENDED AND RESTATED DECLARATION OF REDEVELOPMENT
AGREEMENT RESTRICTION, TERMINATION OF EASEMENT
AGREEMENTS ACROSS PRIVATE COMPONENT AND RELEASE OF RIGHT
OF REVERTER

EXHIBIT B

GUARANTY OF COMPLETION

EXHIBIT C

PARKING FACILITY CONSTRUCTION AGREEMENT

GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION (this "**Guaranty**"), dated as of _____, _____ 2001 made by _____, _____ ("**Guarantor**") for the benefit of the Township of Cranford, in the County of Union, New Jersey ("**Township**").

WITNESSETH

WHEREAS, the Township has agreed to designate Cranford Building Associates, LLC, a New Jersey limited liability company (the "**Redeveloper**") as a "redeveloper" of certain property located in the Township and execute a second amended and restated redevelopment agreement dated _____, 2001 with such Redeveloper (the "Redevelopment Agreement") (capitalized terms used herein and not otherwise defined having the meanings assigned to them in the Redevelopment Agreement); and

WHEREAS, pursuant to the Redevelopment Agreement, the Redeveloper has agreed to construct Mixed Use Development I and Mixed Use Development II (the "Redevelopment Project") in the Township; and

WHEREAS, the Guarantor expects to derive financial benefit from the construction of the Redevelopment Project; and

WHEREAS, the execution and delivery by the Guarantor of this Guaranty is a condition to the execution of the Redevelopment Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged by the Guarantor, and intending to be legally bound, the Guarantor hereby agrees as follows:

ARTICLE I
GUARANTY

1.01. Guaranteed Obligations. The Guarantor hereby unconditionally and irrevocable guarantees to the Township and becomes surety to the Township for the due, punctual and full payment and performance of, and covenants with the Township to duly, punctually and fully pay and perform, the following (collectively, the "**Guaranteed Obligations**"):

- (a) the full and complete construction of the Redevelopment Project in a good and workmanlike manner in accordance with the Redevelopment Agreement (all of the foregoing, the "**Guaranteed Work**"); and

(b) the payment of any and all costs and expenses (including without limitation attorneys' fees) incurred by the Township in connection with the enforcement of the Guarantor's obligation to complete the Guaranteed Work, as and when demanded by Township.

Notwithstanding anything to the contrary in this Agreement, Guarantor's obligations as to Guaranteed Work for any structure at the Redevelopment Project shall be deemed to be released and satisfied upon the issuance of a Certificate of Occupancy (as defined in the Redevelopment Agreement) for such structure, and all of Guarantor's obligations as to Guaranteed Work hereunder shall be deemed to be released and satisfied upon the issuance of a Certificate of Completion (as defined in the Redevelopment Agreement).

1.02. Guaranty Unconditional. The obligations of the Guarantor hereunder are continuing, absolute and unconditional, irrespective of any circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by:

(a) any amendment, modification or supplement to the Redevelopment Agreement;

(b) any exercise or nonexercise of or delay in exercising any right, remedy, power or privilege under or in respect of this Guaranty, the Redevelopment Agreement even if such right, remedy, power or privilege shall be lost thereby), or any waiver, consent, indulgence or other action or inaction in respect thereof;

(c) any bankruptcy, insolvency, arrangement, composition, assignment for the benefit of creditors or similar proceeding commenced by or against the Redeveloper;

(d) any failure to perfect or continue perfection of, or any release or waiver of, any rights given to the Township in any property as security for the performance of any of the Redeveloper's obligations under the Redevelopment Agreement;

(e) any extension of time for payment or performance of any of the Guaranteed Obligations;

(f) the genuineness, validity or enforceability of the Redevelopment Agreement;

(g) any limitation of liability of the Redeveloper or its constituent or related parties contained in the Redevelopment Agreement;

(h) any defense that may arise by reason of the failure of the Township

to file or enforce a claim against the estate of the Redeveloper in any bankruptcy or other proceeding;

(i) any voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the property of the Redeveloper, or any marshaling of assets and liabilities, or other similar proceeding affecting, the Redeveloper or any of its assets;

(j) the release of the Redeveloper from performance or observance of any of the agreements, covenants, terms or conditions contained in the Redevelopment Agreement, by operation of law;

(k) the failure of Township to keep the Guarantor advised of the Redeveloper's financial condition, regardless of the existence of any duty to do so;

(l) any damage or destruction to or condemnation of the Redevelopment Project prior to its initial completion;

(m) any sale or other transfer of the Redevelopment Project or any part thereof or any foreclosure by the Township on the Redevelopment Project or any part thereof; or

(n) any other circumstances which might otherwise constitute a legal or equitable discharge of a guarantor or surety.

No set-off, claim, reduction or diminution of any obligation, or any defense of any kind or nature which Redeveloper or any Guarantor now has or hereafter may have against the Township, shall be available hereunder to any Guarantor against the Township.

1.03. No Notice or Duty to Exhaust Remedies. Guarantor hereby waives diligence, presentment, demand, protest and all notices of any kind, and waives any requirement that Township exhaust any right or remedy, or proceed first or at any time, against the Redeveloper or any other guarantor of, or any security for, any of the Guaranteed Obligations. This Guaranty constitutes an agreement of suretyship as well as of guaranty, and Township may pursue its rights and remedies under this Guaranty and under the Redevelopment Agreement in whatever order, or collectively, and shall be entitled to payment and performance hereunder notwithstanding such and notwithstanding any action taken by the Township or inaction by the Township to enforce any of its rights or remedies against any other guarantor or any other person, entity or property whatsoever.

1.04. SUBORDINATION OF SUBROGATION; WAIVER OF MARSHALING ETC. NOTWITHSTANDING ANY PAYMENTS MADE OR OBLIGATIONS PERFORMED BY ANY GUARANTOR BY REASON OF THIS GUARANTY (INCLUDING BUT NOT LIMITED TO APPLICATION OF FUNDS ON ACCOUNT OF SUCH PAYMENTS OR OBLIGATIONS), THE GUARANTOR HEREBY IRREVOCABLY (A) SUBORDINATES TO THE PRIOR PAYMENT IN FULL OF THE GUARANTEED OBLIGATIONS ANY AND ALL RIGHTS IT

MAY HAVE AT ANY TIME (WHETHER ARISING DIRECTLY OR INDIRECTLY, BY OPERATION OF LAW, CONTRACT OR OTHERWISE) TO ASSERT ANY CLAIM AGAINST THE REDEVELOPER OR ANY OTHER PERSON, OR AGAINST ANY DIRECT OR INDIRECT SECURITY, ON ACCOUNT OF PAYMENTS MADE OR OBLIGATIONS PERFORMED UNDER OR PURSUANT TO THIS GUARANTY, INCLUDING WITHOUT LIMITATION ANY AND ALL RIGHTS OF SUBROGATION, REIMBURSEMENT, EXONERATION, CONTRIBUTION OR INDEMNITY, AND (B) WAIVES AND RELEASES ANY RIGHTS IT MAY HAVE AT ANY TIME TO REQUIRE THE MARSHALING OF ANY ASSETS OF REDEVELOPER, WHICH RIGHT OF MARSHALING MIGHT OTHERWISE ARISE FROM PAYMENTS MADE OR OBLIGATIONS PERFORMED UNDER OR PURSUANT TO THIS GUARANTY.

ARTICLE II **MISCELLANEOUS**

2.01. Damages. Guarantor acknowledges and agrees that it may be impossible to measure accurately the damages to the Township resulting from a breach of the Guarantor's covenant to discharge or perform the Guaranteed Obligations and that such a breach will cause irreparable injury to the Township and that the Township may not have an adequate remedy at law in respect of such breach, and as a consequence, agrees that such covenant shall be specifically enforceable against the Guarantor. Guarantor hereby waives and agrees not to assert in any action for specific performance of such covenant, any defense that specific performance is not an available remedy. This Section 2.01 shall not prejudice the Township's rights to assert any and all claims for damages incurred as a result of the failure of the Guarantor to discharge or perform the Guaranteed Obligations, and the Township may hold the Guarantor liable for all losses and damages sustained and expenses incurred by reason of such failure.

2.02. Further Assurances. From time to time upon the request of the Township, the Guarantor shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the Township may deem necessary or desirable to confirm this Guaranty, to carry out the purpose and intent hereof or to enable Township to enforce any of its rights hereunder.

2.03. Amendments, Waiver, Etc. The Township and the Redeveloper may from time to time enter into written agreements amending, modifying, supplementing or otherwise changing any provision of this Agreement or the Redevelopment Agreement (except as otherwise expressly provided herein or therein) or the right of the Township or the Redeveloper hereunder or thereunder, or may grant written waivers or consents to a departure from the due performance of the obligations of the Redeveloper hereunder or thereunder. Any such agreement, waiver or consent entered into, made or granted pursuant to this Section must be in writing and approved by the Township and shall be effective only to the extent specifically set forth in such writing. In the case of any such waiver or consent relating to any provision hereof or any event of default, such waiver or consent shall not extend to any other or subsequent event of default or impair any right consequent thereto.

2.04. No Implied Waiver; Cumulative Remedies. No course of dealing and no delay or failure of the Township in exercising any right, power or privilege under this Guaranty or the Redevelopment Agreement shall affect any other or future exercise thereof or exercise of any other right, power or privilege; nor shall any single or partial exercise of any such right, power or privilege or any abandonment or discontinuance of steps to enforce such a right, power or privilege preclude any further exercise thereof or of any other right power or privilege. The rights and remedies of Township under this Guaranty are cumulative and not exclusive of any rights or remedies which Township would otherwise have under the Redevelopment Agreement, at law or in equity.

2.05. Notices. All notices, demands, or other communications under the provisions of this Agreement shall be in accordance with Section 8.04 of the Redevelopment Agreement.

2.06. Expenses. The Guarantor agrees to pay or cause to be paid and to save the Township harmless against liability for the payment of all reasonable out-of-pocket expenses, including fees and expenses of counsel for the Township, incurred by the Township from time to time arising in connection with the Township's enforcement or preservation of rights under this Guaranty, including but not limited to such expenses as may be incurred by the Township in connection with any default by Guarantor of any of its obligations hereunder.

2.07. Survival. All obligations of the Guarantor to make payments under Section 2.06 hereof or to indemnify the Township (including indemnities by the Redeveloper of the Township under the Redevelopment Agreement) shall survive the payment and performance in full of the Guaranteed Obligations.

2.08. Jurisdiction; Etc. Guarantor hereby unconditionally and irrevocably (a) subjects itself to the jurisdiction of the Superior Court of New Jersey, Union County, Civil Division, and of the United States District Court for the District of New Jersey, in connection with any action, suit or proceeding under or relating to, or to enforce any of the provisions of, this Agreement, (b) waives, to the extent permitted by law, any right to obtain a change in venue from any such court in any such action, suit or proceeding, and (c) agrees to service of process sent both by certified mail return receipt requested, postage prepaid and by reputable overnight courier to its address (and with such copies) as is set forth in Section 8.04 of the Redevelopment Agreement. Guarantor irrevocably agrees that service of process in accordance with the foregoing sentence shall be deemed in every respect effective and valid personal service of process upon Guarantor. The provisions of this Section shall not limit or otherwise affect the right of the Township to institute and conduct an action in any other appropriate manner, jurisdiction or court.

2.09. Severability. If any term or provision of this Guaranty of the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Guaranty, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Guaranty shall be valid and enforceable to the fullest extent permitted by law.

2.10. Counterparts. This Guaranty may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.

2.11. Governing Law. This Agreement shall be deemed to be a contract under the laws of the State of New Jersey and for all purposes shall be governed by and construed and enforced in accordance with the laws of the State of New Jersey.

2.12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Redeveloper, the Township and their respective successors and assigns, except that Redeveloper may not assign or transfer any of its rights hereunder or interests herein without the prior written consent of the Township, and any purported assignment without such consent shall be void.

2.13. Representations and Warranties of Guarantor. Guarantor hereby represents and warrants that (a) Guarantor is duly formed, validly existing and in good standing as a _____ under the laws of the _____ and has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder and all such action has been duly and validly authorized by all necessary action on the part of Guarantor; (b) this Agreement constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor and its successors and assigns in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights; (c) neither the execution and delivery of this Agreement nor consummation of the transactions herein contemplated nor performance of or compliance with the terms and conditions hereof or thereof will (i) violate any law, (ii) conflict with or result in a breach of or a default under the _____ of Guarantor or any agreement or instrument to which Guarantor is a party or by which Guarantor may be bound or (iii) result in the creation or imposition of any lien, charge, security interest or encumbrance upon any property of Guarantor; (d) the financial statements of Guarantor heretofore furnished to the Township present fairly the financial condition of Guarantor at the respective dates indicated therein and the results of operations and cash flows for the respective periods indicated therein; (e) since the dates of the most recent of such financial statements for Guarantor, there has been no material adverse change in the business, operations, condition (financial or otherwise) or prospects of Guarantor from that reflected in such financial statements. There is no pending or (to Guarantor's actual knowledge) threatened proceeding by or before any governmental authority against or affecting Guarantor or that is reasonably likely to have a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of Guarantor or on the ability of Guarantor to perform its obligations under the Loan Documents.

2.14. Third Party Rights. Nothing in this Agreement, whether express or implied, shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

IN WITNESS WHEREOF, the Guarantor has duly executed and delivered this Guaranty as of the date first above written.

WITNESS/ATTEST:

By: _____

Name:

Title:

Address:

GUARANTY OF COMPLETION

THIS GUARANTY OF COMPLETION (this "**Guaranty**"), dated as of _____, _____ 2001 made by _____, _____ ("**Guarantor**") for the benefit of the Township of Cranford, in the County of Union, New Jersey ("**Township**") ~~(,)~~ []

WITNESSETH

WHEREAS, the Township has agreed to designate Cranford Building Associates, LLC, a New Jersey limited liability company (the "**Redeveloper**") as a "redeveloper" of certain property located in the Township and execute a second amended and restated redevelopment agreement dated _____, 2001 with such Redeveloper (the "Redevelopment Agreement") (capitalized terms used herein and not otherwise defined having the meanings assigned to them in the Redevelopment Agreement); and

WHEREAS, pursuant to the Redevelopment Agreement ~~{and a Parking Facility Construction Agreement}~~, the Redeveloper has agreed to construct Mixed Use Development I and Mixed Use Development II (the ~~{"Project"~~) as well as a Parking Facility (together, ~~the~~ "**Redevelopment Project**") in the Township; and

WHEREAS, the Guarantor expects to derive financial benefit from the construction of the Redevelopment Project; and

WHEREAS, the execution and delivery by the Guarantor of this Guaranty is a condition to the execution of the Redevelopment Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged by the Guarantor, and intending to be legally bound, the Guarantor hereby agrees as follows:

ARTICLE I
GUARANTY

1.01. Guaranteed Obligations. The Guarantor hereby unconditionally and irrevocable guarantees to the Township and becomes surety to the Township for the due, punctual and full payment and performance of, and covenants with the Township to duly, punctually and fully pay and perform, the following (collectively, the "**Guaranteed Obligations**"):

- (a) the full and complete construction of the Redevelopment Project in a good and workmanlike manner in accordance with the Redevelopment Agreement ~~{and~~

~~Parking Facility Construction Agreement (all)~~ [(all)] of the foregoing, the “**Guaranteed Work**”); [and]{

~~(b) the payment of all costs (but not including principal, interest and fees payable to the Township under the Redevelopment Agreement and Parking Facility Construction Agreement) (“Guaranteed Costs”), as and when such payment shall become due; and}~~

~~{(c)}~~ [(b)] the payment of any and all costs and expenses (including without limitation attorneys’ fees) incurred by the Township in connection with the enforcement of the Guarantor’s obligation to complete the Guaranteed Work, as and when demanded by Township.

Notwithstanding anything to the contrary in this Agreement, Guarantor’s obligations as to Guaranteed Work for any structure at the [Redevelopment] Project shall be deemed to be released and satisfied upon the issuance of a Certificate of Occupancy (as defined in the Redevelopment Agreement) for such structure, and all of Guarantor’s obligations as to Guaranteed Work hereunder shall be deemed to be released and satisfied upon the issuance of a Certificate of Completion (as defined in the Redevelopment Agreement).

1.02. Guaranty Unconditional. The obligations of the Guarantor hereunder are continuing, absolute and unconditional, irrespective of any circumstance whatsoever which might otherwise constitute a legal or equitable discharge or defense of a guarantor or surety. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall remain in full force and effect without regard to, and shall not be released, discharged or in any way affected by:

(a) any amendment, modification or supplement to the Redevelopment Agreement ~~{or Parking Facility Construction Agreement}~~;

(b) any exercise or nonexercise of or delay in exercising any right, remedy, power or privilege under or in respect of this Guaranty, the Redevelopment ~~{Agreement or Parking Facility Construction}~~ Agreement even if such right, remedy, power or privilege shall be lost thereby), or any waiver, consent, indulgence or other action or inaction in respect thereof;

(c) any bankruptcy, insolvency, arrangement, composition, assignment for the benefit of creditors or similar proceeding commenced by or against the Redeveloper;

(d) any failure to perfect or continue perfection of, or any release or waiver of, any rights given to the Township in any property as security for the performance of any of the Redeveloper’s obligations under the Redevelopment Agreement ~~{or Parking Facility Construction Agreement}~~;

(e) any extension of time for payment or performance of any of the

Guaranteed Obligations;

(f) the genuineness, validity or enforceability of the Redevelopment Agreement ~~{or Parking Facility Construction Agreement}~~;

(g) any limitation of liability of the Redeveloper or its constituent or related parties contained in the Redevelopment Agreement ~~{or the Parking Facility Construction Agreement}~~;

(h) any defense that may arise by reason of the failure of the Township to file or enforce a claim against the estate of the Redeveloper in any bankruptcy or other proceeding;

(i) any voluntary or involuntary liquidation, dissolution, sale of all or substantially all of the property of the Redeveloper, or any marshaling of assets and liabilities, or other similar proceeding affecting, the Redeveloper or any of its assets;

(j) the release of the Redeveloper from performance or observance of any of the agreements, covenants, terms or conditions contained in the Redevelopment Agreement ~~{or the Parking Facility Construction Agreement}~~, by operation of law;

(k) the failure of Township to keep the Guarantor advised of the Redeveloper's financial condition, regardless of the existence of any duty to do so;

(l) any damage or destruction to or condemnation of the Redevelopment Project prior to its initial completion;

(m) any sale or other transfer of the Project or any part thereof or any foreclosure by the Township on the [Redevelopment] Project or any part thereof; or

(n) any other circumstances which might otherwise constitute a legal or equitable discharge of a guarantor or surety.

No set-off, claim, reduction or diminution of any obligation, or any defense of any kind or nature which Redeveloper or any Guarantor now has or hereafter may have against the Township, shall be available hereunder to any Guarantor against the Township.

1.03. No Notice or Duty to Exhaust Remedies. Guarantor hereby waives diligence, presentment, demand, protest and all notices of any kind, and waives any requirement that Township exhaust any right or remedy, or proceed first or at any time, against the Redeveloper or any other guarantor of, or any security for, any of the Guaranteed Obligations. This Guaranty constitutes an agreement of suretyship as well as of guaranty, and Township may pursue its rights and remedies under this Guaranty~~{}~~ and under the Redevelopment ~~{Agreement or the Parking Facility Construction}~~ Agreement in whatever order, or collectively, and shall be entitled to payment and

performance hereunder notwithstanding such and notwithstanding any action taken by the Township or inaction by the Township to enforce any of its rights or remedies against any other guarantor or any other person, entity or property whatsoever.

1.04. SUBORDINATION OF SUBROGATION; WAIVER OF MARSHALING ETC. NOTWITHSTANDING ANY PAYMENTS MADE OR OBLIGATIONS PERFORMED BY ANY GUARANTOR BY REASON OF THIS GUARANTY (INCLUDING BUT NOT LIMITED TO APPLICATION OF FUNDS ON ACCOUNT OF SUCH PAYMENTS OR OBLIGATIONS), THE GUARANTOR HEREBY IRREVOCABLY (A) SUBORDINATES TO THE PRIOR PAYMENT IN FULL OF THE GUARANTEED OBLIGATIONS ANY AND ALL RIGHTS IT MAY HAVE AT ANY TIME (WHETHER ARISING DIRECTLY OR INDIRECTLY, BY OPERATION OF LAW, CONTRACT OR OTHERWISE) TO ASSERT ANY CLAIM AGAINST THE REDEVELOPER OR ANY OTHER PERSON, OR AGAINST ANY DIRECT OR INDIRECT SECURITY, ON ACCOUNT OF PAYMENTS MADE OR OBLIGATIONS PERFORMED UNDER OR PURSUANT TO THIS GUARANTY, INCLUDING WITHOUT LIMITATION ANY AND ALL RIGHTS OF SUBROGATION, REIMBURSEMENT, EXONERATION, CONTRIBUTION OR INDEMNITY, AND (B) WAIVES AND RELEASES ANY RIGHTS IT MAY HAVE AT ANY TIME TO REQUIRE THE MARSHALING OF ANY ASSETS OF REDEVELOPER, WHICH RIGHT OF MARSHALING MIGHT OTHERWISE ARISE FROM PAYMENTS MADE OR OBLIGATIONS PERFORMED UNDER OR PURSUANT TO THIS GUARANTY.

ARTICLE II MISCELLANEOUS

2.01. Damages. Guarantor acknowledges and agrees that it may be impossible to measure accurately the damages to the Township resulting from a breach of the Guarantor's covenant to discharge or perform the Guaranteed Obligations and that such a breach will cause irreparable injury to the Township and that the Township may not have an adequate remedy at law in respect of such breach, and as a consequence, agrees that such covenant shall be specifically enforceable against the Guarantor. Guarantor hereby waives and agrees not to assert in any action for specific performance of such covenant, any defense that specific performance is not an available remedy. This Section 2.01 shall not prejudice the Township's rights to assert any and all claims for damages incurred as a result of the failure of the Guarantor to discharge or perform the Guaranteed Obligations, and the Township may hold the Guarantor liable for all losses and damages sustained and expenses incurred by reason of such failure.

2.02. Further Assurances. From time to time upon the request of the Township, the Guarantor shall promptly and duly execute, acknowledge and deliver any and all such further instruments and documents as the Township may deem necessary or desirable to confirm this Guaranty, to carry out the purpose and intent hereof or to enable Township to enforce any of its rights hereunder.

2.03. Amendments, Waiver, Etc. The Township and the Redeveloper may from

Guarantor is a party or by which Guarantor may be bound or (iii) result in the creation or imposition of any lien, charge, security interest or encumbrance upon any property of Guarantor; (d) the financial statements of Guarantor heretofore furnished to the Township present fairly the financial condition of Guarantor at the respective dates indicated therein and the results of operations and cash flows for the respective periods indicated therein; (e) since the dates of the most recent of such financial statements for Guarantor, there has been no material adverse change in the business, operations, condition (financial or otherwise) or prospects of Guarantor from that reflected in such financial statements. There is no pending or (to Guarantor's actual knowledge) threatened proceeding by or before any governmental authority against or affecting Guarantor or that is reasonably likely to have a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of Guarantor or on the ability of Guarantor to perform its obligations under the Loan Documents.

2.14. Third Party Rights. Nothing in this Agreement, whether express or implied, shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement, which is intended for the sole and exclusive benefit of the parties hereto.

IN WITNESS WHEREOF, the Guarantor has duly executed and delivered this Guaranty as of the date first above written.

WITNESS/ATTEST:

By: _____

Name:

Title:

Address:

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA



**STANDARD FORM OF DESIGN-BUILD
AGREEMENT AND GENERAL CONDITIONS
BETWEEN OWNER AND CONTRACTOR**
(Where the Basis of Payment is the Cost of the Work Plus a Fee,
with a Guaranteed Maximum Price Option)

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This Agreement has important legal and insurance consequences. Consultation with an attorney and insurance consultant is encouraged with respect to its completion or modification.

**STANDARD FORM OF DESIGN-BUILD AGREEMENT AND
GENERAL CONDITIONS BETWEEN OWNER AND CONTRACTOR**
(Where the Basis of Payment is the Cost of the Work Plus a Fee, with a Guaranteed Maximum Price Option)

**ARTICLE 1
AGREEMENT**

This Agreement is made this _____ day of May
2001
in the year 2000, by and between the

OWNER
(Name and Address)

~~CRANFORD CROSSING COMMUNITY DEVELOPMENT CORPORATION~~ **TOWNSHIP OF CRANFORD**
~~c/o Downtown Management Corporation~~
Attention: ~~Downtown Manager~~ **Business Administrator**
8 Springfield Avenue
Cranford, New Jersey 07016-2199

and the
CONTRACTOR
(Name and Address)

~~FIRST STATE PROPERTIES NO. 20, LLC~~ **CRANFORD BUILDING ASSOCIATES, L.L.C.**
1725 The Fairway
Jenkintown, Pennsylvania 19046

for services in connection with the following

PROJECT CRANFORD CROSSING PARKING FACILITY

The programming, design and construction of a foundation, an entrance ramp and ~~at least~~ a four-story deck parking facility ("Parking Facility") containing approximately 275 parking spaces (subject to Owner's configuration and striping of spaces) on the Parking Property (as defined in the Redevelopment Agreement) and on property owned by New Jersey Transit, including related site-work, the modification of the right-of-way of South Union Avenue ~~and the integration of the Parking Facility with the Mixed-Use Development I (as defined in the Redevelopment Agreement), but excluding the Private Component (as defined in the Redevelopment Agreement).~~ The "Redevelopment Agreement" means that certain Amended and Restated Redevelopment Agreement dated February 1, 2000, between the Township of Cranford (the "Township") and the Contractor.

Notice to the parties shall be given at the above addresses.

ARTICLE 2

GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP The Owner and the Contractor agree to proceed with the Project on the basis of trust, good faith and fair dealing, and shall take all actions reasonably necessary to perform this Agreement in an economical and timely manner, including consideration of design modifications and alternative materials or equipment that will permit the Work to be constructed within the Guaranteed Maximum Price (GMP) and by the date of Substantial Completion, if they are established by Amendment No. 1. The Contractor agrees to procure the architectural and engineering services set forth below, and to furnish construction and administration of the Work.

2.2 ARCHITECT/ENGINEER Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Contractor or furnished by licensed employees of the Contractor, or as permitted by the law of the state where the Project is located. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. If the Architect/Engineer is an independent design professional, the architectural and engineering services shall be procured pursuant to a separate agreement between the Contractor and the Architect/Engineer. The Architect/Engineer for the Project is GEORGE J. DONOVAN A.T.A. & ASSOCIATES

2.3 EXTENT OF AGREEMENT This Agreement is solely for the benefit of the parties, represents the entire and integrated agreement between the parties, and supersedes all prior negotiations, representations or agreements, either written or oral.

2.4 DEFINITIONS

- .1 The Contract Documents consist of:
 - a. Change Orders and written amendments to this Agreement signed by both the Owner and Contractor, including Amendment No. 1 if executed;
 - b. this Agreement except for the existing Contract Documents set forth in item e below;
 - c. the most current Documents approved by the Owner pursuant to Subparagraphs 3.1.4, 3.1.5 or 3.1.6;
 - d. the information provided by the Owner pursuant to Clause 4.1.2.1;
 - e. the Contract Documents in existence at the time of execution of this Agreement which are set forth in Article 15;
 - f. the Owner's Program provided pursuant to Subparagraph 4.1.1.

~~In case of any inconsistency, conflict or ambiguity among the Contract Documents, the Documents shall govern in the order in which they are listed above.~~

.2 The Work is the Design Phase Services procured in accordance with Paragraph 3.1, the GMP Proposal provided in accordance with Paragraph 3.2, the Construction Phase Services provided in accordance with Paragraph 3.3, Additional Services that may be provided in accordance with Paragraph 3.8, and other

services which are necessary to complete the Project in accordance with and reasonably inferable from the Contract Documents.

.3 The term Day shall mean calendar day.

.4 A Subcontractor is a person or entity who has an agreement with the Contractor to perform any portion of the Work. The term Subcontractor does not include the Architect/Engineer or any separate contractor employed by the Owner or any separate contractor's subcontractors.

.5 A Subsubcontractor is a person or entity who has an agreement with a Subcontractor to perform any portion of the Subcontractor's work.

.6 Substantial Completion of the Work, or of a designated portion, occurs on the date when construction is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Project, or a designated portion, for the use for which it is intended. This date shall be confirmed by a certificate of Substantial Completion signed by the Owner and Contractor. The certificate shall state the respective responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance. The certificate shall also list the items to be completed or corrected, and establish the time for their completion and correction.

.7 The Owner's Program is an initial description of the Owner's objectives, including budgetary and time criteria, space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

ARTICLE 3

CONTRACTOR'S RESPONSIBILITIES

The Contractor shall be responsible for procuring the design and for the construction of the Work consistent with the Owner's Program, as such Program may be modified by the Owner during the course of the Work. The Contractor shall exercise reasonable skill and judgment in the performance of its services, but does not warrant or guarantee schedules and estimates other than those that are part of the GMP proposal.

3.1 DESIGN PHASE SERVICES

3.1.1 PRELIMINARY EVALUATION ~~The Contractor shall provide a preliminary evaluation of the Project's feasibility based on the Owner's Program and other relevant information.~~

3.1.2 PRELIMINARY SCHEDULE The Contractor shall prepare a preliminary schedule of the Work for the Owner's written approval. The schedule shall show the activities of the Owner, Architect/Engineer and Contractor necessary to meet the Owner's completion requirements. The schedule shall be updated periodically with the level of detail for each schedule update reflecting the information then available. If an update indicates that a previously approved schedule will not be met, the Contractor shall recommend corrective action to the Owner in writing.

3.1.3 PRELIMINARY ESTIMATE When sufficient Project information has been identified, the Contractor shall prepare for the Owner's written approval a preliminary estimate utilizing area, volume or similar conceptual estimating techniques. The estimate shall be updated periodically with the level of detail for each estimate update reflecting the information then available. If the preliminary estimate or any update exceeds the Owner's budget, the Contractor shall make written recommendations to the Owner.

3.1.4 SCHEMATIC DESIGN DOCUMENTS The Contractor shall submit for the Owner's written approval Schematic Design Documents, based on the Owner's Program and other relevant information. Schematic Design Documents shall include drawings, outline specifications and other conceptual documents illustrating the Project's basic elements, scale, and their relationship to the site. One set of these documents shall be furnished to the Owner. The Contractor shall update the preliminary schedule and estimate based on the Schematic Design Documents.

3.1.5 DESIGN DEVELOPMENT DOCUMENTS The Contractor shall submit for the Owner's written approval Design Development Documents based on the approved Schematic Design Documents. The Design Development Documents shall further define the Project including drawings and outline specifications fixing and describing the Project size and character, and other appropriate elements incorporating the structural, architectural, mechanical and electrical systems. One set of these documents shall be furnished to the Owner. The Contractor shall update the schedule and estimate based on the Design Development Documents.

3.1.6 CONSTRUCTION DOCUMENTS The Contractor shall submit for the Owner's written approval Construction Documents based on the approved Design Development Documents. The Construction Documents shall set forth in detail the requirements for construction of the Work, and shall consist of drawings and specifications based upon codes, laws or regulations enacted at the time of their preparation. Construction shall be in accordance with these approved Construction Documents. One set of these documents shall be furnished to the Owner prior to commencement of construction. ~~If a GMP has not been established, the Contractor shall prepare a further update of the schedule and estimate.~~

3.1.7 OWNERSHIP OF DOCUMENTS ~~All Documents shall remain the property of the Contractor and are not to be used by the Owner without the written consent of the Contractor.~~

3.2 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

3.2.1 When the drawings and specifications are sufficiently complete, the Contractor shall, ~~if requested by the Owner,~~ propose a GMP, which shall be the sum of the estimated Cost of the Work as defined in Article 8 and the Contractor's Fee as defined in Article 7. The GMP is subject to modification as provided in Article 9.

3.2.2 ~~If a GMP is not established, all references in this Agreement to the GMP shall not be applicable, and the parties shall proceed on the basis of reimbursement as provided in Articles 7 and 8. In the absence of a GMP, however, the parties may establish a date of Substantial Completion.~~

3.2.3 The estimated Cost of the Work may include the Contractor's contingency, a sum established by the

Contractor for use at the Contractor's discretion to cover costs which are properly reimbursable as a Cost of the Work but are not the basis for a Change Order.

3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE The Contractor shall include with the GMP proposal a written statement of its basis, which shall include:

- .1 a list of the drawings and specifications, including all addenda, which were used in preparation of the GMP proposal;
- .2 a list of allowances and a statement of their basis;
- .3 a list of the assumptions and clarifications made by the Contractor in the preparation of the GMP proposal to supplement the information contained in the drawings and specifications;
- .4 the date of Substantial Completion upon which the proposed GMP is based, and the Schedule of Work upon which the date of Substantial Completion is based;
- .5 schedule of applicable alternate prices;
- .6 schedule of applicable unit prices;
- .7 statement of Additional Services included, if any; and
- .8 the time limit for acceptance of the GMP proposal.

3.2.5 The Contractor shall meet with the Owner to review the GMP proposal. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, the Owner shall promptly give written notice to the Contractor, who shall make appropriate adjustments to the GMP, its basis or both.

~~3.2.6 Unless the Owner accepts the GMP proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Contractor, the GMP proposal shall not be effective without written acceptance by the Contractor.~~

3.2.7 Prior to the Owner's acceptance of the Contractor's GMP proposal, the Contractor shall not incur any cost to be reimbursed as part of the Cost of the Work, except as provided in this Agreement or as the Owner may specifically authorize in writing.

3.2.8 Upon acceptance by the Owner of the GMP proposal, the GMP and its basis shall be set forth in Amendment No. 1. The GMP and the date of Substantial Completion shall be subject to modification by changes in the Work as provided in Articles 6 and 9.

3.2.9 The GMP shall include in the Cost of the Work those taxes which are applicable at the time the GMP is established. If in accordance with the Owner's direction an exemption is claimed for taxes, the Owner agrees to indemnify, defend and hold the Contractor harmless for any liability, penalty, interest, fine, tax assessment, attorneys' fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the Owner's direction.

3.3 CONSTRUCTION PHASE SERVICES

3.3.1 The Construction Phase will commence upon the issuance by the Owner of a written notice to proceed with

construction. If construction commences prior to execution of Amendment No. 1, the Owner's written notice to proceed shall list the documents that are applicable to the part of the Work which the Owner has authorized.

3.3.2 In order to complete the Work, the Contractor shall provide all necessary construction supervision, inspection, construction equipment, labor, materials, tools, and subcontracted items.

3.3.3 The Contractor shall give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement which govern the proper performance of the Work.

3.3.4 The Contractor shall prepare and submit a Schedule of Work for the Owner's written approval. This schedule shall indicate the dates for the start and completion of the various stages of the construction including the dates when information and approvals are required from the Owner. It shall be revised as required by the conditions of the Work.

~~**3.3.5** The Contractor shall assist the Owner in securing the building permits necessary for the construction of the Project.~~

3.3.6 The Contractor shall take necessary precautions for the safety of its employees on the Project, and shall comply with all applicable provisions of federal, state and municipal safety laws to prevent accidents or injury to persons on, about or adjacent to the Project site. The Contractor, directly or through its Subcontractors, shall erect and properly maintain at all times, as required by the conditions and progress of the Work, necessary safeguards for the protection of workers and the public. The Contractor, however, shall not be responsible for the elimination or abatement of safety hazards created or otherwise resulting from work at the Project site carried on by the Owner or its employees, agents, separate contractors or tenants. The Owner agrees to cause its employees, agents, separate contractors and tenants to abide by and fully adhere to all applicable provisions of federal, state and municipal safety laws and regulations. The above provision shall not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with all applicable provisions of relevant laws.

3.3.7 The Contractor shall keep such full and detailed accounts as may be necessary for proper financial management under this Agreement. The Owner shall be afforded access to all the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Agreement. The Contractor shall preserve all such records for a period of three years after the final payment or longer where required by law.

3.3.8 The Contractor shall provide periodic written reports to the Owner on the progress of the Work as agreed to by the Owner and Contractor.

~~**3.3.9** The Contractor shall develop a system of cost reporting for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes in the Work. The reports shall be presented to the Owner at mutually agreeable intervals.~~

3.3.10 At all times the Contractor shall maintain the site of the Work free from debris and waste materials resulting from

the Work. At the completion of the Work, the Contractor shall remove from the premises all construction equipment, tools, surplus materials, waste materials and debris.

3.4 HAZARDOUS MATERIAL

3.4.1 A Hazardous Material is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. The Contractor shall not be obligated to commence or continue Work until any known or suspected Hazardous Material discovered at the Project site has been removed, rendered or determined to be harmless by the Owner as certified by an independent testing laboratory and approved by the appropriate government agency.

3.4.2 If after the commencement of the Work, known or suspected Hazardous Material is discovered at the Project site, the Contractor shall be entitled to immediately stop Work in the affected area, and the Contractor shall report the condition to the Owner and, if required, the government agency with jurisdiction.

3.4.3 The Contractor shall not be required to perform any Work relating to or in the area of known or suspected Hazardous Material without written mutual agreement.

3.4.4 The Owner shall be responsible for retaining an independent testing laboratory to determine the nature of the material encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of the Owner, and shall be performed in a manner minimizing any adverse effect upon the Work of the Contractor. The Contractor shall resume Work in the area affected by any Hazardous Material only upon written agreement between the parties after the Hazardous Material has been removed or rendered harmless.

3.4.5 If the Contractor incurs additional costs and/or is delayed due to the presence of known or suspected Hazardous Material, the Contractor shall be entitled to an equitable adjustment in the GMP and/or the date of Substantial Completion.

3.4.6 To the fullest extent permitted by law, the Owner shall defend, indemnify and hold harmless the Contractor, Architect/Engineer, Subcontractors and Subsubcontractors, and the agents, officers, directors and employees of each of them, from and against any and all claims, damages, losses, costs and expenses, whether direct, indirect or consequential, including but not limited to attorney's fees, costs and expenses incurred in connection with litigation or arbitration, arising out of or relating to the performance of the Work in any area affected by Hazardous Material. To the fullest extent permitted by law, such indemnification shall apply regardless of the fault, negligence, breach of warranty or contract, or strict liability of the indemnitee.

3.4.7 The terms of this Paragraph 3.4 shall survive the completion of the Work under this Agreement and/or any termination of this Agreement.

3.5 ROYALTIES, PATENTS AND COPYRIGHTS The Contractor shall pay all royalties and license fees which may be due on the inclusion of any patented or copyrighted mate-

rials, methods or systems selected by the Contractor and incorporated in the Work. The Contractor shall defend, indemnify and hold the Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. The Owner agrees to defend, indemnify and hold the Contractor harmless from any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by the Owner.

3.6 TAX EXEMPTION If in accordance with the Owner's direction an exemption is claimed for taxes, the Owner agrees to defend, indemnify and hold the Contractor harmless from any liability, penalty, interest, fine, tax assessment, attorneys fees or other expense or cost incurred by the Contractor as a result of any action taken by the Contractor in accordance with the Owner's direction.

3.7 WARRANTIES AND COMPLETION

3.7.1 The Contractor warrants that all materials and equipment furnished under the Construction Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. Warranties shall commence on the date of Substantial Completion of the Work or of a designated portion. The Contractor agrees to correct all construction performed under this Agreement which proves to be defective in workmanship and materials within a period of one year from the date of Substantial Completion or for such longer periods of time as may be set forth with respect to specific warranties required by the Contract Documents.

3.7.2 Those products, equipment, systems or materials incorporated in the Work at the direction of or upon the specific request of the Owner shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face thereof. All other warranties expressed or implied including the warranty of merchantability and the warranty of fitness for a particular purpose are expressly disclaimed.

3.7.3 The Contractor shall secure required certificates of inspection, testing or approval and deliver them to the Owner.

3.7.4 The Contractor shall collect all written warranties and equipment manuals and deliver them to the Owner.

3.7.5 With the assistance of the Owner's maintenance personnel, the Contractor shall direct the checkout of utilities and operations of systems and equipment for readiness, and assist in their initial start-up and testing.

3.8 ADDITIONAL SERVICES The Contractor shall provide or procure the following Additional Services upon the request of the Owner. A written agreement between the Owner and Contractor shall define the extent of such Additional Services. If a GMP has been established for the Work or any portion of the Work, such Additional Services shall be considered a Change in the Work, unless they are specifically included in the statement of the basis of the GMP as set forth in Amendment No. 1.

~~.1—Documentation of the Owner's Program, establishing the Project budget, investigating sources of financing, general business planning and other information and documentation as may be required to establish the feasibility of the Project.~~

~~.2—Consultations, negotiations, and documentation supporting the procurement of Project financing;~~

~~.3 Surveys, site evaluations, legal descriptions and aerial photographs.~~

~~.4 Appraisals of existing equipment, existing properties, new equipment and developed properties.~~

~~.5 Soils, subsurface and environmental studies, reports and investigations required for submission to governmental authorities or others having jurisdiction over the Project.~~

~~.6—Consultations and representations other than normal assistance in securing building permits, before governmental authorities or others having jurisdiction over the Project.~~

~~.7 Investigation or making measured drawings of existing conditions or the verification of drawings or other Owner-provided information.~~

~~.8 Artistic renderings, models and mockups of the Project or any part of the Project or the Work.~~

~~.9 Inventories of existing furniture, fixtures, furnishings and equipment which might be under consideration for incorporation into the Work.~~

~~.10 Interior design and related services including procurement and placement of furniture, furnishings, artwork and decorations.~~

~~.11 Making revisions to the Schematic Design, Design Development, Construction Documents or documents forming the basis of the GMP after they have been approved by the Owner, and which are due to causes beyond the control of the Contractor.~~

~~.12—Design, coordination, management, expediting and other services supporting the procurement of materials to be obtained, or work to be performed, by the Owner, including but not limited to telephone systems, computer wiring networks, sound systems, alarms, security systems and other specialty systems which are not a part of this Agreement.~~

~~.13 Estimates, proposals, appraisals, consultations, negotiations and services in connection with the repair or replacement of an insured loss.~~

~~.14 The premium portion of overtime work ordered by the Owner including productivity impact costs.~~

~~.15 Document reproduction exceeding the limits provided for in this Agreement.~~

~~.16 Out-of-town travel by the Architect/Engineer in connection with the Work, except between the Architect/Engineer's office, Contractor's office, Owner's office and the Project site.~~

~~.17 Obtaining service contractors and training maintenance personnel, assisting and consulting in the use of systems and equipment after the initial start up and adjusting and balancing of systems and equipment~~

~~.18 Services for tenant or rental spaces not a part of this Agreement.~~

5.3 ASSIGNMENT OF SUBCONTRACT AGREEMENTS

The Contractor shall provide for assignment of subcontract agreements in the event that the Owner terminates this Agreement for cause as provided in Paragraph 12.2. Following such termination, the Owner shall notify in writing those subcontractors whose assignments will be accepted, subject to the rights of sureties.

ARTICLE 6

CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK The Work shall commence on or about JULY 1, 2000 and shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to the provisions of Paragraph 3.4 and Subparagraph 4.1.3.

6.2 SUBSTANTIAL COMPLETION At such time as a GMP is accepted, a date of Substantial Completion of the Work shall be established as set forth in Amendment No. 1. If a GMP is not established and the parties desire to establish a date of Substantial Completion, it shall be set forth in Amendment No. 1. If such a date is established, time shall be of the essence of this Agreement.

6.3 DELAYS IN THE WORK

6.3.1 If causes beyond the Contractor's control delay the progress of the Work, then the GMP, compensation for Design Phase Services, the Contractor's Fee and/or the date of Substantial Completion shall be modified by Change Order as appropriate. Such causes shall include but not be limited to: changes ordered in the Work, acts or omissions of the Owner or separate contractors employed by the Owner, the Owner preventing the Contractor from performing the Work pending dispute resolution, Hazardous Materials, differing site conditions, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, labor disputes, or unavoidable accidents or circumstances.

6.3.2 In the event delays to the project are encountered for any reason, the parties agree to undertake reasonable steps to mitigate the effect of such delays.

ARTICLE 7

COMPENSATION

7.1 INITIAL PAYMENT Upon execution of this Agreement an initial payment of ~~Two Hundred Twenty Five Thousand~~ Two Hundred Twenty Five Thousand dollars (\$225,000) shall be made to the Contractor. The amount of the initial payment shall be credited to the Owner's account at final payment.

7.2 Design Phase Compensation

7.2.1 The cost of services performed directly by the Architect/Engineer is computed separately and is independent

from the Contractor's compensation for work or services directly performed by the Contractor; these costs shall be shown as separate items on applications for payment. If an Architect/Engineer is retained by the Contractor, the payments to the Architect/Engineer shall be as detailed in a separate agreement between the Contractor and Architect/Engineer.

~~7.2.2~~ The Owner shall compensate the Contractor for services performed during the Design Phase as described in Paragraph 3.1, including preparation of a GMP proposal as described in Paragraph 3.2, as follows:

(State whether a stipulated sum, actual cost, or other basis. If a stipulated sum, state what portion of the sum shall be payable each month.)

- 1 — the actual cost of the Design Phase Services;
- 2 — the actual cost of the site-work portion of the Work, if any, performed by Contractor prior to the Commencement of the Construction Phase; and
- 3 — a general administrative charge equal to 8.5% of the amount specified in Clauses 1 and 2 above

~~7.2.3~~ Compensation for Design Phase Services shall be equitably adjusted if such services extend beyond _____ from the date of this Agreement for reasons beyond the reasonable control of the Contractor or as provided in Paragraph 9.1. For changes in Design Phase Services, compensation shall be adjusted as follows.

~~7.2.4~~ Payments for Design Phase Services shall be due and payable within ten (10) days following presentation of the Contractor's monthly invoice to the Owner. If the Owner fails to pay the Contractor as agreed, then the Contractor shall have the right to stop the Work and be entitled to payments due plus interest as provided in Subparagraphs 10.1.3 and 10.1.4.

7.3 CONSTRUCTION PHASE COMPENSATION

7.3.1 The Owner shall compensate the Contractor for Work performed following the commencement of the Construction Phase on the following basis:

- 1 the Cost of the Work as allowed in Article 8; and
- 2 the Contractor's Fee in the amount of Two Hundred Eighty-Five Thousand dollars (\$285,000.00) subject to adjustment as provided in Paragraph 7.3. The Contractor's Fee shall be paid proportionately to the ratio that the monthly Cost of the Work bears to the total estimated Cost of the Work; and

7.3.2 The compensation to be paid under this Paragraph 7.3 shall be limited to the GMP established in Amendment No. 1.

as the GMP may be adjusted under Article 9. In the event the Cost of the Work plus the Contractor's Fee shall be less than the GMP as adjusted by Change Orders, the resulting savings shall be shared by the Owner and the Contractor as follows:

- .1 ~~50% to Owner and the other 50% to Contractor.~~

~~7.3.3 Payment for Construction Phase Services shall be as set forth in Article 10. If Design Phase Services continue to be provided after construction has commenced, the Contractor shall also continue to be compensated as provided in Paragraph 7.2, or as mutually agreed.~~

~~7.4 CONTRACTOR'S FEE The Contractor's Fee includes the following:~~

- ~~.1 salaries and other mandatory or customary compensation of the Contractor's employees at its principal and branch offices, except employees listed in Subparagraph 8.2.2;~~
- ~~.2 general and administrative expenses of the Contractor's principal and branch offices other than the field office, except as may be expressly included in Article 8; and~~
- ~~.3 the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.~~

~~7.5 ADJUSTMENT IN THE CONTRACTOR'S FEE Adjustment in the Contractor's Fee shall be made as follows.~~

- ~~.1 for changes in the Work as provided in Article 9, the Contractor's Fee shall be adjusted as follows:~~

~~.2 for delays in the Work not caused by the Contractor, there will be an equitable adjustment in the Contractor's Fee to compensate the Contractor for increased expenses; and~~

~~.3 if the Contractor is placed in charge of managing the replacement of an insured or uninsured loss, the Contractor shall be paid an additional Fee in the same proportion that the Contractor's Fee bears to the estimated Cost of the Work.~~

ARTICLE 8

COST OF THE WORK

The Owner agrees to pay the Contractor for the Cost of the Work as defined in this Article. This payment shall be in addition to the Contractor's Fee stipulated in Article 7.

8.1 COST ITEMS FOR DESIGN PHASE SERVICES

8.1.1 Compensation for Design Phase Services as provided in Paragraph 7.2.

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES

~~8.2.1 Wages paid for labor in the direct employ of the Contractor in the performance of the Work.~~

~~8.2.2 Salaries of Contractor's employees when stationed at the field office, in whatever capacity employed, employees engaged on the road expediting the production or transportation of material and equipment, and employees from the principal or branch office performing the functions listed below:~~

~~8.2.3 Cost of all employee benefits and taxes including but not limited to workers' compensation, unemployment compensation, Social Security, health, welfare, retirement and other fringe benefits as required by law, labor agreements, or paid under the Contractor's standard personnel policy, insofar as such costs are paid to employees of the Contractor who are included in the Cost of the Work under Subparagraphs 8.2.1 and 8.2.2.~~

~~8.2.4 Reasonable transportation, travel, hotel and moving expenses of the Contractor's personnel incurred in connection with the Work.~~

~~8.2.5 Cost of all materials, supplies and equipment incorporated in the Work, including costs of inspection, testing, transportation, storage and handling.~~

~~8.2.6 Payments made by the Contractor to Subcontractors for work performed under this Agreement.~~

~~8.2.7 Fees and expenses for design services procured by the Contractor except as provided by the A/E and compensated in Paragraph 7.2.~~

~~8.2.8 Cost, including transportation and maintenance of all materials, supplies, equipment, temporary facilities and hand tools not owned by the workers that are used or consumed in the performance of the Work, less salvage value; and cost less salvage value on such items used, but not consumed that remain the property of the Contractor.~~

~~8.2.9 Rental charges of all necessary machinery and equipment, exclusive of hand tools owned by workers, used at the site of the Work, whether rented from the Contractor or others, including installation, repair and replacement, dismantling, removal, maintenance, transportation and delivery costs at rental charges consistent with those prevailing in the area.~~

~~8.2.10 Cost of the premiums for all insurance and surety bonds which the Contractor is required to procure or deems necessary.~~

~~8.2.11 Sales, use, gross receipts or other taxes, tariffs or duties related to the Work for which the Contractor is liable.~~

~~13.4 AWARDS The arbitration award shall be final. Judgment upon the award may be confirmed in any court having jurisdiction.~~

13.5 WORK CONTINUANCE AND PAYMENT Unless otherwise agreed in writing, the Contractor shall continue the Work and maintain the approved schedules during any arbitration proceedings. If the Contractor continues to perform, the Owner shall continue to make payments in accordance with this Agreement.

13.6 MULTIPARTY PROCEEDING The parties agree that all parties necessary to resolve a claim shall be parties to the same arbitration proceeding. Appropriate provisions shall be included in all other contracts relating to the Work to provide for the consolidation of arbitrations.

13.7 COST OF DISPUTE RESOLUTION The prevailing party in any dispute arising out of or relating to this Agreement or its breach that is resolved by arbitration or litigation shall be entitled to recover from the other party reasonable attorney's fees, costs and expenses incurred by the prevailing party in connection with such arbitration or litigation.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 ASSIGNMENT Neither the Owner nor the Contractor shall assign their interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

14.2 GOVERNING LAW This Agreement shall be governed by the law in effect at the location of the Project.

14.3 SEVERABILITY The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

14.4 NO WAIVER OF PERFORMANCE The failure of either party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this

Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

14.5 TITLES The title given to the Articles of this Agreement are for ease of reference only and shall not be relied upon or cited for any other purpose.

14.6 OTHER PROVISIONS

ARTICLE 15

EXISTING CONTRACT DOCUMENTS

The Contract Documents in existence at the time of execution of this Agreement are as follows:

Rider to Standard Form of Design-Build Agreement and General Conditions between Owner and Contractor, AGC Document No. 410, 1993 Edition.

This Agreement is entered into as of the date entered in Article 1.

~~CRANFORD CROSSING COMMUNITY DEVELOPMENT CORPORATION~~

OWNER: _____

BY: _____

PRINT NAME: _____

PRINT TITLE: Chairperson

~~FIRST STATES PROPERTIES NO. 20, LLC~~

CONTRACTOR: _____

BY: _____

PRINT NAME: Nicholas S. Schersch

PRINT TITLE: Manager

ATTEST: _____

ATTEST: _____

AMENDMENT NO.1, DATED _____,
TO DESIGN-BUILD AGREEMENT BETWEEN OWNER & CONTRACTOR

Pursuant to Paragraph 3.2 of the Agreement dated _____ between
the Owner, _____, and
the Contractor, _____, and
for (the Project), _____,
the Owner and Contractor desire to establish a GMP for the Work. Therefore, the Owner and Contractor agree as follows.

ARTICLE 1. GUARANTEED MAXIMUM PRICE

The Contractor's GMP for the Work, including the Cost of the Work as defined in Article 8 and the Contractor's Fee as set forth in Paragraph 7.2, is _____ dollars (\$_____).

The GMP is for the performance of the Work in accordance with the documents listed below, which are part of the Agreement.

- EXHIBIT A** Drawings and Specifications, including Addenda, if any,
dated _____, _____ pages.
- EXHIBIT B** Allowance Items, dated _____, _____ pages.
- EXHIBIT C** Assumptions and Clarifications, dated _____, _____ pages.
- EXHIBIT D** A Schedule of Work, dated _____, _____ pages.
- EXHIBIT E** Alternate Prices, dated _____, _____ pages.
- EXHIBIT F** Unit Prices, dated _____, _____ pages.
- EXHIBIT G** Additional Services included, dated _____, _____ pages.

ARTICLE 2. DATE OF SUBSTANTIAL COMPLETION

The date of Substantial Completion of the Work is: _____

This Amendment is entered into as of _____

ATTEST: _____

OWNER: _____
BY: _____
PRINT NAME: _____
PRINT TITLE: _____

ATTEST: _____

CONTRACTOR: _____
BY: _____
PRINT NAME: _____
PRINT TITLE: _____

RIDER TO
STANDARD FORM OF
DESIGN-BUILD AGREEMENT AND
GENERAL CONDITIONS BETWEEN
OWNER AND CONTRACTOR
AGC DOCUMENT NO. 410, 1993 EDITION

THIS RIDER modifies the "Standard Form of Design-Build Agreement and General Conditions between Owner and Contractor," AGC Document No. 410, 1993 Edition, dated as of _____, 2001, between THE TOWNSHIP OF CRANFORD, IN THE COUNTY OF UNION, NEW JERSEY ("Owner"), and CRANFORD BUILDING ASSOCIATES, L.L.C. ("Contractor"), attached hereto and made a part hereof ("Agreement"). The Agreement is amended and supplemented as set forth in this Rider. The Article and Paragraph numbers used in this Rider correspond to those used in the Agreement. Any term used in this Rider with initial capital letters that is not otherwise defined herein shall have the same meaning ascribed to such term in the Agreement.

ARTICLE 2
GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP: Add the following at the end of Paragraph 2.1:

"Contractor accepts the relationship of trust and confidence established between Contractor and Owner by this Agreement. Contractor agrees to furnish the services set forth herein and agrees to furnish efficient business administration and superintendence and to cause the Project to be completed in the soundest and most expeditious manner consistent with the interest of the Owner."

2.2 ARCHITECT/ENGINEER: Delete Paragraph 2.2 in its entirety and substitute the following in lieu thereof:

"Architectural and engineering services shall be procured from licensed, independent design professionals retained by the Contractor with the consent of the Owner. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. The Architect/Engineer shall be procured with the consent of the Owner pursuant to a separate agreement between the Contractor and the Architect/Engineer. If requested by the Owner, the Contractor shall take proposals for such architectural and engineering services."

2.3 EXTENT OF AGREEMENT: Add the following at the end of the Paragraph 2.3:

“, except for the Redevelopment Agreement and any other agreement referenced therein. When the drawings and specifications are complete, they shall be identified by written addendum to this Agreement. This Agreement may be amended only by written instrument signed by both Owner and Contractor.”

2.4.1 DEFINITIONS: Delete Subparagraph 2.4.1.d. in its entirety. Add the following new Subparagraph 2.4.1.g after Subparagraph 2.4.1.f:

“g. the Redevelopment Agreement.”

Modify the Paragraph 2.4.1 by deleting the last sentence thereof after 2.4.1f and substitute the following in lieu thereof: Redevelopment Agreement shall govern. In case of any inconsistency, conflict or ambiguity under any other Contract Documents, the Contract Documents listed above shall govern in the order in which they are listed above”.

Add the following at the end of Subparagraph 2.4.4:

“Unless otherwise approved by the Owner, the Subcontractor shall not be an Affiliate of the Contractor.”

Add the following at the end of Subparagraph 2.4.5:

“Unless otherwise approved by the Owner, the Subsubcontractor shall not be an Affiliate of the Contractor.”

Add the following at the end of Subparagraph 2.4.7.:

“that is prepared by the Contractor with the Owner’s approval.”

Add the following new Subparagraph 2.4.8 after Subparagraph 2.4.7:

“2.4.8 Affiliate shall mean, with respect to the Contractor, any other individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust (including any beneficiary thereof) or incorporated organization controlling or controlled by or under common control with the Contractor, its members, shareholders, officers or employees. ‘Control’ means the power to direct the management and policies of such entity directly or indirectly, whether through ownership of voting securities, by contract or otherwise.”

ARTICLE 3
CONTRACTOR'S RESPONSIBILITIES

3.0 CONTRACTOR RESPONSIBILITIES: Add the following at the end of the introductory Paragraph of Article 3:

“The Work includes all labor, materials, equipment, and services provided by the Architect/Engineer, Subcontractors, Subsubcontractors, material suppliers, and any other entity for whom Contractor is responsible pursuant to this Agreement. Contractor shall cause the Work to be performed in accordance with all applicable laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction. Contractor shall be solely responsible for all construction designs, means, methods, techniques, sequences, and procedures for all portions of the Work under this Agreement.”

3.1.1 PRELIMINARY EVALUATION: Delete Subparagraph 3.1.1 and its heading in their entirety and substitute the following in lieu thereof:

“3.1.1 PRELIMINARY ESTIMATE: Within 60 days of the execution of this Agreement and prior to the commencement of any Design Phase Services the Contractor shall provide a fee proposal for these services not otherwise included in the Contractor's Fee set forth in Subparagraph 7.3.1.2 including: the preparation of the Preliminary Estimate's Program, the Preliminary Schedule and substantially complete Schematic Design and Design Development Documents sufficient to enable the Contractor to provide the Owner with the GMP proposal described in Paragraph 3.2. Such fee proposal shall also identify, in detail, the services to be performed, the entity that shall perform such services and the method for charging the Owner for such services including a not to exceed amount for such services. Upon the Owner's acceptance of such fee proposal, the Contractor shall commence Design Phase Services.”

3.1.2 PRELIMINARY SCHEDULE: Modify Subparagraph 3.1.2 by adding the phrase “within 60 days of the Owner's acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by deleting the word “periodically” from the third sentence and substitute the word “monthly” in lieu thereof.

3.1.3 PRELIMINARY ESTIMATE: Modify Subparagraph 3.1.3 by adding the phrase “within 60 days of the Owner's acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by deleting the word “periodically” from the second sentence and substitute the word “monthly” in lieu thereof.

3.1.4 SCHEMATIC DESIGN DOCUMENTS: Modify Subparagraph 3.1.4 by adding the phrase “within 60 days of the Owner's acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by adding, after the word “update” in the last sentence, the word “monthly”.

3.1.5 DESIGN DEVELOPMENT DOCUMENTS: Modify Subparagraph 3.1.5 by adding the phrase “within 60 days of the Owner’s acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by adding, after the word “update” in the last sentence, the word “monthly”.

3.1.6 CONSTRUCTION DOCUMENTS: Modify Subparagraph 3.1.6 by adding “within 90 days of the Owner’s approval of Design Development Documents at the end of the first sentence thereof and by deleting the last sentence thereof.

3.1.7 OWNERSHIP OF DOCUMENTS: Delete Subparagraph 3.1.7 in its entirety and substitute the following in lieu thereof:

“All Documents shall be the property of the Owner. The Owner shall have the right, without Contractor’s agreement and without further compensation to Contractor, to utilize the Documents for completion of the Project by others in the event of Contractor’s default under this Agreement, or the Redevelopment Agreement, and in connection with other projects, provided, however, Contractor shall have no professional liability in connection with the use of the Documents in such other projects and Owner shall hold Contractor harmless with respect to such use.”

3.2 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

3.2.1 Modify Subparagraph 3.2.1 by deleting the phrase “sufficiently complete” and substitute the phrase “seventy percent (70%) complete and delivered to Owner,” in lieu thereof. Delete the phrase “if requested by the Owner,”. After the phrase “propose a GMP” insert the phrase “of not more than \$17,000 per parking space”.

3.2.2 Delete Subparagraph 3.2.2 in its entirety.

3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE:

3.2.4.8 Modify Subparagraph 3.2.4.8 by adding, after the word “acceptance”, the words “or rejection” and by adding, at the end of such Subparagraph, the following: “of at least 60 days.”

3.2.6 Delete Subparagraph 3.2.6 in its entirety and substitute the following in lieu thereof:

“Unless the Owner accepts the GMP proposal in writing on or before the later to occur of (i) the deadline set forth in Subparagraph 3.2.4.8 or (ii) ninety (90) days following the date of Contractor’s submittal of the GMP proposal to Owner (as the same may be adjusted pursuant to Subparagraph 3.2.5 hereof), this Agreement shall be deemed to have been terminated by Owner without cause pursuant to Paragraph 12.3 hereof; unless the submitted GMP proposal fails to meet the Owner’s Program in which case this Agreement shall be deemed to have been terminated by the Owner with cause pursuant to Subparagraph 12.2.2.4 that the

foregoing presumption shall not apply to any GMP proposal that fails to provide for the construction of a four story Parking Facility containing not less than 310 parking spaces.”

3.2.7 Add the following at the end of Subparagraph 3.2.7:

“Any other provision of this Agreement to the contrary notwithstanding, prior to Owner’s acceptance of the GMP proposal the Contractor may incur costs to be reimbursed as part of the Cost of the Work to the extent that the same relate to site-work costs that are properly allocable to the Project and are performed by Contractor at the time Contractor performs similar site-work activities for the Mixed Use Development I and the Mixed Use Development II (each as defined in the Redevelopment Agreement).”

3.3 CONSTRUCTION PHASE SERVICES

3.3.2 Add the following at the end of Subparagraph 3.3.2:

“During the construction of the Project, Contractor shall provide construction administration services that shall include the observation of construction work for conformance to the drawings and specifications; processing of shop drawings, materials and product samples; reviewing the result of construction tests and inspections; handling of design and scope changes; Project closeout; preparation of as-built record drawings and specifications; and preparation of the final punch list.”

3.3.4 Add the following at the end of the first sentence of Subparagraph 3.3.4:

“within ten (10) days of receipt of the written notice to proceed.”

Modify the last sentence of Subparagraph 3.3.4 by deleting the phrase “revised as required by the conditions of the Work.” and substitute the phrase “updated on a monthly basis” in lieu thereof.

3.3.5 Delete Subparagraph 3.3.5 in its entirety and substitute the following in lieu thereof:

“The Contractor shall obtain all building and construction permits necessary for the construction of the Project. The Owner may provide assistance to the Contractor in securing permits but shall not be under any obligation to act in this regard.

3.3.8 Modify Subparagraph 3.3.8 by deleting the word “periodic” and substitute the word “monthly” in lieu thereof.

Modify Subparagraph 3.3.8 by deleting the phrase “as agreed to by the Owner and Contractor”.

3.3.9 Delete Subparagraph 3.3.9 in its entirety and substitute the following in lieu thereof:

“The Contractor shall present cost reports to the Owner on a monthly basis.”

3.3.11 and 3.3.12 Add the following new Subparagraph 3.3.11 and 3.3.12 after Subparagraph 3.3.10:

“3.3.11 Contractor shall maintain at the site for the Owner one record copy of all drawings, specifications, Change Orders, and other modifications in good order and marked currently to record all changes made during construction. Upon completion of the Work, Contractor shall deliver such documents to Owner.

3.3.12 Contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the Work by Owner or its authorized representatives.”

3.7.1 WARRANTIES AND COMPLETION: Modify the second sentence of Subparagraph 3.7.1 by deleting the phrase “within a period of one year from the date of Substantial Completion or such longer periods of time” and add the following at the end of the Subparagraph 3.7.1:

“If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished under this Agreement.

The Contractor shall provide the Owner with a maintenance bond for any and all defective conditions arising by reason of defective materials, work, or labor performed by the Contractor, Subcontractors or Subsubcontractors. The maintenance bond shall be approved by the Owner and shall be in a amount equal to the amount of the GMP. The maintenance bond shall be in effect for a period of two (2) years commencing from the date of completion of all Work required under the Agreement.”

3.8 ADDITIONAL SERVICES

3.8.1 Delete Subparagraph 3.8.1. in its entirety.

3.8.2 Delete Subparagraph 3.8.2. in its entirety.

3.8.5 Modify Subparagraph 3.8.5 by adding, after the word “studies”, the phrase “other than those necessary for the design of the Project.”

3.8.6. Delete Subparagraph 3.8.6 in its entirety.

3.8.12 Delete Subparagraph 3.8.12 in its entirety.

3.9 PERFORMANCE BONDS/LABOR AND MATERIALS BOND: Add the following new Paragraph after paragraph 3.8:

“3.9 PERFORMANCE BONDS/LABOR AND MATERIALS BOND

“3.9.1 Pursuant to N.J.S.A. 2A:44 - 143 et seq., the Contractor shall provide to the Owner a performance bond for construction and maintenance and a labor materials payment bond, equal to the amount of the GMP. Such bonds shall be the security for performance of the Work, and the payment for furnished labor and supplies in the execution of Work under the Agreement. The bonds shall be provided by an insurance company approved by the Owner, and shall be in effect from the date of commencement of the Work to the date of completion of all Work required under the Agreement .”

“3.9.2 The Contractor shall be responsible throughout the term of the Agreement for monitoring the financial condition of any surety company issuing bonds and for making inquiries no less often than monthly to confirm that such surety company maintains at least the minimum rating agreed to by Owner. In the event the rating level of any surety, as agreed to by the Owner, falls below such minimum level, the Contractor shall promptly notify the Owner of such event and shall promptly furnish a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all of the above requirements, unless the Owner agrees in writing to accept an alternative method of assurance.”

3.10 AFFIRMATIVE ACTION: Add the following new Paragraph after paragraph 3.9:

“3.10 AFFIRMATIVE ACTION

During the Term of the Agreement, the Contractor or Subcontractor(s) shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor or Subcontractor(s) shall take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor or Subcontractor(s) shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this nondiscrimination clause.

The Contractor or Subcontractor(s) shall, where applicable, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The Contractor or Subcontractor(s) shall, where applicable, send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authority advising the labor union or workers' representative of the Contractor's commitments under the law and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or Subcontractor(s) shall comply with the regulations promulgated by the State Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time and the Americans With Disabilities Act.

The Contractor or Subcontractor(s) shall attempt in good faith to employ minority and female workers consistent with the applicable employment goals prescribed by N.J.A.C. 17:27-5.2, promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time.”

3.11 PREVAILING WAGE LAW: Add the following new Paragraph after paragraph 3.11:

“3.11 PREVAILING WAGE LAW

The Contractor shall comply with the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, c. 150, as amended and supplemented. The Contractor hereby warrants that neither Contractor nor any Subcontractor that may be employed to perform any work covered under this Agreement are listed or on record with the New Jersey Department of Labor for failure to pay prevailing wages in accordance with the Prevailing Wage Act.”

ARTICLE 4 OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER: Delete Paragraph 4.1 in its entirety.

4.2 OWNER'S RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 Modify Subparagraph 4.2.1 by deleting the word “provide” and substitute the phrase “review and timely approve or reject” in lieu thereof.

4.3 OWNER'S RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 In Subparagraph 4.3.1 add, after the word “approve”, the phrase “or reject”.

4.3.3 Delete of Subparagraph 4.3.3 in its entirety and substitute the following in lieu thereof:

“The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Architect/Engineer.”

4.4 OWNER’S REPRESENTATIVE

4.4.3 Delete Subparagraph 4.4.3. in its entirety.

ARTICLE 5
SUBCONTRACTS

5.0 Add, at the end of Paragraph 5.0, the following:

“The Contractor shall not contract, hire or utilize any Subcontractor or Subsubcontractor on this Project who has been hired or employed or will be hired or employed to performed any work on or relating to the Mixed Use Development I and Mixed Use Development II (as each are defined in the Redevelopment Agreement).”

5.1 RETAINING SUBCONTRACTORS: Delete Paragraph 5.1 in its entirety and substitute the following in lieu thereof:

“The Contractor shall receive at least three bids for work to be preformed by Subcontractors for presentation to the Owner including bids from those Subcontractors selected by the Owner. The Contractor shall retain the Subcontractor that submits the lowest bid unless otherwise agreed to by the Owner for the purpose of submitting bids. The Contractor shall not, however, be required to retain any Subcontractor to whom the Contractor has a reasonable objection.

5.2 MANAGEMENT OF SUBCONTRACTORS: Delete Paragraph 5.2 in its entirety and substitute the following in lieu thereof:

“The Contractor shall be responsible for the Subcontractors with regard to the Project, including but not limited to, management, supervision and coordination of their performance of the Work.”

5.4 CONTRACTOR'S LISTS: Add the following new Paragraphs 5.4 and 5.5 directly after Paragraph 5.3:

"5.4 CONTRACTOR LIST

5.4.1 As soon as practicable following the execution of this Agreement, Contractor shall furnish to Owner in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) from which the Contractor expects to solicit bid for each of the principal portions of the Work. The Owner may within 30 days thereafter, provide the Contractor with additional persons or entities for the solicitation of bids for such portions of the work.

5.4.2 Contractor shall provide a monthly list of all Subcontractors and suppliers who are or may be entitled to file or record a construction lien claim on the Project, including the amount owed to any such parties."

5.4.3. All Subcontractors with five (5) or more employees shall have an affirmative action plan in place and approved by the State Treasurer.

ARTICLE 6
CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK: Delete Paragraph 6.1 in its entirety and substitute the following in lieu thereof:

"The Work shall commence in accordance with the schedule set forth in the Redevelopment Agreement and shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to the provisions of Paragraph 3.4. Notwithstanding the foregoing, the Contractor shall not commence construction of the Work (other than site-work permitted under Subparagraph 3.2.7) prior to Owner's acceptance of the GMP proposal and Owner's and Contractor's execution of Amendment No. 1 hereto."

6.2 SUBSTANTIAL COMPLETION: Delete the second sentence of Paragraph 6.2 in its entirety. Delete from the last sentence of Paragraph 6.2 the phrase "if such a date is established,".

6.3 DELAYS IN THIS WORK

6.3.1 Delete the second sentence of Subparagraph 6.3.1 in its entirety and substitute the following in lieu thereof:

"Such causes shall be limited to the causes for delay described in Section 7.01 of the Redevelopment Agreement that are beyond the Contractor's control."

6.3.3 Add the following new Subparagraph 6.3.3 directly after Subparagraph 6.3.2 as follows:

“Notwithstanding any provisions to the contrary, Contractor shall be subject to penalties for delays in Work in the amount of \$500 per day as further described in Amendment No. 1 hereto.”

ARTICLE 7 COMPENSATION

7.1 INITIAL PAYMENT: Delete Paragraph 7.1 in its entirety.

7.2 DESIGN PHASE COMPENSATION

7.2.1 Delete from the last sentence of Subparagraph 7.2.1 the phrase “If an Architect/Engineer is retained by the Contractor,” in lieu thereof.

7.2.2 Delete Subparagraph 7.2.2 in its entirety and substitute the following in lieu thereof:

“The Owner shall compensate the Contractor for services performed during the Design Phase as described in Paragraph 3.1, including preparation of a GMP proposal as a part of the Contractor’s Fee described in Paragraph 7.3.1.2 plus the actual cost of the site-work portion of the Work, if any, performed by Contractor prior to the commencement of the Construction Phase.”

7.2.3 Delete Subparagraph 7.2.3 in its entirety:

7.2.4 Delete Subparagraph 7.2.4 in its entirety and substitute the phrase “Payments for Design Phase Services shall be as set forth in Article 10.” in lieu thereof.

7.3 CONSTRUCTION PHASE COMPENSATION

7.3.1 Delete from Subparagraph 7.3.1 the phrase “following the commencement of the Construction Phase”.

7.3.1.2 Delete from Subparagraph 7.3.1.2 the phrase “subject to adjustment as provided in Paragraph 7.5.” Delete the last sentence in Subparagraph 7.3.1.2 and substitute the following in lieu thereof:

“10% of the Contractor’s Fee shall be paid upon the execution of Amendment No. 1 and the remaining portion of such Contractor’s Fee (less a 10% retainer) shall be paid in proportion to the ratio that the Cost of the Work bears to the total estimated Cost of the Work.

7.3.2.1 Add, at the end of Subparagraph 7.3.2 the phrase “75% to Owner and the other 25% to the Contractor.”

7.3.3 Delete the second sentence of Subparagraph 7.3.3.

7.4 CONTRACTOR'S FEE: Delete Paragraph 7.4 in its entirety and substitute the following in lieu thereof:

“7.4 The Contractor's Fee shall include all expenses of the Contractor (other than those described Article 8 as a Cost of the Work) plus the Design Phase Services described in Subparagraphs 3.1.1, 3.1.2 and 3.1.3.”

7.5 ADJUSTMENT IN THE CONTRACTOR'S FEE: Delete Paragraph 7.5 in its entirety.

ARTICLE 8 COST OF THE WORK

8.2 COST ITEMS FOR CONSTRUCTION PHASE SERVICES:

8.2.1 Delete Subparagraph 8.2.1 in its entirety.

8.2.2 Delete Subparagraph 8.2.2 in its entirety.

8.2.3 Delete Subparagraph 8.2.3 in its entirety.

8.2.4 Delete Subparagraph 8.2.4 in its entirety.

8.2.7 Delete Subparagraph 8.2.7 in its entirety.

8.2.12 Delete from the end of Subparagraph 8.2.12 the phrase “other than the Contractor's negligence” and substitute the phrase “solely due to the Owner's acts and omissions.” in lieu thereof.

8.2.13 Modify Subparagraph 8.2.13 by deleting the phrase “one year following the date of Substantial Completion” and substituting the phrase “two years following the completion of all Work required under the Agreement” in lieu thereof. Add the phrase “other than those due to the contractor's negligence” at the end of Subparagraph 8.2.13.

8.2.18 Add the phrase “other than those due to the Contractor's negligence” at the end of Subparagraph 8.2.18.

8.2.19 Add the phrase “other than those due to the Contractor's negligence” at the end of Subparagraph 8.2.19.

8.2.20 Delete Subparagraph 8.2.20 in its entirety.

8.2.21 Add the following new Subparagraph 8.2.21 directly after Subparagraph 8.2.20.

“Cost items for Construction Phase Services set forth in Subparagraphs 8.2.5, 8.2.8, 8.2.9, 8.2.10, 8.2.11, 8.2.12, 8.2.13, 8.2.14, 8.2.15, 8.2.16, 8.2.17, 8.2.18, 8.2.19 shall not exceed 8.5% of the Cost of the Work”

ARTICLE 9 CHANGES IN THE WORK

9.1 CHANGE ORDERS: Delete from the first sentence of Paragraph 9.1 the phrase “ and the Contractor’s Fee”. Delete from the second sentence of Paragraph 9.1 the phrase “ and the Contractor’s Fee”.

9.2 DETERMINATION OF COST

9.2.1 Delete from Subparagraph 9.2.1 the phrase “set forth in this Agreement”.

9.2.3 Delete Subparagraph 9.2.3 in its entirety.

9.2.4 Modify Subparagraph 9.2.4 by deleting the phrase “through 9.2.3” from the second line thereof and substitute the phrase “and 9.2.2” in lieu thereof.

Delete the third and second to last sentences in Subparagraph 9.2.4 in their entirety.

9.3 NO OBLIGATION TO PERFORM: Add the following at the end of Paragraph 9.3:

“or in the case of an emergency affecting the safety of persons or property.”

9.5 UNKNOWN CONDITIONS: Modify Paragraph 9.5 by deleting the phrase “or if physical conditions are materially different from those normally encountered and generally recognized as inherent in the kind of work provided for in this Agreement,” and “, the Contractors Fee,”

9.6 CLAIMS FOR ADDITIONAL COST OR TIME: Modify Paragraph 9.6 by deleting all references to “the Contractor’s Fee” and by deleting all references to “twenty-one (21)” in Paragraph 9.6 and substitute the phrase “ten (10)” in lieu thereof.

9.7 EMERGENCIES: Modify Paragraph 9.7 by deleting the phrase “, the Contractor’s Fee”.

ARTICLE 10
PAYMENT FOR CONSTRUCTION PHASE SERVICES

10.1 PROGRESS PAYMENTS

10.1.1 Modify Subparagraph 10.1.1 by deleting the words “Construction Phase” from the second line thereof and substitute the word “Work” in lieu thereof.

Modify Subparagraph 10.1.1 by deleting the word “last” typed in the blank space on the fourth line and substitute the “25th”

Modify Subparagraph 10.1.1 by deleting the phrase “, along with a proportionate share of the Contractor’s Fee” from the seventh line thereof.

Add the following after the first sentence of Subparagraph 10.1.1:

“An Application for Payment, in the form prescribed by the Owner, shall include backup material, including invoices to verify the amount requested. Owner reserves the right to request any additional information it requires to confirm any items or amounts reflected in an Application for Payment.”

10.1.2 Delete Subparagraph 10.1.2 in its entirety and substitute the following in lieu thereof: “Forty-five (45)” days after receipt of each monthly Application for Payment, the Owner shall pay directly to the Contractor the appropriate amount for which the Application for Payment is made, less amounts previously paid by the Owner and less a 10% retainer. The funds withheld or retained shall be deposited with a banking institution or savings and loan association insured by an agency of the Federal government, in an account bearing interest at the rate currently paid by such institutions or associations on time or savings deposits.” Any interest accruing on cash payments withheld or retained shall be credited to the Owner.”

10.1.3 Modify Subparagraph 10.1.3 by deleting the word “at” in the first line thereof and substitute the phrase “within five (5) days of” in lieu thereof.

10.1.4 Delete Subparagraph 10.1.4 in its entirety and substitute the following in lieu thereof:

“Payments due but unpaid shall bear interest at the current “prime rate” as stated in the *Wall Street Journal* plus two (2) percentage points.”

10.1.7 Delete Subparagraph 10.1.7 in its entirety and substitute the following in lieu thereof:

“Upon Substantial Completion of the Work, as certified by the Contractor and Architect/Engineer to Owner and as approved by the Owner, the Owner shall pay the Contractor a sum sufficient to increase the total payments to 95% of the GMP, less an amount equal to one hundred fifty percent (150%) of the total cost to complete all incomplete Work as the Architect/Engineer shall determine, subject to the Owner’s approval. The Owner thereafter shall pay the Contractor monthly the amount retained for incomplete items of Work as each item is completed in accordance with Subparagraph 10.1.2.”

10.2 FINAL PAYMENT

10.2.1 Modify Subparagraph 10.2.1 by deleting the phrase “compensation for Design Phase Services and the Contractor’s Fee, less the initial payment made under Paragraph 7.1” and substitute the phrase “and any other payments due pursuant to this Agreement but unpaid, including any and all interest thereon” in lieu thereof.

10.2.2 Delete Subparagraph 10.2.2 in its entirety.

ARTICLE 11 INDEMNITY INSURANCE AND WAIVER OF SUBROGATION

11.1 INDEMNITY

11.1.1 Modify Subparagraph 11.1.1 by deleting the phrase “to the extent of the negligence attributed to such acts or omissions” from lines six and seven thereof and substitute the phrase “negligence, or acts or omissions” in lieu thereof.

11.2 CONTRACTOR’S LIABILITY INSURANCE

11.2.1.5 Modify Subparagraph 11.2.1.5 by deleting the words “other than the Work itself”.

11.2.2 Modify Subparagraph 11.2.2 inserting “\$5,000,000” as the amount of all insurance coverages.

11.2.2.3 Add a new Subparagraph 11.2.2.3 directly after Subparagraph 11.2.2.2 as follows:

“.3 Contractor’s Risk Insurance

a. Policy Limit \$5,000,000”

11.2.4 Add the following at the end of Subparagraph 11.2.4:

“All insurance policies maintained by Contractor shall include an endorsement naming Owner and the Township of Cranford as additional insureds.”

11.3 PROFESSIONAL LIABILITY INSURANCE: Modify Paragraph 11.3 by deleting the amount of “\$1,000,000” and substitute the amount of “\$5,000,000”.

11.5.4 Delete Subparagraph 11.5.4 in its entirety.

11.6 PROPERTY INSURANCE LOSS ADJUSTMENT: Delete Paragraph 11.6 in its entirety.

ARTICLE 12
TERMINATION OF THE AGREEMENT AND OWNER’S
RIGHT TO PERFORM CONTRACTOR’S OBLIGATIONS

12.1 TERMINATION BY THE CONTRACTOR

12.1.1.2 Modify Subparagraph 12.1.1.2 by adding, after the word “Owner”, the phrase “without just cause or excuse”.

12.1.2 Modify Subparagraph 12.1.2 by deleting the phrase “, plus all demobilization costs”.

12.3 TERMINATION BY OWNER WITHOUT CAUSE Modify Subparagraph 12.3 by deleting the phrase “, plus all demobilization costs”.

12.3.1 Modify Subparagraph 12.3.1 by deleting the phrase “25% of the Contractor’s Fee” and substitute the phrase “10% of the Contractor’s Fee” in lieu thereof.:

12.3.2 Modify Subparagraph 12.3.2 by deleting the word “100%” and substitute the word “10%” in lieu thereof.

“10% of the Contractor’s Fee”

12.4 SUSPENSION BY THE OWNER FOR CONVENIENCE: Delete Section 12.4 in its entirety.

ARTICLE 13
DISPUTE RESOLUTIONS

13.0 DISPUTE RESOLUTION: Delete Article 13 in its entirety and substitute the following in lieu thereof:

“All disputes arising under this Agreement between Owner and Contractor shall be resolved in the manner expressed in Section _____ of the Redevelopment Agreement.”

ARTICLE 14
MISCELLANEOUS PROVISIONS

14.6 OTHER PROVISIONS: Add the following new Subparagraphs to Paragraph 14.6:

“14.6.1 All notices required by or relating to this Agreement shall be in writing and shall be personally delivered or transmitted by United States registered or certified mail, return receipt request, postage pre-paid, to the other respective party at its address set forth below, or at such other address as such other parties shall designate by notice. Notices to Owner shall be addressed to Township of Cranford, 8 Springfield Avenue, Cranford, New Jersey 07016-2199, Attention: Township Administrator. Notices to Contractor shall be addressed to

Attention: Township Administrator.

“14.6.2 This Agreement may be executed by the parties hereto in any number of separate counterparts, all of which, when delivered, shall together constitute one and the same agreement.

“14.6.3 Whenever this Agreement provides for a date, day, or period of time on which or prior to which action or events are to occur or not occur, and if such date, day or last day of such period of time falls on a Saturday, Sunday, or legal holiday, then same shall be deemed to fall on the immediately following business day.

“14.6.4 This Agreement shall be binding upon the respective parties hereto and their successors and assigns, provided however, that this Agreement may not be assigned by either party without the prior written consent of both parties hereto.”

OWNER:

TOWNSHIP OF CRANFORD

By: _____

Name: George J. Jom

Title: Mayor

CONTRACTOR:

By: _____

Name:

Title:

RIDER TO
STANDARD FORM OF
DESIGN-BUILD AGREEMENT AND
GENERAL CONDITIONS BETWEEN
OWNER AND CONTRACTOR
AGC DOCUMENT NO. 410, 1993 EDITION

THIS RIDER modifies the "Standard Form of Design-Build Agreement and General Conditions between Owner and Contractor," AGC Document No. 410, 1993 Edition, dated as of _____, 2001, between THE TOWNSHIP OF CRANFORD, IN THE COUNTY OF UNION, NEW JERSEY ("Owner"), and CRANFORD BUILDING ASSOCIATES, L.L.C. ("Contractor"), attached hereto and made a part hereof ("Agreement"). The Agreement is amended and supplemented as set forth in this Rider. The Article and Paragraph numbers used in this Rider correspond to those used in the Agreement. Any term used in this Rider with initial capital letters that is not otherwise defined herein shall have the same meaning ascribed to such term in the Agreement.

ARTICLE 2
GENERAL PROVISIONS

2.1 TEAM RELATIONSHIP: Add the following at the end of Paragraph 2.1:

"Contractor accepts the relationship of trust and confidence established between Contractor and Owner by this Agreement. Contractor agrees to furnish the services set forth herein and agrees to furnish efficient business administration and superintendence and to cause the Project to be completed in the soundest and most expeditious manner consistent with the interest of the Owner."

2.2 ARCHITECT/ENGINEER: Delete Paragraph 2.2 in its entirety and substitute the following in lieu thereof:

"Architectural and engineering services shall be procured from licensed, independent design ~~{professionals}~~ [professionals] retained by the Contractor with the consent of the Owner. The person or entity providing architectural and engineering services shall be referred to as the Architect/Engineer. The Architect/Engineer shall be procured with the consent of the Owner pursuant to a separate agreement between the Contractor and the Architect/Engineer. If requested by the Owner, the Contractor shall take proposals for such architectural and engineering services."

2.3 EXTENT OF AGREEMENT: Add the following at the end of the Paragraph 2.3:

“, except for the Redevelopment Agreement and any other agreement referenced therein. When the drawings and specifications are complete, they shall be identified by written addendum to this Agreement. This Agreement may be amended only by written instrument signed by both Owner and Contractor.”

2.4.1 DEFINITIONS: Delete Subparagraph 2.4.1.d. in its entirety. Add the following new Subparagraph 2.4.1.g after Subparagraph 2.4.1.f:

“g. the Redevelopment Agreement.”

Modify the Paragraph 2.4.1 by deleting the last sentence thereof after 2.4.1f and substitute the following in lieu thereof: Redevelopment Agreement shall govern. In case of any inconsistency, conflict or ambiguity under any other Contract Documents, the Contract Documents listed above shall govern in the order in which they are listed above”.

Add the following at the end of Subparagraph 2.4.4:

“Unless otherwise approved by the Owner, the Subcontractor shall not be an Affiliate of the Contractor.”

Add the following at the end of Subparagraph 2.4.5:

“Unless otherwise approved by the Owner, the Subsubcontractor shall not be an Affiliate of the Contractor.”

Add the following at the end of Subparagraph 2.4.7.:

“that is prepared by the Contractor with the Owner’s approval.”

Add the following new Subparagraph 2.4.8 after Subparagraph 2.4.7:

“2.4.8 Affiliate shall mean, with respect to the Contractor, any other individual, corporation, partnership, joint venture, association, limited liability company, joint stock company, trust (including any beneficiary thereof) or incorporated organization controlling or controlled by or under common control with the Contractor, its members, shareholders, officers or employees. ‘Control’ means the power to direct the management and policies of such entity directly or indirectly, whether through ownership of voting securities, by contract or otherwise.”

ARTICLE 3
CONTRACTOR'S RESPONSIBILITIES

3.0 CONTRACTOR RESPONSIBILITIES: Add the following at the end of the introductory Paragraph of Article 3:

“The Work includes all labor, materials, equipment, and services provided by the Architect/Engineer, Subcontractors, Subsubcontractors, material suppliers, and any other entity for whom Contractor is responsible pursuant to this Agreement. Contractor shall cause the Work to be performed in accordance with all applicable laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction. Contractor shall be solely responsible for all construction designs, means, methods, techniques, sequences, and procedures for all portions of the Work under this Agreement.”

3.1.1 PRELIMINARY EVALUATION: Delete Subparagraph 3.1.1 and its heading in their entirety and substitute the following in lieu thereof:

“3.1.1 PRELIMINARY ESTIMATE: Within 60 days of the execution of this Agreement and prior to the commencement of any Design Phase Services the Contractor shall provide a fee proposal for these services not otherwise included in the Contractor’s Fee set forth in Subparagraph 7.3.1.2 including: the preparation of the Preliminary Estimate’s Program, the Preliminary Schedule and substantially complete Schematic Design and Design Development Documents sufficient to enable the Contractor to provide the Owner with the GMP proposal described in Paragraph 3.2. Such fee proposal shall also identify, in detail, the services to be performed, the entity that shall perform such services and the method for charging the Owner for such services including a not to exceed amount for such services. Upon the Owner’s acceptance of such fee proposal, the Contractor shall commence Design Phase Services.”

3.1.2 PRELIMINARY SCHEDULE: Modify Subparagraph 3.1.2 by adding the phrase “within 60 days of the Owner’s acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by deleting the word “periodically” from the third sentence and substitute the word “monthly” in lieu thereof.

3.1.3 PRELIMINARY ESTIMATE: Modify Subparagraph 3.1.3 by adding the phrase “within 60 days of the Owner’s acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by deleting the word “periodically” from the second sentence and substitute the word “monthly” in lieu thereof.

3.1.4 SCHEMATIC DESIGN DOCUMENTS: Modify Subparagraph 3.1.4 by adding the phrase “within 60 days of the Owner’s acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by adding, after the word “update” in the last sentence, the word “monthly”.

3.1.5 DESIGN DEVELOPMENT DOCUMENTS: Modify Subparagraph 3.1.5 by adding the phrase “within 60 days of the Owner’s acceptance of the fee proposal described in Subparagraph 3.1.1 at the end of the first sentence thereof and by adding, after the word “update” in the last sentence, the word “monthly”.

3.1.6 CONSTRUCTION DOCUMENTS: Modify Subparagraph 3.1.6 by adding “within 90 days of the Owner’s approval of Design Development Documents at the end of the first sentence thereof and by deleting the last sentence thereof.

3.1.7 OWNERSHIP OF DOCUMENTS: Delete Subparagraph 3.1.7 in its entirety and substitute the following in lieu thereof:

“All Documents shall be the property of the Owner. The Owner shall have the right, without Contractor’s agreement and without further compensation to Contractor, to utilize the Documents for completion of the Project by others in the event of Contractor’s default under this Agreement, or the Redevelopment Agreement, and in connection with other projects, provided, however, Contractor shall have no professional liability in connection with the use of the Documents in such other projects and Owner shall hold Contractor harmless with respect to such use.”

3.2 GUARANTEED MAXIMUM PRICE (GMP) PROPOSAL

3.2.1 Modify Subparagraph 3.2.1 by deleting the phrase “sufficiently complete” and substitute the phrase “seventy percent (70%) complete and delivered to Owner,” in lieu thereof. Delete the phrase “if requested by the Owner,”. After the phrase “propose a GMP” insert the phrase “of not more than \$17,000 per parking space”.

3.2.2 Delete Subparagraph 3.2.2 in its entirety.

3.2.4 BASIS OF GUARANTEED MAXIMUM PRICE:

3.2.4.8 Modify Subparagraph 3.2.4.8 by adding, after the word “acceptance”, the words “or rejection” and by adding, at the end of such Subparagraph, the following: “of at least 60 days.”

3.2.6 Delete Subparagraph 3.2.6 in its entirety and substitute the following in lieu thereof:

“Unless the Owner accepts the GMP proposal in writing on or before the later to occur of (i) the deadline set forth in Subparagraph 3.2.4.8 or (ii) ninety (90) days following the date of Contractor’s submittal of the GMP proposal to Owner (as the same may be adjusted pursuant to Subparagraph 3.2.5 hereof), this Agreement shall be deemed to have been terminated by Owner without cause pursuant to Paragraph 12.3 hereof; unless the submitted GMP proposal fails to meet the Owner’s Program in which case this Agreement shall be deemed to have been terminated by the Owner with cause pursuant to Subparagraph 12.2.2.4 that the

foregoing presumption shall not apply to any GMP proposal that fails to provide for the construction of a four story Parking Facility containing not less than 310 parking spaces.”

3.2.7 Add the following at the end of Subparagraph 3.2.7:

“Any other provision of this Agreement to the contrary notwithstanding, prior to Owner’s acceptance of the GMP proposal the Contractor may incur costs to be reimbursed as part of the Cost of the Work to the extent that the same relate to site-work costs that are properly allocable to the Project and are performed by Contractor at the time Contractor performs similar site-work activities for the Mixed Use Development I and the Mixed Use Development II (each as defined in the Redevelopment Agreement).”

3.3 CONSTRUCTION PHASE SERVICES

3.3.2 Add the following at the end of Subparagraph 3.3.2:

“During the construction of the Project, Contractor shall provide construction administration services that shall include the observation of construction work for conformance to the drawings and specifications; processing of shop drawings, materials and product samples; reviewing the result of construction tests and inspections; handling of design and scope changes; Project closeout; preparation of as-built record drawings and specifications; and preparation of the final punch list.”

3.3.4 Add the following at the end of the first sentence of Subparagraph 3.3.4:

“within ten (10) days of receipt of the written notice to proceed.”

Modify the last sentence of Subparagraph 3.3.4 by deleting the phrase “revised as required by the conditions of the Work.” and substitute the phrase “updated on a monthly basis” in lieu thereof.

3.3.5 Delete Subparagraph 3.3.5 in its entirety and substitute the following in lieu thereof:

“The Contractor shall obtain all building and construction permits necessary for the construction of the Project. The Owner may provide assistance to the Contractor in securing permits but shall not be under any obligation to act in this regard.

3.3.8 Modify Subparagraph 3.3.8 by deleting the word “periodic” and substitute the word “monthly” in lieu thereof.

Modify Subparagraph 3.3.8 by deleting the phrase “as agreed to by the Owner and Contractor”.

3.3.9 Delete Subparagraph 3.3.9 in its entirety and substitute the following in lieu thereof:

“The Contractor shall present cost reports to the Owner on a monthly basis.”

3.3.11 and 3.3.12 Add the following new Subparagraph 3.3.11 and 3.3.12 after Subparagraph 3.3.10:

“3.3.11 Contractor shall maintain at the site for the Owner one record copy of all drawings, specifications, Change Orders, and other modifications in good order and marked currently to record all changes made during construction. Upon completion of the Work, Contractor shall deliver such documents to Owner.

3.3.12 Contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the Work by Owner or its authorized representatives.”

3.7.1 WARRANTIES AND COMPLETION: ~~{Add}~~ [Modify the second sentence of Subparagraph 3.7.1 by deleting the phrase “within a period of one year from the date of Substantial Completion or such longer periods of time” and add] the following at the end of the Subparagraph 3.7.1:

“If required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment furnished under this Agreement.

~~{ }~~ [The Contractor shall provide the Owner with a maintenance bond for any and all defective conditions arising by reason of defective materials, work, or labor performed by the Contractor, Subcontractors or Subsubcontractors. The maintenance bond shall be approved by the Owner and shall be in a amount equal to the amount of the GMP. The maintenance bond shall be in effect for a period of two (2) years commencing from the date of completion of all Work required under the Agreement.”]

3.8 ADDITIONAL SERVICES

3.8.1 Delete Subparagraph 3.8.1. in its entirety.

3.8.2 Delete Subparagraph 3.8.2. in its entirety.

3.8.5 Modify Subparagraph 3.8.5 by adding, after the word “studies”, the phrase “other than those necessary for the design of the Project.”

3.8.6. Delete Subparagraph 3.8.6 in its entirety.

3.8.12 Delete Subparagraph 3.8.12 in its entirety.

3.9 PERFORMANCE BONDS/LABOR AND MATERIALS BOND: Add the following new Paragraph after paragraph 3.8:

“3.9 PERFORMANCE BONDS/LABOR AND MATERIALS BOND

“3.9.1 Pursuant to N.J.S.A. 2A:44 - 143 et seq., the Contractor shall provide to the Owner a performance bond for construction and maintenance and a labor materials payment bond, equal to the amount of the GMP. Such bonds shall be the security for performance of the Work, and the payment for furnished labor and supplies in the execution of Work under the Agreement. The bonds shall be provided by an insurance company approved by the Owner, and shall be in effect from the date of ~~{Commencement Of The}~~ [commencement of the] Work to the date of completion of all Work required under the Agreement .”

“3.9.2 The Contractor shall be responsible throughout the term of the Agreement for monitoring the financial condition of any surety company issuing bonds and for making inquiries no less often than monthly to confirm that such surety company maintains at least the minimum rating agreed to by Owner. In the event the rating level of any surety, as agreed to by the Owner, falls below such minimum level, the Contractor shall promptly notify the Owner of such event and shall promptly furnish a substitute or an additional bond of a surety company whose rating and other qualifications satisfy all of the above requirements, unless the Owner agrees in writing to accept an alternative method of assurance.”

3.10 AFFIRMATIVE ACTION: Add the following new Paragraph after paragraph 3.9:

“3.10 AFFIRMATIVE ACTION

During the Term of the Agreement, the Contractor or Subcontractor(s) shall not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. The Contractor or Subcontractor(s) shall take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor or Subcontractor(s) shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Authority setting forth the provisions of this nondiscrimination clause.

The Contractor or Subcontractor(s) shall, where applicable, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation.

The Contractor or Subcontractor(s) shall, where applicable, send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the Authority advising the labor union or workers' representative of the Contractor's commitments under the law and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The Contractor or Subcontractor(s) shall comply with the regulations promulgated by the State Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time and the Americans With Disabilities Act.

The Contractor or Subcontractor(s) shall attempt in good faith to employ minority and female workers consistent with the applicable employment goals prescribed by N.J.A.C. 17:27-5.2, promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented from time to time or in accordance with a binding determination of the applicable county employment goals determined by the Affirmative Action Office pursuant to N.J.A.C. 17:27-5.2 promulgated by the Treasurer pursuant to P.L.1975, c.127, as amended and supplemented form time to time.”

3.11 PREVAILING WAGE LAW: Add the following new Paragraph after paragraph 3.11:

“3.11 PREVAILING WAGE LAW

The Contractor shall comply with the provisions of the New Jersey Prevailing Wage Act, P.L. 1963, c. 150, as amended and supplemented. The Contractor hereby warrants that neither Contractor nor any Subcontractor that may be employed to perform any work covered under this Agreement are listed or on record with the New Jersey Department of Labor for failure to pay prevailing wages in accordance with the Prevailing Wage Act.”

ARTICLE 4

OWNER'S RESPONSIBILITIES

4.1 INFORMATION AND SERVICES PROVIDED BY OWNER: Delete Paragraph 4.1 in its entirety.

4.2 OWNER'S RESPONSIBILITIES DURING DESIGN PHASE

4.2.1 Modify Subparagraph 4.2.1 by deleting the word “provide” and substitute the phrase “review and timely approve or reject” in lieu thereof.

4.3 OWNER'S RESPONSIBILITIES DURING CONSTRUCTION PHASE

4.3.1 In Subparagraph 4.3.1 add, after the word “approve”, the phrase “or reject”.

4.3.3 Delete of Subparagraph 4.3.3 in its entirety and substitute the following in lieu thereof:

“The Owner shall have no contractual obligations to Subcontractors, suppliers, or the Architect/Engineer.”

4.4 OWNER’S REPRESENTATIVE

4.4.3 Delete Subparagraph 4.4.3. in its entirety.

ARTICLE 5 SUBCONTRACTS

5.0 Add, at the end of Paragraph 5.0, the following:

“The Contractor shall not contract, hire or utilize any Subcontractor or Subsubcontractor on this Project who has been hired or employed or will be hired or employed to performed any work on or relating to the Mixed Use Development I and Mixed Use Development II (as each are defined in the Redevelopment Agreement).”

5.1 RETAINING SUBCONTRACTORS: Delete Paragraph 5.1 in its entirety and substitute the following in lieu thereof:

“The Contractor shall receive at least three bids for work to be preformed by Subcontractors for presentation to the Owner including bids from those Subcontractors selected by the Owner. The Contractor shall retain the Subcontractor that submits the lowest bid unless otherwise agreed to by the Owner for the purpose of submitting bids. The Contractor shall not, however, be required to retain any Subcontractor to whom the Contractor has a reasonable objection.

5.2 MANAGEMENT OF SUBCONTRACTORS: Delete Paragraph 5.2 in its entirety and substitute the following in lieu thereof:

“The Contractor shall be responsible for the Subcontractors with regard to the Project, including but not limited to, management[, supervision] and coordination of their performance of the Work.”

5.4 CONTRACTOR'S LISTS: Add the following new Paragraphs 5.4 and 5.5 directly after Paragraph 5.3:

"5.4 CONTRACTOR LIST

5.4.1 As soon as practicable following the execution of this Agreement, Contractor shall furnish to Owner in writing the names of the persons or entities (including those who are to furnish materials or equipment fabricated to a special design) from which the Contractor expects to solicit bid for each of the principal portions of the Work. The Owner may within 30 days thereafter, provide the Contractor with additional persons or entities for the solicitation of bids for such portions of the work.

5.4.2 Contractor shall provide a monthly list of all Subcontractors and suppliers who are or may be entitled to file or record a construction lien claim on the Project, including the amount owed to any such parties."

[5.4.3. All Subcontractors with five (5) or more employees shall have an affirmative action plan in place and approved by the State Treasurer.]

ARTICLE 6
CONTRACT TIME

6.1 COMMENCEMENT OF THE WORK: Delete Paragraph 6.1 in its entirety and substitute the following in lieu thereof:

"The Work shall commence in accordance with the schedule set forth in the Redevelopment Agreement and shall proceed in general accordance with the Schedule of Work as such schedule may be amended from time to time, subject, however, to the provisions of Paragraph 3.4. Notwithstanding the foregoing, the Contractor shall not commence construction of the Work (other than site-work permitted under Subparagraph 3.2.7) prior to Owner's acceptance of the GMP proposal and Owner's and Contractor's execution of Amendment No. 1 hereto."

6.2 SUBSTANTIAL COMPLETION: Delete the second sentence of Paragraph 6.2 in its entirety. Delete from the last sentence of Paragraph 6.2 the phrase "if such a date is established,".

6.3 DELAYS IN THIS WORK

6.3.1 Delete the second sentence of Subparagraph 6.3.1 in its entirety and substitute the following in lieu thereof:

"Such causes shall be limited to the causes for delay described in Section 7.01 of the Redevelopment Agreement that are beyond the Contractor's control."

13.0 DISPUTE RESOLUTION: Delete Article 13 in its entirety and substitute the following in lieu thereof:

“All disputes arising under this Agreement between Owner and Contractor shall be resolved in the manner expressed in Section _____ ~~{10.07}~~ of the Redevelopment Agreement.”

ARTICLE 14
MISCELLANEOUS PROVISIONS

14.6 OTHER PROVISIONS: Add the following new Subparagraphs to Paragraph 14.6:

“14.6.1 All notices required by or relating to this Agreement shall be in writing and shall be personally delivered or transmitted by United States registered or certified mail, return receipt request, postage pre-paid, to the other respective party at its address set forth below, or at such other address as such other parties shall designate by notice. Notices to Owner shall be addressed to Township of Cranford, 8 Springfield Avenue, Cranford, New Jersey 07016-2199, Attention: ~~{Business}~~ [Township] Administrator. Notices to Contractor shall be addressed to

Attention: { _____ } [Township Administrator].

“14.6.2 This Agreement may be executed by the parties hereto in any number of separate counterparts, all of which, when delivered, shall together constitute one and the same agreement.

“14.6.3 Whenever this Agreement provides for a date, day, or period of time on which or prior to which action or events are to occur or not occur, and if such date, day or last day of such period of time falls on a Saturday, Sunday, or legal holiday, then same shall be deemed to fall on the immediately following business day.

“14.6.4 This Agreement shall be binding upon the respective parties hereto and their successors and assigns, provided however, that this Agreement may not be assigned by either party without the prior written consent of both parties hereto.”

OWNER:

TOWNSHIP OF CRANFORD

By: _____

Name: George J. Jorn

Title: Mayor

CONTRACTOR:

By: _____

Name:

Title:

M&S DRAFT
8/13/01

TERMINATION AND SETTLEMENT AGREEMENT

among

TOWNSHIP OF CRANFORD, NEW JERSEY,

FIRST STATES PROPERTIES NO. 20, LLC,

FIRST STATES PROPERTIES, L.P.

and

MAIN STREET BANK

Dated as of _____, 2001

THIS TERMINATION AND SETTLEMENT AGREEMENT (the "Termination Agreement") is made this ___ day of _____, 2001, by and among THE TOWNSHIP OF CRANFORD, a municipal corporation of the State of New Jersey ("Township"), having its offices at 8 Springfield Avenue, Cranford, New Jersey 07016-2199, FIRST STATES PROPERTIES NO. 20, LLC, a Pennsylvania limited liability company ("Prior Redeveloper"), having an address at 1725 The Fairway, Jenkintown, Pennsylvania 19046, FIRST STATES PROPERTIES, L.P., a Pennsylvania limited partnership and the sole member of Prior Redeveloper (the "Guarantor"), having an address at 1725 The Fairway, Jenkintown, Pennsylvania 19046, and MAIN STREET BANK, a Pennsylvania banking corporation (the "Lender"), having an address at 601 Penn Street, Reading, PA 19603-1097 (collectively, the "Parties").

BACKGROUND

WHEREAS, the Township Committee of the Township of Cranford, in the County of Union, New Jersey (the "Township"), following the recommendation of the Township Planning Board (the "Planning Board"), has determined by resolution adopted on December 22, 1998 that Block 476, Lot 2 on the tax maps of the Township (the "Roundbank Property") constitutes an "area in need of redevelopment" pursuant to the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Act"); and

WHEREAS, the Township, following the recommendation of the Planning Board, has determined by resolution adopted on January 23, 1999 that Block 474, Lot 4.01 on the tax maps of the Township (the "Township Owned Property") also constitutes an "area in need of redevelopment", pursuant to the provisions of the Act and is necessary for the effective redevelopment of the Roundbank Property (the Roundbank Property and the Township Owned Property are referred together as the "Roundbank Redevelopment Area"); and

WHEREAS, pursuant to the Act, the Township has determined to act as the "redevelopment entity" (as such term is defined at N.J.S.A. 40A:12A-3) for the Roundbank Redevelopment Area and to exercise the powers contained in the Act to facilitate the development of the Roundbank Redevelopment Area; and

WHEREAS, by resolution adopted on April 21, 1999, the Planning Board adopted a resolution recommending the approval of a redevelopment plan prepared by Heyer, Gruel & Associates, PA, dated April, 1999 (the "Original Redevelopment Plan") providing for the redevelopment of the Roundbank Redevelopment Area (the "Redevelopment Project"); and

WHEREAS, by ordinance adopted on May 11, 1999 (the "Original Redevelopment Ordinance"), the Township (a) approved the Original Redevelopment Plan, (b) designated Prior Redeveloper as a redeveloper (as such term is defined at N.J.S.A. 40A:12A-3) of the Roundbank Redevelopment Area, and (c) took certain other actions to further the Original Redevelopment Plan; and

WHEREAS, by resolution adopted on June 29, 1999, the Township approved the execution of a redevelopment agreement by and between the Township and Prior Redeveloper; and

WHEREAS, the Township and Prior Redeveloper executed a redevelopment agreement on July 13, 1999; and

WHEREAS, on November 19, 1999, the Planning Board approved a subdivision of the Township Owned Land into two parcels known as Block 474, Lot 4.02 (the "Parking Property") and Block 474, Lot 4.03 (the "Commercial Property"); and

WHEREAS, by ordinance adopted on December 14, 1999, the Township (a) amended the Redevelopment Plan (the Original Redevelopment Plan, as amended, is the "Redevelopment Plan"), (b) amended the designation of the redevelopers for the Roundbank Redevelopment Area to include the Cranford Crossing Community Development Corporation as the redeveloper of the Parking Property and Prior Redeveloper as the redeveloper of the Roundbank Property and the Commercial Property, and (c) took certain other actions to further the Redevelopment Plan; and

WHEREAS, the Township and Prior Redeveloper subsequently executed an amended and restated redevelopment agreement dated as of February 1, 2000 (the "Amended Redevelopment Agreement"), which Amended Redevelopment Agreement was approved by resolution of the Township Committee on March 9, 2000; and

WHEREAS, by resolution adopted on March 9, 2000, the Township also authorized a guaranty and subsidy agreement (the "Guaranty Agreement") with the Lender, which Guaranty Agreement was executed by the Township on April 21, 2000 in conjunction with the execution of a construction loan agreement dated April 21, 2000 by and between Prior Redeveloper and the Lender (the "Construction Loan Agreement"); and

WHEREAS, on April 21, 2000, the Township also sold (a) the Commercial Property to Prior Redeveloper and (b) an easement (the "Easement") on the Private Component (as defined in the Amended Redevelopment Agreement) to Prior Redeveloper; and

WHEREAS, Prior Redeveloper has agreed to sell the Roundbank Property and the Commercial Property to Cranford Building Associates, L.L.C. (the "Redeveloper"), who desires to act as new "redeveloper" for the Roundbank Redevelopment Area under an amended Redevelopment Plan that, among other things, does not require the Easement, and a second amended and restated redevelopment agreement; and

WHEREAS, by ordinance adopted on _____, 2001, the Township, among other things, (a) designated the Redeveloper as the new "redeveloper" for the Roundbank Redevelopment Area, (b) further amended the Redevelopment Plan, (c) authorized the execution of a second amended and restated redevelopment agreement with the Redeveloper, and (d) authorized the execution of this Termination Agreement and various other documents; and

WHEREAS, capitalized terms used herein shall have the meaning assigned to such terms in the preambles hereto and in Section 1.01 of the Amended Redevelopment Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the Parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Termination of Amended Redevelopment Agreement. The Township and Prior Redeveloper hereby (a) terminate the Amended Redevelopment Agreement and (b) waive all of their respective rights and interests therein and thereunder.

Section 2. Cancellation of Redeveloper's Note and Second Lien Mortgage and Security Agreement. The Township agrees, simultaneously with the execution of this Termination Agreement, to (a) cancel the Redeveloper's Note dated April 21, 2000, given by Prior Redeveloper to the Township in the original principal amount of \$461,709.00, (b) satisfy, release and forever discharge the Second Lien Mortgage and Security Agreement dated April 21, 2000, given by Prior Redeveloper to the Township and secured by a second lien mortgage encumbering the Roundbank Property and the Commercial Property and (c) terminate of record the UCC-1 Financing Statements given by Prior Redeveloper, as debtor, to the Township, as secured party, in connection with the Redeveloper's Note and the Second Lien Mortgage (collectively, the "Township Security Documents"), all in exchange for the Township's receipt of (aa) all plans, specifications, permits, files, certificates, and/or related documents with respect to the Parking Facility (the "Plans") and (bb) \$276,709.00 in immediately available funds from Prior Redeveloper. Prior Redeveloper acknowledges that (a) Prior Redeveloper has the right to sell such Plans to the Township, (b) Prior Redeveloper has received consideration for such Plans and (c) the Township shall have unrestricted use of such Plans. Simultaneously with the execution of this Termination Agreement, Prior Redeveloper shall provide the Township with consents from the applicable professionals with respect to the foregoing transfer of the Plans to the Township.

Section 3. Termination of Construction Loan Documents. The Parties hereby (a) terminate (i) Lender's Commitment Letter dated February 23, 2000, (ii) Construction Loan Agreement between Lender and Prior Redeveloper dated April 21, 2000, (iii) Assignment of Construction Contracts between Lender and Prior Redeveloper dated April 21, 2000, (iv) Assignment of Architect's Agreement between Lender and Prior Redeveloper dated April 21, 2000, (v) Assignment of Rents and Leases between Lender and Prior Redeveloper dated April 21, 2000, (vi) Assignment of Licenses, Permits and Certificates between Lender and Prior Redeveloper dated April 21, 2000, (vii) Guaranty of Completion between Lender and Guarantor dated April 21, 2000, (viii) Guaranty and Subsidy Agreement between Lender and the Township dated April 21, 2000, and (ix) Reimbursement Agreement between the Township and Prior Redeveloper dated April 21, 2000 (collectively, the "Construction Loan Documents") and (b) waive all of their respective rights and interests therein and thereunder.

IN WITNESS WHEREOF, the Township, Prior Redeveloper, Grantor and Lender have caused this Termination Agreement to be duly executed by their respective officers thereunto duly authorized, all as of the day and year above written.

TOWNSHIP OF CRANFORD

(Seal)

By: _____
The Honorable George J. Jom
Mayor Township of Cranford

Attest:

Rosalie Hellenbrecht, Township Clerk

FIRST STATES PARTNERS NO. 20, LLC

By: _____
Nicholas Schorsch, Manager

Witness:

Name:

FIRST STATES PARTNERS, L.P.

By: First States Partners, Inc, its
General partner

By: _____
Nicholas Schorsch, President

Witness:

Name:

MAIN STREET BANK

By: _____
[Name and Title]

Witness:

Name:

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: SS.:
COUNTY OF UNION :

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, an attorney licensed in the State of New Jersey, personally appeared GEORGE J. JORN, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the TOWNSHIP OF CRANFORD, the Township named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township, that deponent well knows the seal of said Township; and that the seal affixed to said Instrument is the proper seal and was hereto affixed by Rosalie Hellenbrecht, Township Clerk, and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said Township.

Joseph P. Baumann, Jr.
Attorney-at-Law
State of New Jersey

ACKNOWLEDHMENT

STATE OF :
 : SS.:
COUNTY OF :

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, a notary public, personally appeared NICHOLAS SCHORSCH, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Manager of FIRST STATES PROPERTIES NO. 20, LLC, the Prior Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Prior Redeveloper, and said Instrument was signed and delivered by said Manager as and for the voluntary act and deed of said Proper Redeveloper.

Notary Public

[Notary Seal]

ACKNOWLEDHMENT

STATE OF

:
: SS.:
:

COUNTY OF

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, a notary public, personally appeared NICHOLAS SCHORSCH, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the President of FIRST STATES PARTNERS, INC., a Pennsylvania corporation and the general partner of FIRST STATES PROPERTIES NO. 20, LLC, the Prior Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the general partner of the Prior Redeveloper, and said Instrument was signed and delivered by said President as and for the voluntary act and deed of said general partner of the Proper Redeveloper.

Notary Public

[Notary Seal]

ACKNOWLEDGMENT

STATE OF :
 : SS. :
COUNTY OF :

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, a notary public, personally appeared _____, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the _____ of MAIN STREET BANK, a Pennsylvania banking corporation, the Lender named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Lender, and said Instrument was signed and delivered by said _____ as and for the voluntary act and deed of said Lender.

Notary Public

[Notary Seal]

ACKNOWLEDGMENT

STATE OF :
: SS.:
COUNTY OF :

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, a notary public, personally appeared _____, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the _____ of MAIN STREET BANK, a Pennsylvania banking corporation, the Lender named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Lender, and said Instrument was signed and delivered by said _____ as and for the voluntary act and deed of said Lender.

Notary Public

[Notary Seal]

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
: SS.:
COUNTY OF UNION :

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, an attorney licensed in the State of New Jersey, personally appeared GEORGE J. JORN, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the TOWNSHIP OF CRANFORD, the Township named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township, that deponent well knows the seal of said Township; and that the seal affixed to said Instrument is the proper seal and was hereto affixed by Rosalie Hellenbrecht, Township Clerk, and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said Township.

Joseph P. Baumann, Jr.
Attorney-at-Law
State of New Jersey

TERMINATION AND SETTLEMENT AGREEMENT

among

[TOWNSHIP OF CRANFORD, NEW JERSEY,]

FIRST STATES PROPERTIES NO. 20, LLC,

FIRST STATES PROPERTIES, L.P. {}

[and]

MAIN STREET BANK

{and

TOWNSHIP OF CRANFORD, NEW JERSEY }

Dated as of _____ [,] 2001

~~{This Termination and Settlement Agreement}~~ [THIS TERMINATION AND SETTLEMENT AGREEMENT] (the "Termination Agreement") ~~{made as of the _____ day of, 2001 among }~~ [is made this _____ day of _____, 2001, by and among THE TOWNSHIP OF CRANFORD, a municipal corporation of the State of New Jersey ("Township"), having its offices at 8 Springfield Avenue, Cranford, New Jersey 07016-2199,] FIRST STATES PROPERTIES NO. 20, LLC, ~~{A}~~ [a] Pennsylvania limited liability company ~~{(the "Original Redeveloper"); }~~ ~~{["Prior Redeveloper"], having an address at 1725 The Fairway, Jenkintown, Pennsylvania 19046, }~~ FIRST STATES PROPERTIES, L.P., a Pennsylvania limited partnership ~~{(the "Guarantor"); }~~ ~~{and the sole member of Prior Redeveloper (the "Guarantor"), having an address at 1725 The Fairway, Jenkintown, Pennsylvania 19046, and}~~ MAIN STREET BANK, a Pennsylvania banking corporation (the "Lender"), ~~{and the TOWNSHIP OF CRANFORD, a municipal corporation of the State of New Jersey (the "Township")}~~ [having an address at 601 Penn Street, Reading, PA 19603-1097] (collectively, the "Parties") []

BACKGROUND

WHEREAS, the Township Committee of the Township of Cranford, in the County of Union, New Jersey (the "Township"), following the recommendation of the Township Planning Board (the "Planning Board") [] has determined by resolution adopted on December 22, 1998 that Block 476, Lot 2 on the tax maps of the Township (the "Roundbank Property") constitutes an "area in need of redevelopment" pursuant to the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq [] (the "Act"); and

WHEREAS, the Township, following the recommendation of the Planning Board, has determined by resolution adopted on January 23, 1999 that Block 474, Lot 4.01 on the tax maps of the Township (the "Township Owned Property") also constitutes an "area in need of redevelopment", pursuant to the provisions of the Act and is necessary for the effective redevelopment of the Roundbank Property (the Roundbank Property and the Township Owned Property are referred together as the "Roundbank Redevelopment Area"); and

WHEREAS, pursuant to the Act, the Township has determined to act as the "redevelopment entity" (as such term is defined at N.J.S.A. 40A:12A-3) for the Roundbank Redevelopment Area and to exercise the powers contained in the Act to facilitate the development of the Roundbank Redevelopment Area; and

WHEREAS, by resolution adopted on April 21, 1999, the Planning Board adopted a resolution recommending the approval of a redevelopment plan prepared by Heyer, Gruel & Associates, PA, dated April, 1999 (the "Original Redevelopment Plan") providing for the redevelopment of the Roundbank Redevelopment Area (the "Redevelopment Project"); and

WHEREAS, by ordinance adopted on May 11, 1999 (the "Original Redevelopment Ordinance"), the Township (a) approved the Original Redevelopment Plan, (b) designated ~~{the~~

~~Original~~ [Prior] Redeveloper as a redeveloper (as such term is defined at N.J.S.A. 40A:12A-3) of the Roundbank Redevelopment Area, and (c) took certain other actions to further the Original Redevelopment Plan; and

WHEREAS, by resolution adopted on June 29, 1999, the Township approved the execution of a redevelopment agreement by and between the Township and ~~the Original~~ [Prior] Redeveloper; and

WHEREAS, the Township and ~~the Original~~ [Prior] Redeveloper executed a redevelopment agreement on July 13, 1999 ~~(the "Original Redevelopment Agreement")~~; and

WHEREAS, on November 19, 1999, the Planning Board approved a subdivision of the Township Owned Land into two parcels known as Block 474, Lot ~~No.~~ 4.02 (the "Parking Property") and Block 474, Lot ~~No.~~ 4.03 (the "Commercial Property"); and

WHEREAS, by ordinance adopted on December 14, 1999, the Township (a) amended the Redevelopment Plan (the Original Redevelopment Plan~~[.]~~ as amended~~[.]~~ is the "Redevelopment Plan"), (b) amended the designation of the redevelopers for the Roundbank Redevelopment Area to include the Cranford Crossing Community Development Corporation ~~(the "Corporation")~~ as the redeveloper of the Parking Property and ~~the Original~~ [Prior] Redeveloper as the redeveloper of the Roundbank Property and the Commercial Property, and (c) took certain other actions to further the Redevelopment Plan; and

WHEREAS, the Township and ~~the Original~~ [Prior] Redeveloper subsequently executed an amended and restated redevelopment agreement ~~on April 21~~ [dated as of February 1], 2000 (the "Amended Redevelopment Agreement"), which Amended Redevelopment Agreement was approved by resolution of the Township Committee on March 9, 2000; and

WHEREAS, by resolution adopted on March 9, 2000, the Township also authorized a guaranty and subsidy agreement (the "Guaranty Agreement") with the Lender ~~(as defined in the Amended Redevelopment Agreement)~~, which Guaranty Agreement was executed [by the Township] on April 21, 2000 in conjunction with the execution of a construction loan agreement dated April 21, 2000 by and between ~~the Original~~ [Prior] Redeveloper and the Lender (the "Construction Loan Agreement"); and

WHEREAS, on April 21, 2000, the Township also sold (a) the Commercial Property to ~~the Original~~ [Prior] Redeveloper and (b) an easement (the "Easement") on the Private Component (as defined in the Amended Redevelopment Agreement) to ~~the Original~~ [Prior] Redeveloper; and

WHEREAS, ~~the Original Developer~~ [Prior Redeveloper] has agreed to sell the Roundbank Property and the Commercial Property to Cranford Building Associates, L.L.C. (the "Redeveloper") ~~and terminate the Easement and the existing agreements by and among the Original Redeveloper, the Guarantor (as defined in the Amended Redevelopment Agreement) and the Lender, including~~

but not limited to, the Amended Redevelopment Agreement and the Guaranty Agreement} [who desires to act as new "redeveloper" for the Roundbank Redevelopment Area under an amended Redevelopment Plan that, among other things, does not require the Easement, and a second amended and restated redevelopment agreement]; and

WHEREAS, by ordinance adopted on _____ {June, 2001, } [2001,] the Township, among other things, (a) designated the Redeveloper as the new "redeveloper" for the Roundbank Redevelopment Area, (b) [further amended the Redevelopment Plan, (c)] authorized the execution of a second amended and restated redevelopment agreement with the Redeveloper, and {(c)} [(d)] authorized the execution of this Termination Agreement [and various other documents]; and

WHEREAS, capitalized terms used herein shall have the meaning assigned to such terms in the preambles hereto and in Section 1.01 of the Amended Redevelopment Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, the Parties hereto, intending to be legally bound, hereby agree as follows:

Section 1. Termination of } Agreements. The Parties hereby } [Amended Redevelopment Agreement. The Township and Prior Redeveloper hereby (a)] terminate {all transaction agreements (together, the "Agreements") which arose out of the execution of} the Amended Redevelopment Agreement {, the Construction Loan Agreement and the Guaranty Agreement including, but not limited to, the following:

- (i) Amended Redevelopment Agreement
- (ii) Reimbursement Agreement
- (iii) Main Street Bank Commitment Letter dated February 23, 2000
- (iv) Construction Loan Agreement
- (v) Assignment of Construction Contract dated April 21, 2000
- (vi) Assignment of Architect's Agreement dated April 21, 2000
- (vii) Assignment of Rents and Leases dated April 21, 2000
- (viii) Assignment of Licenses, Rents and Certificates dated April 21, 2000
- (ix) Guaranty of Completion dated April 21, 2000
- (x) Guaranty Agreement

The Parties } [and (b)] waive all of their respective rights and interests {in and to the Agreements. The Parties agree that all obligations existing under the Agreements are satisfied and discharged. The Parties also waive all notice requirements contained in the Agreements.} [therein and thereunder.]

Section 2. Cancellation of Redeveloper's Note and Second Lien Mortgage and Security Agreement. The Township agrees, simultaneously with the execution of this Termination Agreement, to [(a)] cancel the Redeveloper's Note {and release the Second Lien Mortgage and Security Agreement dated April 21, 2000 } [dated April 21, 2000, given by Prior Redeveloper to the

Township in the original principal amount of \$461,709.00, (b) satisfy, release and forever discharge the Second Lien Mortgage and Security Agreement dated April 21, 2000, given by Prior Redeveloper to the Township and secured by a second lien mortgage encumbering the Roundbank Property and the Commercial Property and (c) terminate of record the UCC-1 Financing Statements given by Prior Redeveloper, as debtor, to the Township, as secured party, in connection with the Redeveloper's Note and the Second Lien Mortgage (collectively, the "Township Security Documents"), all] in exchange for the Township's receipt of ~~{(a)}~~[(aa)] all plans, specifications, permits, files, certificates, and/or related documents with respect to the Parking Facility (the "Plans") and ~~{(b) \$276,709}~~[(bb) \$276,709.00] in immediately available funds ~~{. The Original Redeveloper and the Guarantor hereby acknowledge that (a) the Original}~~ [from Prior Redeveloper. Prior Redeveloper acknowledges that (a) Prior] Redeveloper has the right to sell such Plans to the Township, (b) ~~{the Original}~~ [Prior] Redeveloper has received consideration for such Plans and (c) the Township shall have unrestricted use of such Plans. ~~{On the date hereof, the Original}~~ [Simultaneously with the execution of this Termination Agreement, Prior] Redeveloper shall provide the Township with consents from the applicable professionals with respect to ~~{this}~~ [the foregoing] transfer of ~~{such}~~ [the] Plans to the Township.

Section 3. ~~{Cancellation of \$12,925,700 Promissory Note Dated April 21, 2000}~~ [Termination of Construction Loan Documents. The Parties hereby (a) terminate (i) Lender's Commitment Letter dated February 23, 2000, (ii) Construction Loan Agreement between Lender and Prior Redeveloper dated April 21, 2000, (iii) Assignment of Construction Contracts between Lender and Prior Redeveloper dated April 21, 2000, (iv) Assignment of Architect's Agreement between Lender and Prior Redeveloper dated April 21, 2000, (v) Assignment of Rents and Leases between Lender and Prior Redeveloper dated April 21, 2000, (vi) Assignment of Licenses, Permits and Certificates between Lender and Prior Redeveloper dated April 21, 2000, (vii) Guaranty of Completion between Lender and Guarantor dated April 21, 2000, (viii) Guaranty and Subsidy Agreement between Lender and the Township dated April 21, 2000, and (ix) Reimbursement Agreement between the Township and Prior Redeveloper dated April 21, 2000 (collectively, the "Construction Loan Documents") and (b) waive all of their respective rights and interests therein and thereunder.

Section 4. Cancellation of Prior Redeveloper's \$12,925,700 Note and First Lien Mortgage and Security Agreement]. The Lender agrees, simultaneously with the execution of this Termination Agreement, to [(i)] cancel the ~~{\$12,925,700 Promissory}~~ Note dated April 21, 2000 ~~{and release}~~[, given by Prior Redeveloper to Lender in the original principal amount of \$12,925,700.00, (ii) satisfy, release and forever discharge] the ~~{First Lien}~~ Mortgage and Security Agreement dated April 21, 2000[, given by Prior Redeveloper to Lender (with the joinder of the Township) and secured by a first lien mortgage encumbering the Roundbank Property and the Commercial Property and (iii) terminate of record the UCC-1 Financing Statements given by Prior Redeveloper, as debtor, to Lender, as secured party, in connection with the Construction Loan Documents (collectively, the "Lender Security Documents").]†

~~Section 4. Termination of Easement.~~ The Original Redeveloper hereby agrees to terminate the Easement.†

~~Section 5. {Waiver. The Parties to this Termination Agreement hereby agree to waive any and all claims arising out of or under any of the Agreements.~~

~~Section 6.† Release and Discharge.~~ Each ~~{party}~~ [Party] to this Termination Agreement hereby releases ~~{all other Parties to this Termination Agreement from and discharges any further liability, claims or demands of any nature growing out of, concerning or in any way related}~~ [and forever discharges all other Parties of and from any and all claims, demands, duties, obligations, suits, actions and causes of action of any kind and nature in any way now or hereafter arising out of or relating] to the ~~{Agreements.~~

~~Section 7.† Amended {and Restated Declaration of} Redevelopment Agreement {Resolutions, Release of Right of Reverter and Termination of Easement. The applicable Parties shall execute and record the Amended and Restated Declaration of Redevelopment Agreement Restrictions, Release of Right of Reverter and Termination of Easement attached hereto as Exhibit A on the date hereof}~~[, the Township Security Documents, the Construction Loan Documents and the Lender Security Documents or any of the ancillary agreements or transactions contemplated therein or thereby.]

~~{Section 8. Assignment of Redeveloper's Rights and Conveyance of Certain Properties. The Original Redeveloper shall, on the date hereof, assign all of its right, title and interest in the Project to the Redeveloper and convey fee simple interest in the Roundbank Property and the Commercial Property to the Redeveloper.~~

~~Section 9† [Section 6]. Settlement of Arbitration Proceedings.~~ The Township and ~~{the Original}~~ [Prior] Redeveloper hereby agree that this Termination Agreement shall also be a settlement of all claims asserted by the Parties in the pending arbitration proceedings instituted pursuant to the Amended Redevelopment Agreement.

Section ~~{10}~~ [7]. Controlling Law. All questions relating to the validity, interpretation,

performance and enforcement of this Termination Agreement shall be governed by and construed, interpreted and enforced in accordance with the laws of the State of New Jersey, notwithstanding any New Jersey or other choice-of-law rules to the contrary.

Section ~~{11}~~ [8]. Additional Acts. The Parties agree to execute and deliver all agreements, instruments, consents and other documents necessary ~~{in connection with}~~ [to effectuate and fully implement the terminations, waivers and releases contemplated by] this Termination Agreement [promptly and without additional consideration].

Section 9~~{~~

Section 12~~}~~. Counterparts. This Termination Agreement may be executed and delivered in any number of counterparts, and such counterparts taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the ~~{Original}~~ [Township, Prior] Redeveloper, ~~{the}~~ Grantor~~,~~
~~the}~~ [and] Lender~~,~~ and the Township~~}~~ have caused this Termination Agreement to be duly executed
by their respective officers thereunto duly authorized, all as of the day and year above written.

~~{FIRST STATES PROPERTIES NO. 20, LLC~~

By:
Name:
Title:

~~FIRST STATES PROPERTIES, L.P.~~

By: {[TOWNSHIP OF CRANFORD

(Seal)

By: _____
The Honorable George J. Jom
Mayor Township of Cranford

Attest:

Rosalie Hellenbrecht, Township Clerk

FIRST STATES PARTNERS NO. 20, LLC

By: _____
Nicholas Schorsch, Manager

Witness:

Name:

FIRST STATES PARTNERS, L.P.

By: First States Partners, Inc, its
General partner

By: _____
Nicholas Schorsch, President

Witness:

ACKNOWLEDGMENT

STATE OF NEW JERSEY :

: SS.:

COUNTY OF UNION :

BE IT REMEMBERED, that on this _____ day of _____ 2001 before me, the subscriber, an attorney licensed in the State of New Jersey, personally appeared GEORGE J. JORN, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the TOWNSHIP OF CRANFORD, the Township named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township, that deponent well knows the seal of said Township; and that the seal affixed to said Instrument is the proper seal and was hereto affixed by Rosalie Hellenbrecht, Township Clerk, and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said Township.

Joseph P. Baumann, Jr.
Attorney-at-Law
State of New Jersey

ACKNOWLEDHMENT

STATE OF

:

: SS.:

COUNTY OF

:

BE IT REMEMBERED, that on this day of 2001 before me, the subscriber, a notary public, personally appeared NICHOLAS SCHORSCH, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Manager of FIRST STATES PROPERTIES NO. 20, LLC, the Prior Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Prior Redeveloper, and said Instrument was signed and delivered by said Manager as and for the voluntary act and deed of said Proper Redeveloper.

Notary Public

[Notary Seal]

ACKNOWLEDHMENT

STATE OF

:

: SS.:

COUNTY OF

:

BE IT REMEMBERED, that on this day of 2001 before me, the subscriber, a notary public, personally appeared NICHOLAS SCHORSCH, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the President of FIRST STATES PARTNERS, INC., a Pennsylvania corporation and the general partner of FIRST STATES PROPERTIES NO. 20, LLC, the Prior Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the general partner of the Prior Redeveloper, and said Instrument was signed and delivered by said President as and for the voluntary act and deed of said general partner of the Proper Redeveloper.

Notary Public

[Notary Seal]

ACKNOWLEDGMENT

STATE OF :
: SS.:
COUNTY OF :

BE IT REMEMBERED, that on this day of 2001 before me, the subscriber, a notary public, personally appeared , who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the of MAIN STREET BANK, a Pennsylvania banking corporation, the Lender named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Lender, and said Instrument was signed and delivered by said as and for the voluntary act and deed of said Lender.

Notary Public

[Notary Seal] {Name:
Title:

~~TOWNSHIP OF CRANFORD~~

By:
Name:
Title:
EXHIBIT A

~~AMENDED AND RESTATED DECLARATION OF REDEVELOPMENT AGREEMENT RESTRICTIONS AND DECEASE OF RIGHTS OF REVERTER}~~

Record and Return to:
Joseph P. Baumann, Jr.
McMANIMON & SCOTLAND, LLC
One Riverfront Plaza, 4th Floor
Newark, New Jersey 07102

M&S DRAFT
8/13/01

AMENDED AND RESTATED DECLARATION OF REDEVELOPMENT
AGREEMENT RESTRICTIONS,
TERMINATION OF EASEMENT AGREEMENT ACROSS PRIVATE COMPONENT
AND RELEASE OF REVERTER
(Record in Mortgage Book and in Deed Book)

THIS AMENDED AND RESTATED DECLARATION OF REDEVELOPMENT AGREEMENT RESTRICTIONS, TERMINATION OF EASEMENT AND RELEASE OF RIGHT OF REVERTER ("Amended Declaration") is made this ___ day of _____, 2001, by and among THE TOWNSHIP OF CRANFORD, a municipal corporation of the State of New Jersey ("Township"), having its offices at 8 Springfield Avenue, Cranford, New Jersey 07016-2199, FIRST STATES PROPERTIES NO. 20, LLC, a Pennsylvania limited liability company ("Prior Redeveloper"), having an address at 1725 The Fairway, Jenkintown, Pennsylvania 19046 and CRANFORD BUILDING ASSOCIATES, L.L.C., a New Jersey limited liability company ("Redeveloper"), having an address c/o Kushner Companies at 26 Columbia Turnpike, Florham Park, New Jersey 07932.

BACKGROUND

A. Redeveloper is about to become the owner of certain property situate in the Township of Cranford commonly known as Block 476, Lot 2 (the "Roundbank Property") and Block 474, Lot 4.03 (the "Commercial Property"), by acquiring the same from the Prior Redeveloper by Deed dated the date hereof and, intended to be recorded in the office of the Union County Clerk immediately prior to the recording of this Amended Declaration. The Roundbank Property is the same property that was conveyed by First Union National Bank to the Prior Redeveloper by Deed dated August 20, 1998, and recorded in the office of the Union County Clerk in Deed Book 4716, page 308. The Commercial Property is the same property that was conveyed by the Township to the Prior Redeveloper by Deed dated April 21, 2000, and recorded in the office of the Union County Clerk in Deed Book 4965, page 250 (the "Commercial Property Deed"). Legal descriptions of the Roundbank Property and the Commercial Property are attached as Exhibits A and B hereto, respectively.

B. Prior Redeveloper holds an easement across a portion of a property ("Private Component") owned by the Township and commonly known as Block 474, Lot 4.02 (the "Parking Property"), which easement was created by Deed of Easement dated April 21, 2000, and recorded in the office of the Union County Clerk in Deed Book 4965, page 258 ("Easement Agreement"). Legal descriptions of the Parking Property and the Private Component are attached as Exhibits C and D hereto, respectively. The Roundbank Property, the Commercial Property and the Parking Property, including the Private Component, are collectively referred to as the "Redevelopment Area."

C. By action of the Township taken on December 22, 1998, and January 23, 1999, the Redevelopment Area was declared an "area in need of redevelopment" in accordance with the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Act").

D. By action of the Township taken on May 11, 1999, and December 14, 1999, a redevelopment plan was adopted for the Redevelopment Area (the "Original Redevelopment Plan").

E. By action of the Township taken on _____, 2001, the Original Redevelopment Plan for the Redevelopment Area was amended to, among other things, eliminate the need for the Easement Agreement across the Private Component (as amended, the "Redevelopment Plan").

F. The Redevelopment Plan is hereby incorporated by reference in its entirety and copies of the same are available by contacting the office of the Township Clerk of the Township.

G. In furtherance of the Original Redevelopment Plan, the Township and Prior Developer entered into a Redevelopment Agreement dated July 13, 1999, as amended and restated on February 1, 2000 (the "Original Redevelopment Agreement").

H. The Act requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring that the owner shall construct only the uses established in the current redevelopment plan.

I. The Original Redevelopment Agreement contained such a covenant by the Prior Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as a perpetual covenant by the Prior Redeveloper and its successor or assigns not to discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familiar status in the sale, lease, rental, use or occupancy of the Redevelopment Area, any portion thereof, or any building or structures erected thereon.

J. The Original Redevelopment Agreement also provided that the parcels comprising the Redevelopment Area shall not be readily transferrable during certain periods of time and further

provides certain remedies to the Township for violations of the covenants and defaults under the Redevelopment Agreement.

K. In addition to the requirements of the Act, the Original Redevelopment Agreement grants the Township a right of reverter with respect to the Commercial Property and the Private Component (collectively, "Right of Reverter") if the Prior Redeveloper failed to timely perform certain of its obligations under the Original Redevelopment Agreement, which Right of Reverter is set forth in the Commercial Property Deed and the Easement Agreement. The Right of Reverter does not affect the Roundbank Property.

L. The Original Redevelopment Agreement required that all such covenants, restrictions and rights be memorialized in a Declaration of Redevelopment Agreement Restrictions (the "Original Declaration"), which Original Declaration was recorded in the office of the Union County Clerk in Mortgage Book 4965, page 104.

M. Prior Redeveloper and the Township have, by separate agreement, terminated the Original Redevelopment Agreement. Contemporaneously therewith, the Township and Redeveloper have executed a Second Amended and Restated Redevelopment Agreement dated _____, 2001 (the "Redevelopment Agreement"), a copy of which is attached as Exhibit E hereto.

N. The new Redevelopment Agreement also contains the covenants and restrictions required by the Act, but does not contain a Right of Reverter because the obligations of the Prior Redeveloper under the Original Redevelopment Agreement that gave rise to the Right of Reverter have been satisfied.

O. The Township, Prior Redeveloper and Redeveloper desire to (i) rescind the Original Declaration, (ii) terminate the Easement Agreement across the Private Component, (iii) terminate the Township's Right of Reverter, (iv) release and discharge the Commercial Property from the Right of Reverter and (v) substitute this Amended Declaration for the Original Declaration in its entirety.

NOW THEREFORE, FOR VALUE RECEIVED AND INTENDING TO BE LEGALLY BOUND HEREBY, IT IS AGREED AS FOLLOWS:

Section 1. The Original Declaration is hereby rescinded in its entirety and no longer applies in any way to the Redevelopment Area or any portion thereof.

Section 2. The Easement Agreement and all rights and privileges therein granted to the Original Redeveloper across the Private Component are hereby terminated in their entirety.

Section 3. The Township's Right of Reverter is hereby terminated in its entirety and no

longer applies in any way to the Redevelopment Area or any portion thereof. Any provision of the Commercial Property Deed or the Easement Agreement to the contrary notwithstanding, the Commercial Property is hereby forever unconditionally released and discharged from the Township's Right of Reverter.

Section 4. The Redevelopment Agreement is hereby recorded on the Roundbank Property, the Commercial Property and the Parking Property. This Amended Declaration is hereby substituted for the Original Declaration in its entirety.

IN WITNESS WHEREOF, the parties hereto have caused this Amended Declaration to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers all as of the date first written above.

TOWNSHIP OF CRANFORD

(Seal)

By: _____
The Honorable George J. Jorn
Mayor Township of Cranford

Attest:

Rosalie Hellenbrecht, Township Clerk

FIRST STATES PARTNERS NO. 20, LLC

By: _____
Nicholas Schorsch, Manager

Witness:

Name:

CRANFORD BUILDING ASSOCIATES, L.L.C.

By: _____
[Name and Title]

Witness:

Name:

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
 : SS.:
COUNTY OF UNION :

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, an attorney licensed in the State of New Jersey, personally appeared GEORGE J. JORN, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of the TOWNSHIP OF CRANFORD, the Township named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township, that deponent well knows the seal of said Township; and that the seal affixed to said Instrument is the proper seal and was hereto affixed by Rosalie Hellenbrecht, Township Clerk, and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said Township.

Joseph P. Baumann, Jr.
Attorney-at-Law
State of New Jersey

ACKNOWLEDHMENT

STATE OF NEW JERSEY :
 : SS.:
COUNTY OF UNION :

BE IT REMEMBERED, that on this ____ day of _____ 2001 before me, the subscriber, a notary public, personally appeared NICHOLAS SCHORSCH, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Manager of FIRST STATES PROPERTIES NO. 20, LLC, the Prior Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Prior Redeveloper, and said Instrument was signed and delivered by said Manager as and for the voluntary act and deed of said Proper Redeveloper.

Notary Public
[Notary Seal]

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
 : SS.:
COUNTY OF UNION :

BE IT REMEMBERED, that on this ___ day of _____, 2001 before me, the subscriber, a notary public, personally appeared _____, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Manager of CRANFORD BUILDING ASSOCIATES, L.L.C., the Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Redeveloper, and said Instrument was signed and delivered by said Manager as and for the voluntary act and deed of said Redeveloper.

Notary Public

[Notary Seal]

EXHIBIT A
DESCRIPTION OF ROUND BANK PROPERTY

EXHIBIT B
DESCRIPTION OF COMMERCIAL PROPERTY

EXHIBIT C
DESCRIPTION OF PARKING PROPERTY

EXHIBIT D
DESCRIPTION OF PRIVATE COMPONENT

Record and Return to:
Joseph P. Baumann, Jr.
McMANIMON & SCOTLAND, LLC
One Riverfront Plaza, 4th Floor
Newark, New Jersey 07102

[M&S] DRAFT ~~{4/17/01}~~
[8/13/01]

~~{CORRECTED}~~ [AMENDED AND RESTATED] DECLARATION OF REDEVELOPMENT
AGREEMENT RESTRICTIONS[,
TERMINATION OF EASEMENT AGREEMENT ACROSS PRIVATE COMPONENT
AND RELEASE OF RIGHT OF REVERTER]
(Record in Mortgage Book [and in Deed Book])~~{}~~

~~{Corrected Declaration of Redevelopment Agreement Restrictions}~~ [THIS AMENDED
AND RESTATED DECLARATION OF REDEVELOPMENT AGREEMENT RESTRICTIONS,
TERMINATION OF EASEMENT AND RELEASE OF RIGHT OF REVERTER ("Amended
Declaration")] is made this ___ day of _____, 2001 ~~{by and between the Township of
Cranford}~~ [, by and among THE TOWNSHIP OF CRANFORD], a municipal corporation of the State
of New Jersey [("Township"),] having its offices at 8 Springfield Avenue, Cranford, New Jersey
07016-2199 ~~{and, a }~~ [, FIRST STATES PROPERTIES NO. 20, LLC, a Pennsylvania] limited
liability company ~~{of the of having its offices at , , New Jersey .}~~ [("Prior Redeveloper"), having an
address at 1725 The Fairway, Jenkintown, Pennsylvania 19046 and CRANFORD BUILDING
ASSOCIATES, L.L.C., a New Jersey limited liability company ("Redeveloper"), having an address c/o
Kushner Companies at 26 Columbia Turnpike, Florham Park, New Jersey 07932.]

~~{WITNESSETH}~~ [BACKGROUND]

~~{WHEREAS, (the "Redeveloper") is }~~ [A. Redeveloper is about to become] the owner of
certain property situate in the Township of Cranford ~~{(the "Township")}~~ commonly known as Block
476, Lot 2 (the "Roundbank Property") and Block 474, Lot 4.03 (the "Commercial Property"), [by
acquiring the same from the Prior Redeveloper by Deed dated the date hereof and, intended to be
recorded in the office of the Union County Clerk immediately prior to the recording of this Amended
Declaration. The Roundbank Property is the same property that was conveyed by First Union
National Bank to the Prior Redeveloper by Deed dated August 20, 1998, and recorded in the office
of the Union County Clerk in Deed Book 4716, page 308. The Commercial Property is the same
property that was conveyed by the Township to the Prior Redeveloper by Deed dated April 21, 2000,
and recorded in the office of the Union County Clerk in Deed Book 4965, page 250 (the
"Commercial Property Deed"). Legal descriptions of] ~~{legal descriptions of which are attached
hereto as Exhibits A and B, respectively; and~~

~~WHEREAS, by action of the Township taken on December 22, 1998 and January 23, 1999, the above referenced parcels, along with Block 474, Lot 4.02 (the "Parking Property" and together with the Roundbank Property and the Commercial Property, the "Redevelopment Areas") (a legal description) [are attached as Exhibits A and B hereto, respectively.~~

B. Prior Redeveloper holds an easement across a portion of a property ("Private Component") owned by the Township and commonly known as Block 474, Lot 4.02 (the "Parking Property"), which easement was created by Deed of Easement dated April 21, 2000, and recorded in the office of the Union County Clerk in Deed Book 4965, page 258 ("Easement Agreement"). Legal descriptions of the Parking Property (is attached hereto as Exhibit C) were declared "areas" and the Private Component are attached as Exhibits C and D hereto, respectively. The Roundbank Property, the Commercial Property and the Parking Property, including the Private Component, are collectively referred to as the "Redevelopment Area."

C. By action of the Township taken on December 22, 1998, and January 23, 1999, the Redevelopment Area was declared an "area" in need of redevelopment" (along with certain other parcels of property, all) in accordance with the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "Act") (, and) [.]

~~(WHEREAS, by) [D. By] action of the Township taken on May 11, 1999 [.] and December 14, 1999, a redevelopment plan was adopted for the Redevelopment Area (the "[Original] Redevelopment Plan") (, and) [.]~~

~~(WHEREAS, in furtherance of the Redevelopment Plan, the Township and First States Properties No. 20, LLC (the "Prior Redeveloper"), entered into a Redevelopment Agreement dated July 13, 1999 as amended and restated on February 1, 2000 (the "Original Redevelopment Agreement");~~

~~WHEREAS, the Prior Redeveloper and the Township have terminated) [E. By action of the Township taken on _____, 2001,] the Original Redevelopment (Agreement; and) [Plan for the Redevelopment Area was amended to, among other things, eliminate the need for the Easement Agreement across the Private Component (as amended, the "Redevelopment Plan").]~~

~~(WHEREAS, the Township has executed a second amended and restated redevelopment agreement dated _____, 2001 with the Redeveloper (the "Redevelopment Agreement"); and~~

~~WHEREAS, the) [F. The] Redevelopment Plan is hereby incorporated by reference in its entirety and copies of the same are available by contacting the office of the Township Clerk of the Township (, and) [.]~~

~~(WHEREAS, the) [G. In furtherance of the Original Redevelopment Plan, the~~

Township and Prior Developer entered into a Redevelopment Agreement dated July 13, 1999, as amended and restated on February 1, 2000 (the "Original Redevelopment Agreement").

H. The] Act requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring that the owner shall construct only the uses established in the current redevelopment plan{;}[.]

~~{WHEREAS, the}~~ [L. The Original] Redevelopment Agreement contained such a covenant by the [Prior] Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as a perpetual covenant by the [Prior] Redeveloper and its successor or assigns not to discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex or familiar status in the sale, lease, rental, use or occupancy of the Redevelopment Area, any portion thereof, or any building or structures erected thereon{; and }[.]

~~{WHEREAS, the}~~ [J. The Original] Redevelopment Agreement also ~~{provides}~~ [provided] that the parcels comprising the Redevelopment Area shall not be readily transferrable during certain periods of time and further provides certain remedies to the Township for violations of the covenants and defaults under the Redevelopment Agreement{; and }[.]

~~{WHEREAS}~~ [K. In addition to the requirements of the Act], the Original Redevelopment Agreement [grants the Township a right of reverter with respect to the Commercial Property and the Private Component (collectively, "Right of Reverter") if the Prior Redeveloper failed to timely perform certain of its obligations under] ~~{required that such covenants be memorialized in a Declaration of Redevelopment Agreement Restrictions (the "Original Declaration of Redevelopment Agreement Restrictions") and said declaration was recorded in the office of the Union County Clerk; and~~

~~WHEREAS, as a result of the execution of a new Redevelopment Agreement and the termination of} the Original Redevelopment Agreement, ~~{it is necessary to record}~~ [which Right of Reverter is set forth in the Commercial Property Deed and the Easement Agreement. The Right of Reverter does not affect the Roundbank Property.~~

L. The Original Redevelopment Agreement required that all such covenants, restrictions and rights be memorialized in] a ~~{Corrected}~~ Declaration of Redevelopment Agreement Restrictions [(the "Original Declaration"), which Original Declaration was recorded in the office of the Union County Clerk in Mortgage Book 4965, page 104.

M. Prior Redeveloper and the Township have, by separate agreement, terminated the Original Redevelopment Agreement. Contemporaneously therewith, the Township and Redeveloper have executed a Second Amended and Restated Redevelopment Agreement dated _____, 2001 (the "Redevelopment Agreement"), a copy of which is attached as Exhibit E hereto.

N. The new Redevelopment Agreement also contains the covenants and restrictions required by the Act, but does not contain a Right of Reverter because the obligations of the Prior Redeveloper under the Original Redevelopment Agreement that gave rise to the Right of Reverter have been satisfied.

O. The Township, Prior Redeveloper and Redeveloper desire to (i) rescind the Original Declaration, (ii) terminate the Easement Agreement across the Private Component, (iii) terminate the Township's Right of Reverter, (iv) release and discharge the Commercial Property from the Right of Reverter and (v) substitute this Amended Declaration for the Original Declaration in its entirety.

NOW THEREFORE, FOR VALUE RECEIVED AND INTENDING TO BE LEGALLY BOUND HEREBY, }{

NOW THEREFORE, } IT IS AGREED AS FOLLOWS:

Section 1. [The Original Declaration is hereby rescinded in its entirety and no longer applies in any way to the Redevelopment Area or any portion thereof.

Section 2. The Easement Agreement and all rights and privileges therein granted to the Original Redeveloper across the Private Component are hereby terminated in their entirety.

Section 3. The Township's Right of Reverter is hereby terminated in its entirety and no longer applies in any way to the Redevelopment Area or any portion thereof. Any provision of the Commercial Property Deed or the Easement Agreement to the contrary notwithstanding, the Commercial Property is hereby forever unconditionally released and discharged from the Township's Right of Reverter.

Section 4.] The Redevelopment Agreement is hereby recorded on the Roundbank Property {and}[.] the Commercial Property [and the Parking Property. This Amended Declaration is hereby substituted for the Original Declaration in its entirety].

IN WITNESS WHEREOF, the parties hereto have caused this {Corrected} [Amended] Declaration {of Redevelopment Agreement Restrictions} to be executed in their names by their duly authorized officials or managers, as the case may be, and their corporate seals to be hereunto affixed attested to by their duly authorized officers all as of the date first written above.

TOWNSHIP OF CRANFORD

(Seal)

By: _____
The Honorable George J. Jorn
Mayor Township of Cranford

Attest:

Rosalie Hellenbrecht, Township Clerk

[FIRST STATES PARTNERS NO. 20, LLC]

By: _____
Nicholas Schorsch, Manager

{WITNESS:} [Witness:

Name:

[CRANFORD BUILDING ASSOCIATES, L.L.C.]

By: _____
[Name and Title]

Witness:

Name:]

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
 : SS.:
COUNTY OF UNION :

BE IT REMEMBERED, that on this ___ day of _____ 2001 before me, the subscriber, an attorney licensed in the State of New Jersey, personally appeared GEORGE J. JORN[,] who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Mayor of

the TOWNSHIP OF CRANFORD, the Township named in the within Instrument; that the execution, as well as the making of this Instrument, have been duly authorized by the Township, that deponent well knows the seal of said Township; and that the seal affixed to said Instrument is the proper seal and was hereto affixed by Rosalie ~~Hellenbreck,~~ Hellenbrecht, Township Clerk[,] and said Instrument was signed and delivered by said Mayor as and for the voluntary act and deed of said Township.

Joseph P. Baumann, Jr.
Attorney-at-Law
State of New Jersey

ACKNOWLEDGMENT

STATE OF NEW JERSEY :
 : SS.:
COUNTY OF UNION :

BE IT REMEMBERED, that on this _____ day of _____ 2001 before me, the subscriber, a notary public, personally appeared _____, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction that he is the Manager of CRANFORD BUILDING ASSOCIATES, L.L.C., the Redeveloper named in the within Instrument; that the execution, as well as the making of this Instrument, having been duly authorized by the Redeveloper, and said Instrument was signed and delivered by said Manager as and for the voluntary act and deed of said Redeveloper.

Notary Public
[Notary Seal]

EXHIBIT A
DESCRIPTION OF ROUND BANK PROPERTY

EXHIBIT B
DESCRIPTION OF COMMERCIAL PROPERTY

EXHIBIT C
DESCRIPTION OF PARKING PROPERTY

EXHIBIT D
DESCRIPTION OF PRIVATE COMPONENT

EXHIBIT E
SECOND AMENDED AND RESTATED REDEVELOPMENT AGREEMENT]

M&S DRAFT
8/13/01

TAX AGREEMENT

among

TOWNSHIP OF CRANFORD, NEW JERSEY

and

CRANFORD BUILDING ASSOCIATES, L.L.C.

Dated as of _____, 2001

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TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement") made this _____ day of _____ 2001 by and between the **TOWNSHIP OF CRANFORD**, a municipal corporation of the State of New Jersey having its principal place of business at 8 Springfield Avenue, Cranford, New Jersey 07106-2199 (the "Township")

AND

CRANFORD BUILDING ASSOCIATES, L.L.C., a limited liability company of the State of New Jersey, having its principal place of business at 26 Columbia Turnpike, Florham Park, New Jersey 07932 (the "Redeveloper").

WITNESSETH:

WHEREAS, the Redeveloper wishes to have a five-year tax exemption granted for the project to be developed in the redevelopment Area, all as described below; and

WHEREAS, the Township does hereby grant its approval of a five-year tax exemption;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1. Governing Law

This Agreement shall be governed by the laws of New Jersey, including the provisions of the **Five-Year Exemption and Abatement Law**, N.J.S.A. 40A:21-1 *et seq.*, as amended and supplemented, the **Local Redevelopment and Housing Law**, N.J.S.A. 40A:12A-1 *et seq.*, as amended and supplemented and Ordinance No. 2001-_____ of the Township municipal code. It being expressly understood and agreed by the parties hereto that the Township expressly relies upon the facts, data, and representations contained in the application attached hereto in granting the tax exemption.

Section 1.2. General Definitions

As used in this Agreement the following terms set forth below shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation." The words "agree,"

“agreements,” “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed,” except or unless the context may otherwise specify. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement.

“**Agreement**” shall mean this agreement as same shall be amended and supplemented from time to time.

“**Area in need of redevelopment**” or “**Area in need of rehabilitation**” shall mean a portion or all of a municipality which has been determined to be an area in need of rehabilitation or redevelopment pursuant to the “Local Redevelopment and Housing Law,” P.L. 1992, c. 79 (C.40A:12A-1 et seq.).

“**Assessor**” shall mean the Tax Assessor of the Township.

“**Certificate of Occupancy**” shall have the meaning as set forth in section 92-1 et seq. of the Township municipal code and the applicable provisions of the Uniform Construction Code.

“**Commercial Property**” shall mean the parcel of land described on the Tax Map of the Township as Block 474, Lot No. 4.03.

“**Date of Completion**” shall be for Mixed Use Development I or Mixed Use Development II, as applicable, the earlier of (1) the date of issuance of a Certificate of Occupancy, (2) the date of a determination by the Assessor that the applicable project is an economically viable structure, or (3) the date of a determination by the Assessor that the applicable project is substantially ready for the use intended.”

“**Exemption**” shall have the meaning assigned to such term in the Exemption and Abatement Act.

“**Exemption and Abatement Act**” shall mean the Five-Year Exemption and Abatement Law (N.J.S.A. 40A:21-1 et seq.), as amended and supplemented.

“**Improvement**” all mean the buildings, structures and fixtures constructed on the Commercial Property and Roundbank Property, as applicable.

“**Land Taxes**” shall mean the amount of taxes assessed on the value of land on which the Project is located. Land assessments shall not be abated or exempt from ad valorem taxation.

“**Mixed Use Development I**” shall mean approximately 13,000 square feet of retail space on the first floor and not to exceed 30 apartments on the second, third and fourth floors located on the Commercial Property.

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“PILOT” shall mean payment in lieu of taxes of an amount equal to a percentage of taxes otherwise due, according to the following schedule:

- (1) In the first full tax year after completion, no payment in lieu of taxes otherwise due;
- (2) In the second tax year, an amount equal to 20% of taxes otherwise due;
- (3) In the third tax year, an amount equal to 40% of taxes otherwise due;
- (4) In the fourth tax year, an amount equal to 60% of taxes otherwise due;
- (5) In the fifth tax year, an amount equal to 80% of taxes otherwise due.

“Project” shall mean the development of land and improvements which are the subject of the Tax Agreement and located within the Redevelopment Area, and described more specifically as the “Mixed Use Development I” and “Mixed Use Development II.”

“Redeveloper” shall mean Cranford Building Associates, L.L.C.

“Redevelopment Agreement” shall mean the agreement entitled “Second Amended and Restated Redevelopment Agreement,” dated _____, 2001.

“Redevelopment and Housing Act” shall mean the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 eq seq.), as amended and supplemented.

“Redevelopment Area” shall mean the Roundbank Property, the Commercial Property, and Block 474, Lot No. 4.02, as designated on the Tax Maps of the Township.

“Roundbank Property” shall mean the real property designated on the Tax Map of the Township as Block 476, Lot No. 2.

“State” shall mean the State of New Jersey.

“Statutes” shall mean and refer to the statutes of the State of New Jersey when used in this Agreement, unless otherwise specified.

“Tax Collector” shall mean the Tax Collector of the Township.

“Termination” shall mean any act or omission which by operation of the terms of the Agreement shall cause the Redeveloper or its successor to relinquish the tax exemption granted herein.

“Township” shall mean the Township of Cranford, in the County of Union, New Jersey;

“Township Administrator” shall mean the Administrator of the Township.

“Township Attorney” shall mean the attorney-at-law appointed by the Township to serve as the municipal attorney.

“Township Clerk” shall mean the Clerk of the Township.

“Township Committee” shall mean the Township Committee of the Township.

Section 1.3. Exhibits Incorporated

All exhibits which are referred to in the Application and the Agreement, which are attached hereto are incorporated herein and made a part hereof.

ARTICLE II - APPROVAL

Section 2.1. Approval of Tax Exemption

Pursuant to the enabling and authorizing ordinances, respectively, Ordinance No. _____ and Ordinance No. _____ of the Township, all Improvements constructed or acquired by the Redeveloper, including all Improvements constructed by or on behalf tenants utilizing the Project or space within the Project shall be exempt from taxation as provided in the Exemption and Abatement Act. The Redeveloper represents and covenants that, effective as of the completion of the Project, the Redeveloper shall cause any tenants under lease agreement to use the Project for the purposes set forth in the Redevelopment Agreement, and the land use applications filed with, and as approved by, the Township in connection with this Project.

Section 2.2. Approval of Redeveloper

Approval hereunder is granted to the Redeveloper for the Project, which shall in all respects materially comply and conform to all applicable statutes of the State and ordinances of the Township, as amended and supplemented, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described in the Redevelopment Agreement.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1. Term

It is understood and agreed by the parties to this Agreement that the obligation to make PILOT payments required under Article IV hereof and the Exemption granted and referred to in Section 2.1 hereof, shall remain in effect for a period of five years commencing from January 1st of the tax year next following the Date of Completion, pursuant to N.J.S.A. 40A:21-11. During the

construction period the applicable Project shall be taxed as vacant land.

Section 3.2. Date of Termination

This Agreement and the Exemption granted hereunder shall terminate on December 31st of the fifth year of the Exemption. At the expiration of the Exemption, the applicable Improvements thereof shall thereafter be assessed and taxed according to general law, applicable to other non-exempt property in the Township. Thereafter, all restrictions and limitations imposed upon the Redeveloper under this Agreement shall terminate.

ARTICLE IV - PILOT

Section 4.1. Pilot

In consideration of the Exemption from taxation on Improvements, the Redeveloper shall make the PILOT for the applicable property to the Township pursuant to the "Tax phase-in basis" formula, of an annual amount equal to a percentage of the taxes otherwise due, according to the following schedule:

- (1) In the first full tax year after completion, no payment in lieu of taxes otherwise due;
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- (3) In the third tax year, an amount equal to 40% of taxes otherwise due;
- (4) In the fourth tax year, an amount equal to 60% of taxes otherwise due;
- (5) In the fifth tax year, an amount equal to 80% of taxes otherwise due.

The Redeveloper's obligation to make the PILOT shall be absolute and unconditional and not subject to any defense, set-off, recoupment or counterclaim under any circumstances.

Section 4.2. Payment in Quarterly Installments

The Redeveloper expressly agrees that the PILOT shall be made in quarterly installments according to the same schedule as real property taxes are due and payable (February 1, May 1, August 1 and November 1). In the event the Redeveloper fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted by state statute in the case of unpaid taxes or tax liens.

Section 4.3. Real Property Taxes

In addition to the required PILOT, the Redeveloper shall be liable for all real property taxes assessed and levied against the land on which the Improvements are located and/or taxes assessed and levied on any Improvements not contemplated within the scope of the Redevelopment Agreement and authorized hereunder or by other agreement.

Section 4.4. Material Conditions

It is expressly agreed and understood that all Land Taxes and the PILOT and any interest payments, penalties or costs of collection due thereon are material conditions of this Agreement. In the event that any of the provisions which apply to the payment of Land Taxes and the PILOT, as provided for in this Agreement are judicially declared to be invalid or unenforceable, this Agreement shall terminate upon notice to the respective parties. If any other term, covenant or condition of this Agreement is invalid or unenforceable, then the remainder of this Agreement or the application of such term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law as to all other persons and circumstances.

ARTICLE V - CERTIFICATE OF OCCUPANCY

Section 5.1. Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Redeveloper to substantially complete the Project as represented and reflected in the Redevelopment Agreement, and to obtain the necessary certificates, including but not limited to a Certificate of Occupancy, prior to any use thereof.

Section 5.2. Filing of Certificate of Occupancy

It shall be the primary responsibility of the Redeveloper to forthwith file with the Assessor and any other appropriate official or office of the Township a copy of the Certificate of Occupancy or any other certificate required by law. Failure to secure and submit said certificate(s) in a timely manner shall subject the Redeveloper to any penalty and fines permitted by state statute.

ARTICLE VI - INDEMNIFICATION

Section 6.1. Indemnification

It is understood and agreed that the Redeveloper shall indemnify, protect, defend, and hold the Township and its officers, agents and employees harmless from and against all liability, losses, damages, demands, costs, claims, action, or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from or in any way connected to the Agreement and/or by reason of any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of the Exemption and Abatement Law. In the event the Township is named as a party defendant, the Township maintains the right to intervene as a party thereto, to which intervention the Redeveloper consents; the expense thereof to be borne by the Redeveloper.

ARTICLE VII - ASSIGNMENT AND/OR ASSUMPTION

Section 7.1. Approval

For so long as this Agreement is in effect, the Redeveloper shall not, without the prior consent of the Township Committee, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the lands which are basic to, embraced in, or underlying the Improvements. It is understood and agreed that the Township will consent to a sale of the Project and the transfer of the Agreement where it is determined that the new owner (the "transferee") of the Project will continue to use the real property pursuant to the conditions which qualified the Project for Exemption as described in the Redevelopment Agreement. Upon the assignment and/or assumption by the transferee of the Redeveloper's obligations, to the extent those obligations relate to the portion of the Project acquired by the transferee, under this Agreement, the Exemption for the Project shall continue and inure to the transferee.

Section 7.2. Subordination of Fee Title

It is expressly understood and agreed that the Redeveloper has the right, subordinate to the lien of the PILOT and to the rights of the Township, to encumber the fee title to the applicable Property and may encumber or assign for security purposes the Redeveloper's interest in the applicable Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE VIII - DEFAULT

Section 8.1. Default

Default shall be failure to conform with the terms of the Agreement and failure of the Redeveloper to perform any obligation imposed hereunder.

Section 8.2. Cure Upon Default

In the event of default as defined and set forth in this Agreement, the Township shall notify the Redeveloper in writing of said default. The notice shall set forth with particularity the basis of the default. The Redeveloper shall have thirty days to cure any default which shall be the sole and exclusive remedy available to the Redeveloper unless such default can not be cured within such thirty day period, provided such cure is diligently and continuously pursued to the reasonable satisfaction of the Township. Upon the lapse of the thirty days, the Township shall have the right to proceed against the property pursuant to the Tax Sale Law, N.J.S.A. 54:5-1, et seq. and/or may terminate the Agreement.

Section 8.3. Remedies Upon Default

All of the remedies provided in this Agreement to the Township and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision within this Agreement shall deprive the Township of any of its remedies or actions against the Redeveloper because of its failure to pay Land Taxes, the PILOT and interest payments due thereon. This right shall apply to arrears that are due and owing under the terms hereof or which would in the future become due as if there had been no determination of default, nor shall the bringing of any action for Land Taxes and the PILOT, or other charges or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes, the PILOT or other charges be construed as a waiver of the right to terminate the Agreement or proceed with an in rem foreclosure action or any other remedy.

ARTICLE IX - WAIVER

Section 9.1. Waiver

Nothing contained in the Agreement shall constitute a waiver or relinquishment by the Township of any rights and remedies, including without limitation, the right to terminate the Agreement for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the Township may be entitled under law, in equity, or under any provisions of the Agreement.

ARTICLE X - NOTICE

Section 10.1. Sent by Township

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested, addressed as follows:

When sent to the Developer it shall be addressed to:

26 Columbia Turnpike
Florham Park, New Jersey 07932
Attn: Jeffrey Freireich

with a copy to:

Brach, Eichler, Silver, Bernstein, Hammer & Gladstone
101 Eisenhower Parkway
Roseland, New Jersey 07068
Attn: Alan Hammer, Esq.

Section 10.2. Sent by Redeveloper

When sent by the Redeveloper to the Township, it shall be addressed to the Clerk of the Township of Cranford, at 8 Springfield Avenue, Cranford, New Jersey 07106-2199, with copy sent to the Assessor of the Township, unless prior to the giving of notice the Township shall have notified the Redeveloper otherwise. The notice to the Township shall intelligently identify the subject to which it relates (i.e. Block and Lot No.).

ARTICLE XI - COMPLIANCE

Section 11.1. Statutes and Ordinances

The Redeveloper hereby agrees at all times prior to the expiration or termination of this Agreement to remain bound by the relevant provisions of all federal and State statutes and municipal ordinances and regulations as amended and supplemented. The Redeveloper's failure to comply with any applicable statutes or ordinances shall constitute a violation and breach of the Agreement and the Township shall, among its other remedies, have the right to terminate the Agreement.

ARTICLE XII - CONSTRUCTION

Section 12.1. Construction

This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Redeveloper and Township have combined in their review and approval of this Agreement.

ARTICLE XIII - TERMINATION

Section 13.1. Termination Upon Default of the Redeveloper

In the event the Redeveloper fails to cure or remedy any default or breach within the time period provided in Section 8.2, the Township may terminate the Agreement upon thirty days notice to the Redeveloper. Upon such termination, all affected parcels and all Improvements made thereto shall be assessed and subject to taxation as are all other taxable properties within the Township.

Section 13.2. Voluntary Termination by the Redeveloper

The Redeveloper may after the expiration of one year from the completion date of the applicable Project notify the Township Committee that as of the certain date designated in the notice, it relinquishes its Exemption on the applicable Improvements. As of the date so set, the Exemption and the PILOT shall terminate.

ARTICLE XIV - MISCELLANEOUS

Section 14.1. Conflict

The parties agree that in the event of a conflict between the Application and the Agreement the language contained in the Agreement shall govern and prevail.

Section 14.2. Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. The Agreement and Redevelopment Agreement constitute the entire Agreement between the parties and there shall be no modifications hereto other than by a written instrument executed by both parties and delivered to each.

Section 14.3. Entire Document

The Redevelopment Agreement is incorporated in this Agreement, which form and constitute the entire agreement between the Township and the Redeveloper.

Section 14.4. Good Faith

In their dealing with each other, utmost good faith is required from the Redeveloper and the Township.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

ATTEST:

REDEVELOPER

TOWNSHIP OF CRANFORD

By: _____
The Honorable George J. Jorn
Mayor, Township of Cranford

APPROVED AS TO FORM AND
LEGALITY

Robert Renaud, Township Attorney

ATTEST:

Rosalie Hellenbrecht, Township Clerk

[M&S DRAFT
8/13/01]

TAX AGREEMENT

among

TOWNSHIP OF CRANFORD, NEW JERSEY

and

CRANFORD BUILDING ASSOCIATES, L.L.C.

Dated as of _____, 2001

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TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement") made this _____ day of _____ 2001 by and between the **TOWNSHIP OF CRANFORD**, a municipal corporation of the State of New Jersey having its principal place of business at 8 Springfield Avenue, Cranford, New Jersey 07106-2199 (the "Township")

AND

CRANFORD BUILDING ASSOCIATES, L.L.C., a limited liability company of the State of New Jersey, having its principal place of business at 26 Columbia Turnpike, Florham Park, New Jersey 07932 (the "Redeveloper").

WITNESSETH:

WHEREAS, the Redeveloper wishes to have a five-year tax exemption granted for the project to be developed in the redevelopment Area, all as described below; and

WHEREAS, the Township does hereby grant its approval of a five-year tax exemption;

NOW, THEREFORE, in consideration of the mutual covenants herein contained and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1. Governing Law

This Agreement shall be governed by the laws of New Jersey, including the provisions of the **Five-Year Exemption and Abatement Law**, N.J.S.A. 40A:21-1 et seq., as amended and supplemented, the **Local Redevelopment and Housing Law**, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented and Ordinance No. 2001-_____ of the Township municipal code. It being expressly understood and agreed by the parties hereto that the Township expressly relies upon the facts, data, and representations contained in the application attached hereto in granting the tax exemption.

Section 1.2. General Definitions

As used in this Agreement the following terms set forth below shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation." The words "agree,"

TAX AGREEMENT

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As used in this Agreement the following terms set forth below shall have the meanings ascribed to such terms below. Terms listed below in the singular form shall include the plural and words listed in the plural shall include the singular. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter. Unless otherwise noted, the words "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation." The words "agree,"

“agreements,” “approval” and “consent” when used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed,” except or unless the context may otherwise specify. All references to Sections, Articles or Exhibits shall refer to Sections, Articles or Exhibits in this Agreement.

“**Agreement**” shall mean this agreement as same shall be amended and supplemented from time to time.

“**Area in need of redevelopment**” or “**Area in need of rehabilitation**” shall mean a portion or all of a municipality which has been determined to be an area in need of rehabilitation or redevelopment pursuant to the “Local Redevelopment and Housing Law,” P.L. 1992, c. 79 (C.40A:12A-1 et seq.).

“**Assessor**” shall mean the Tax Assessor of the Township.

“**Certificate of Occupancy**” shall have the meaning as set forth in section 92-1 et seq. of the Township municipal code and the applicable provisions of the Uniform Construction Code.

“**Commercial Property**” shall mean the parcel of land described on the Tax Map of the Township as Block 474, Lot No. 4.03.

“**Date of Completion**” shall be for Mixed Use Development I or Mixed Use Development II, as applicable, the earlier of (1) the date of issuance of a Certificate of Occupancy, (2) the date of a determination by the Assessor that the applicable project is an economically viable structure, or (3) the date of a determination by the Assessor that the applicable project is substantially ready for the use intended.”

“**Exemption**” shall have the meaning assigned to such term in the Exemption and Abatement Act.

“**Exemption and Abatement Act**” shall mean the Five-Year Exemption and Abatement Law (N.J.S.A. 40A:21-1 et seq.), as amended and supplemented.

“**Improvement**” all mean the buildings, structures and ~~{fixture constructed in the Redevelopment Area as part of the Project}~~ [fixtures constructed on the Commercial Property and Roundbank Property, as applicable].

“**Land Taxes**” shall mean the amount of taxes assessed on the value of land on which the Project is located. Land assessments shall not be abated or exempt from ad valorem taxation.

“**Mixed Use Development I**” shall mean approximately 13,000 square feet of retail space on the first floor and not to exceed 30 apartments on the second, third and fourth floors located on the Commercial Property.

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“PILOT” shall mean payment in lieu of taxes of an amount equal to a percentage of taxes otherwise due, according to the following schedule:

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- (4) In the fourth tax year, an amount equal to 60% of taxes otherwise due;
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“Project” shall mean the development of land and improvements which are the subject of the Tax Agreement and located within the Redevelopment Area, and described more specifically as the “Mixed Use Development I” and “Mixed Use Development II.”

“Redeveloper” shall mean Cranford Building Associates, L.L.C.

“Redevelopment Agreement” shall mean the agreement entitled “Second Amended and Restated Redevelopment Agreement,” dated _____, 2001.

“Redevelopment and Housing Act” shall mean the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.), as amended and supplemented.

“Redevelopment Area” shall mean the Roundbank Property, the Commercial Property, and Block 474, Lot No. 4.02, as designated on the Tax Maps of the Township.

“Roundbank Property” shall mean the real property designated on the Tax Map of the Township as Block 476, Lot No. 2.

“State” shall mean the State of New Jersey.

“Statutes” shall mean and refer to the statutes of the State of New Jersey when used in this Agreement, unless otherwise specified.

“Tax Collector” shall mean the Tax Collector of the Township.

“Termination” shall mean any act or omission which by operation of the terms of the Agreement shall cause the Redeveloper or its successor to relinquish the tax exemption granted herein.

“Township” shall mean the Township of Cranford, in the County of Union, New Jersey;

“Township Administrator” shall mean the Administrator of the Township.

“Township Attorney” shall mean the attorney-at-law appointed by the Township to serve as the municipal attorney.

“Township Clerk” shall mean the Clerk of the Township.

“Township Committee” shall mean the Township Committee of the Township.

Section 1.3. Exhibits Incorporated

All exhibits which are referred to in the Application and the Agreement, which are attached hereto are incorporated herein and made a part hereof.

ARTICLE II - APPROVAL

Section 2.1. Approval of Tax Exemption

Pursuant to the enabling and authorizing ordinances, respectively, Ordinance No. _____ and Ordinance No. _____ of the Township, all Improvements constructed or acquired by the Redeveloper, including all Improvements constructed by or on behalf tenants utilizing the Project or space within the Project shall be exempt from taxation as provided in the Exemption and Abatement Act. The Redeveloper represents and covenants that, effective as of the completion of the Project, the Redeveloper shall cause any tenants under lease agreement to use the Project for the purposes set forth in the Redevelopment Agreement, and the land use applications filed with, and as approved by, the Township in connection with this Project.

Section 2.2. Approval of Redeveloper

Approval hereunder is granted to the Redeveloper for the Project, which shall in all respects materially comply and conform to all applicable statutes of the State and ordinances of the Township, as amended and supplemented, and the lawful regulations made pursuant thereto, governing land, building(s) and the use thereof, and which Project is more particularly described in the Redevelopment Agreement.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1. Term

It is understood and agreed by the parties to this Agreement that the obligation to make PILOT payments required under Article IV hereof and the Exemption granted and referred to in Section 2.1 hereof, shall remain in effect for a period of five years commencing from January 1st of the tax year next following the ~~{date of the issuance of a final certificate of occupancy for the last~~

~~building to be constructed as a part of the Project~~ [Date of Completion], pursuant to N.J.S.A. 40A:21-11. During the construction period the [applicable] Project shall be taxed as vacant land.

Section 3.2. Date of Termination

This Agreement and the Exemption granted hereunder shall terminate on December 31st of the fifth year of the Exemption. At the expiration of the Exemption, the [applicable] Improvements thereof shall thereafter be assessed and taxed according to general law, applicable to other non-exempt property in the Township. Thereafter, all restrictions and limitations imposed upon the Redeveloper under this Agreement shall terminate.

ARTICLE IV - PILOT

Section 4.1. Pilot

In consideration of the Exemption from taxation on Improvements, the Redeveloper shall make the PILOT [for the applicable property] to the Township pursuant to the "Tax phase-in basis" formula, of an annual amount equal to a percentage of the taxes otherwise due, according to the following schedule:

- (1) In the first full tax year after completion, no payment in lieu of taxes otherwise due;
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The Redeveloper's obligation to make the PILOT shall be absolute and unconditional and not subject to any defense, set-off, recoupment or counterclaim under any circumstances.

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The Redeveloper expressly agrees that the PILOT shall be made in quarterly installments according to the same schedule as real property taxes are due and payable (February 1, May 1, August 1 and November 1). In the event the Redeveloper fails to timely pay any installment, the amount past due shall bear the highest rate of interest permitted by state statute in the case of unpaid taxes or tax liens.

Section 4.3. Real Property Taxes

In addition to the required PILOT, the Redeveloper shall be liable for all real property taxes assessed and levied against the land on which the Improvements are located and/or taxes assessed and levied on any Improvements not contemplated within the scope of the Redevelopment Agreement and authorized hereunder or by other agreement.

Section 4.4. Material Conditions

It is expressly agreed and understood that all Land Taxes and the PILOT and any interest payments, penalties or costs of collection due thereon are material conditions of this Agreement. In the event that any of the provisions which apply to the payment of Land Taxes and the PILOT, as provided for in this Agreement are judicially declared to be invalid or unenforceable, this Agreement shall terminate upon notice to the respective parties. If any other term, covenant or condition of this Agreement is invalid or unenforceable, then the remainder of this Agreement or the application of such term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law as to all other persons and circumstances.

ARTICLE V - CERTIFICATE OF OCCUPANCY

Section 5.1. Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Redeveloper to substantially complete the Project as represented and reflected in the Redevelopment Agreement, and to obtain the necessary certificates, including but not limited to a ~~{certificate of occupancy}~~ [Certificate of Occupancy], prior to any use thereof.

Section 5.2. Filing of Certificate of Occupancy

It shall be the primary responsibility of the Redeveloper to forthwith file with the Assessor and any other appropriate official or office of the Township a copy of the ~~{certificate of occupancy}~~ [Certificate of Occupancy] or any other certificate required by law. Failure to secure and submit said certificate(s) in a timely manner shall subject the Redeveloper to any penalty and fines permitted by state statute.

ARTICLE VI - INDEMNIFICATION

Section 6.1. Indemnification

It is understood and agreed that the Redeveloper shall indemnify, protect, defend, and hold the Township and its officers, agents and employees harmless from and against all liability, losses, damages, demands, costs, claims, action, or expenses (including reasonable attorneys' fees and expenses) of every kind, character and nature arising out of or resulting from or in any way connected to the Agreement and/or by reason of any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of the Exemption and Abatement Law. In the event the Township is named as a party defendant, the Township maintains the right to intervene as a party thereto, to which intervention the Redeveloper consents; the expense thereof to be borne by the Redeveloper.

ARTICLE VII - ASSIGNMENT AND/OR ASSUMPTION

Section 7.1. Approval

For so long as this Agreement is in effect, the Redeveloper shall not, without the prior consent of the Township Committee, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the Improvements from the lands which are basic to, embraced in, or underlying the Improvements. It is understood and agreed that the Township will consent to a sale of the Project and the transfer of the Agreement where it is determined that the new owner (the "transferee") of the Project will continue to use the real property pursuant to the conditions which qualified the Project for Exemption as described in the Redevelopment Agreement. Upon the assignment and/or assumption by the transferee of the Redeveloper's obligations, to the extent those obligations relate to the portion of the Project acquired by the transferee, under this Agreement, the Exemption for the Project shall continue and inure to the transferee.

Section 7.2. Subordination of Fee Title

It is expressly understood and agreed that the Redeveloper has the right, subordinate to the lien of the PILOT and to the rights of the Township, to encumber the fee title to the [applicable] Property and may encumber or assign for security purposes the Redeveloper's interest in the [applicable] Project, and that any such encumbrance or assignment shall not be deemed to be a violation of this Agreement.

ARTICLE VIII - DEFAULT

Section 8.1. Default

Default shall be failure to conform with the terms of the Agreement and failure of the Redeveloper to perform any obligation imposed hereunder.

Section 8.2. Cure Upon Default

In the event of default as defined and set forth in this Agreement, the Township shall notify the Redeveloper in writing of said default. The notice shall set forth with particularity the basis of the default. The Redeveloper shall have thirty days to cure any default which shall be the sole and exclusive remedy available to the Redeveloper unless such default can not be cured within such thirty day period, provided such cure is diligently and continuously pursued to the reasonable satisfaction of the Township. Upon the lapse of the thirty days, the Township shall have the right to proceed against the property pursuant to the Tax Sale Law, N.J.S.A. 54:5-1, et seq. and/or may terminate the Agreement.

Section 8.3. Remedies Upon Default

All of the remedies provided in this Agreement to the Township and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision within this Agreement shall deprive the Township of any of its remedies or actions against the Redeveloper because of its failure to pay Land Taxes, the PILOT and interest payments due thereon. This right shall apply to arrears that are due and owing under the terms hereof or which would in the future become due as if there had been no determination of default, nor shall the bringing of any action for Land Taxes and the PILOT, or other charges or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes, the PILOT or other charges be construed as a waiver of the right to terminate the Agreement or proceed with an in rem foreclosure action or any other remedy.

ARTICLE IX - WAIVER

Section 9.1. Waiver

Nothing contained in the Agreement shall constitute a waiver or relinquishment by the Township of any rights and remedies, including without limitation, the right to terminate the Agreement for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the Township may be entitled under law, in equity, or under any provisions of the Agreement.

ARTICLE X - NOTICE

Section 10.1. Sent by Township

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested, addressed as follows:

When sent to the Developer it shall be addressed to:

26 Columbia Turnpike
Florham Park, New Jersey 07932
Attn: Jeffrey Freireich

with a copy to:

Brach, Eichler, Silver, Bernstein, Hammer & Gladstone
101 Eisenhower Parkway
Roseland, New Jersey 07068
Attn: Alan Hammer, Esq.

Section 10.2. Sent by Redeveloper

When sent by the Redeveloper to the Township, it shall be addressed to the Clerk of the Township of Cranford, at 8 Springfield Avenue, Cranford, New Jersey 07106-2199, with copy sent to the Assessor of the Township, unless prior to the giving of notice the Township shall have notified the Redeveloper otherwise. The notice to the Township shall intelligently identify the subject to which it relates (i.e. Block and Lot No.).

ARTICLE XI - COMPLIANCE

Section 11.1. Statutes and Ordinances

The Redeveloper hereby agrees at all times prior to the expiration or termination of this Agreement to remain bound by the relevant provisions of all federal and State statutes and municipal ordinances and regulations as amended and supplemented. The Redeveloper's failure to comply with any applicable statutes or ordinances shall constitute a violation and breach of the Agreement and the Township shall, among its other remedies, have the right to terminate the Agreement.

ARTICLE XII - CONSTRUCTION

Section 12.1. Construction

This Agreement shall be construed and enforced in accordance with the laws of the State, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Redeveloper and Township have combined in their review and approval of this Agreement.

ARTICLE XIII - TERMINATION

Section 13.1. Termination Upon Default of the Redeveloper

In the event the Redeveloper fails to cure or remedy any default or breach within the time period provided in Section 8.2, the Township may terminate the Agreement upon thirty days notice to the Redeveloper. Upon such termination, all affected parcels and all Improvements made thereto shall be assessed and subject to taxation as are all other taxable properties within the Township.

Section 13.2. Voluntary Termination by the Redeveloper

The Redeveloper may after the expiration of one year from the completion date of the [applicable] Project notify the Township Committee that as of the certain date designated in the notice, it relinquishes its Exemption on [the applicable] Improvements. As of the date so set, the Exemption and the PILOT shall terminate.

ARTICLE XIV - MISCELLANEOUS

Section 14.1. Conflict

The parties agree that in the event of a conflict between the Application and the Agreement the language contained in the Agreement shall govern and prevail.

Section 14.2. Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. The Agreement and Redevelopment Agreement constitute the entire Agreement between the parties and there shall be no modifications hereto other than by a written instrument executed by both parties and delivered to each.

Section 14.3. Entire Document

The Redevelopment Agreement is incorporated in this Agreement, which form and constitute the entire agreement between the Township and the Redeveloper.

Section 14.4. Good Faith

In their dealing with each other, utmost good faith is required from the Redeveloper and the Township.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

ATTEST:

REDEVELOPER

TOWNSHIP OF CRANFORD

By: _____
The Honorable George J. Jorn
Mayor, Township of Cranford

APPROVED AS TO FORM AND
LEGALITY

Robert Renaud, Township Attorney

ATTEST:

Rosalie Hellenbrecht, Township Clerk