

## **DEVELOPER'S AGREEMENT**

**THIS AGREEMENT** effective as of the date it is fully executed by both parties,

**BETWEEN**

BOROUGH OF RED BANK  
a Municipal Corporation of the State of New Jersey  
90 Monmouth Street  
Red Bank, New Jersey 07701

(hereinafter referred to as the "Borough")

**AND**

METROVATION ANDERSON, LLC  
Brook 35 Plaza  
2150 Highway 35, Suite 250  
Sea Girt, New Jersey 08750

(hereinafter referred to as "Developer")

affects all, or a portion of, real estate known as:

**Block 38, Lots 1, 2, 2.02, 7, 8, 9 & 10 within the Borough of Red Bank**

**WHEREAS**, by Resolution No. Z 2014-27 (the "Resolution of Approval") the Zoning Board of Adjustment of the Borough of Red Bank (the "ZBA") granted the Developer's application for Site Plan approval, use/ "D" variance approval, height variance approval and bulk variance approval with respect to property located at 212, 218-220 Monmouth Street, 35-37 Shrewsbury, 39-41, 47-51 Shrewsbury Avenue, and designated as Block 38, Lots 1, 2, 2.02, 7, 8, 9 and 10 on the tax map of the Borough of Red Bank (hereinafter the "Property"). The Resolution of Approval effectuated the following:

- Renovation and expansion of the existing Anderson building located on the Property;
- Utilization of the property as a proposed mixed use of retail, restaurant, and office space, totaling approximately 48,850 square feet;
- Installation of two shipping containers (approximately 320 sq. ft. each, for a total of 640 sq. ft.) in the center of the proposed parking area (to be utilized as retail space); and
- Installation of two shipping containers to be combined to form a single, approximately 818 sq. ft. residential apartment on the second floor of the above referenced retail shipping containers; and

**WHEREAS**, the approved site plan calls for certain improvements and the Developer has agreed to construct these improvements as shown on the submissions and records comprising the Developer's approved ZBA application, all of which are made a part of this Agreement by reference hereto as though fully set forth at length (hereinafter referred to as the "plat").

**NOW, THEREFORE**, the parties to this Agreement for and in consideration of the mutual promises and covenants to each other and for other good and valuable consideration, including the site plan approval granted by the ZBA, hereby agree for themselves, their successors and assigns, as follows:

1. Application of Agreement: The terms and conditions of this Agreement shall be applicable only to this project by this Developer, subject to the provisions of Section 13.
2. Developer/Contract Purchaser Bound: The Developer agrees to be bound by the testimony, representations, commitments, matters of fact and matters of law which constitute the file and record of the ZBA in this matter and it will faithfully discharge all of the obligations and commitments thereof.
3. Construction Subject to Ordinance: The Developer shall construct in accordance with the specifications of the ordinances of the Borough of Red Bank, as amended to date, in a manner satisfactory to the Borough Engineer and in accordance with the "plat" improvements as set forth on the "plat" including but not limited to, the installation of those items specifically set forth in the Resolution of Approval. Developer shall perform all work in full compliance and observation of all ordinances of the Borough of Red Bank. The Developer shall be responsible for securing all permits required by law including road opening permits and others required by the ordinances of the Borough of Red Bank and to pay the requisite fees called for under the appropriate fee schedules.
4. Performance Guarantees: Developer shall post with the Borough performance guarantees in the following manner and amounts:

a. A performance bond or letter of credit at the time of the issuance of building permits, subject to the approval of the Borough Attorney, with adequate surety to ensure the faithful completion of the Improvements in the amount of **\$772, 449.00**;

b. At the time of the issuance of building permits, a cash deposit equal to ten percent (10%) of the total performance guarantee, or **\$85,828**; and

c. Any partial reduction granted in the performance guarantees pursuant to N.J.S.A. 40:55D-53 shall be applied to the cash deposit in the same proportion as the original cash deposit bears to the full amount of the performance guarantee. In addition, all taxes, assessments, escrows and fees for the property must be paid prior to the release of all performance guarantees.

d. As used herein, "Improvements" shall be defined as: Curb, Hardscape and Pavement within the Municipal Right of Way, Traffic Signs, Municipal Storm Drainage System, Hydrants, Street Trees and Street Lighting.

5. Performance Guarantee Replacement: In the event that any insurance company, financial institution or other entity issuing a performance guarantee hereunder shall be subject to a reorganization, rehabilitation or other action whereby a State or Federal agency has taken over management of the entity or, if in the reasonable opinion of the Governing Body, the circumstances and condition of the entity results in the Borough declaring it feels its interests are jeopardized, the Developer, within 60 days of such written notification sent by the Borough, shall replace the performance guarantees. If requested by the Developer, the Borough shall adopt a resolution conditionally releasing the jeopardized performance guarantees subject to the posting of satisfactory substitute guarantees.

6. Lapsed Performance Guarantee: In the event any performance guarantee shall lapse, be cancelled or withdrawn or otherwise not remain in full force and effect, the Developer, until a replacement guarantee has been deposited with and approved by the Borough, will cease and desist any and all work on the project or development except for relatively minor work for safety authorized in writing by the Borough's Construction Officer. In the event any occupancy takes place in any Improvements of the development or project, said occupancy shall be illegal and the Developer shall forthwith cause it to cease and desist.

7. Engineering Escrows: The Developer shall pay an engineering inspection fee in the amount of **\$44,762.00**.

8. Legal Fee Escrow: The Developers shall pay the sum of One Thousand Five Hundred (\$1,500.00) Dollars to the Borough which shall be held in escrow for the Borough's legal fees related to this development. Such funds shall be used for the negotiation, preparation and review of this agreement, any ordinances or other legal instruments related to this project, and all bonds, letters of credit, deeds, resolutions, as well as fees or document preparation associated with the recording and/or release of the aforementioned materials. Any unused portion of this escrow shall be returned to the Developers according to law. If this escrow should be exhausted, the Developers shall pay such additional funds as determined by the Borough. All payments shall be made to the Borough of Red Bank and will be held in escrow by same.

9. Water and Sewer Fees: The Developer agrees to pay to the Borough of Red Bank, based on the approved plan, the following sewer and water system vulnerabilities fees as set forth below (the "Fees"), fifty (50%) percent of same payable at the time of the issuance of the building permit, and fifty (50%) percent payable at the time of the issuance of the Certificate of Occupancy:

- a. Sewer connection fees of \$ 91,272.30;
- b. Water connection fees of \$38,882.62; and
- c. A fair share contribution in the amount of \$320.00 per Equivalent Dwelling Units (EDUs) towards the costs of remediation of the Water System Vulnerabilities. The parties agree that the entire project consists of 14.87 EDUs, yielding a fair share contribution of \$ 4,759.47.

10. Withholding Permits/Certificates of Occupancy: Developer understands and agrees in the event it is in violation, after fifteen (15) days written notice and opportunity to cure, of any of the terms of this Agreement, the Borough may, in its discretion, withhold the issuance of any further building permit(s) and/or certificate(s) of occupancy until the violation has been corrected. Developer understands and

acknowledges that all conditions contained in the record of proceedings in this matter, including any agreements made by the Developer, were essential to the Zoning Board of Adjustment's decision to grant the approval set forth herein. A material breach of any such condition or a failure by the Developer to adhere to the material terms of any agreement within the time required shall result in the automatic revocation of the planning approval and shall terminate the right of the Developer to obtain construction permits, certificates of occupancy or any other governmental authorizations necessary in order to continue development of this project.

11. Completion of Improvements: The Improvements contemplated in this Agreement and in the application shall be performed within a period of three (3) years from the date of the Resolution of Approval (November 6, 2014) or such additional periods of time as may be granted by the Borough in accordance with N.J.S.A. 40:55D-52, and prior to the issuance of a certificate of occupancy. The failure of the Borough to declare the Developer in default upon the expiration of the three (3) year period and/or the willingness of the Borough to allow Developer additional time to complete the Improvements shall not be deemed a waiver of any of the Borough's rights under this Agreement. The issuance of a certificate of occupancy by the Borough within the three (3) year period shall not be deemed a waiver for defects ascertained during said period or subsequent thereto.

12. Release of Maps: Any payments, posting of bonds or other financial obligation required to be performed by the Contract Purchaser/Developer in this Agreement, unless specifically set forth otherwise, shall be done and/or performed prior to the issuance of any building permits to the Contract Purchaser/Developer.

13. Assignment/Sale of Premises: In the event the property is sold or otherwise conveyed by the Developer prior to the installation of all Improvements, the Developer shall have the right to assign both the performance guarantees and this Developer's Agreement to a subsequent qualified Developer provided this subsequent Developer shall remain primarily liable for the obligations created thereunder and provided further that any subsequent Developer assumes same in writing in a form which is acceptable to the Borough Attorney. In the event a subsequent Developer tenders new guarantees to the Borough, they shall

be reviewed by the Borough Attorney as to form and content prior to acceptance and release of this subsequent Developer's performance guarantees.

14. Record Drawings: The Developer shall provide to the Borough, by filing with the Borough Engineer, record drawings of all Improvements and utilities, including water, sanitary sewer and storm drainage as constructed by the Developer both within its development site and off-tract, if required. Said record drawings shall be in conformance with applicable Borough standards and shall be both in hard copy and on disc. A final survey of the site must be submitted at the time of request for a Certificate of Occupancy.

15. Maintenance of Project: During the course of construction and until the time of final acceptance of Improvements, the Developer shall: (1) keep the site reasonably free of excess dirt, stone, mud and other debris; (2) maintain and keep all storm drainage within the site free from accumulation of debris and leaves; and (3) shall utilize a snow fence to protect those areas which will remain undisturbed throughout the construction. "Final Acceptance" of Improvements for the purpose of this provision is deemed to be the date upon which the Improvements are accepted by the Borough and the final maintenance guarantees for the same are posted with the Borough and a resolution of acceptances adopted by the governing body of the Borough. Said maintenance guarantees shall be posted with the Borough for a period of not less than two (2) years in an amount not less than fifteen (15%) percent of the cost of the Improvements.

16. Public Roadways and Sidewalks to be Maintained: Developer shall be responsible for the cleaning and sweeping of the public roadways at the point of entrance to and exit from the Development project to avoid the accumulation of debris and to maintain the public roadways in a clean and safe condition. The Developer shall also be responsible for keeping the sidewalks in the vicinity of the Development free from debris and obstruction for the safety of pedestrians and shall at all times during construction maintain safe pedestrian passage and/or signage for an alternate pedestrian access route. In the event that the Developer fails to maintain the roadway and sidewalks in accordance with the foregoing standard, the Borough may cause same to be done and the Superintendent of the Department of Public Works, or his designee, shall certify the Borough's expense in connection herewith to, the Borough Treasurer and the

Borough Tax Collector. In the event Developer has not cured such condition within fifteen (15) days after receipt of written notice of same, then said amount shall constitute a lien upon the premises and permission is hereby given that such lien may show on municipal Certificates of Lien issued for the subject property by officials and/or employees of the Borough.

17. Deeds and Affidavits of Title: Developer shall provide to the Borough such documents, including but not limited to deeds, affidavits of title, corporate resolutions to convey, and a letter from the title insurance company which letter shall certify to the Borough that the Grantor is the fee owner of the property and has the ability to transfer the interest conveyed without encumbrances as are necessary to convey a valid, marketable and insurable easement(s) or fee title, as the case may be, for such dedications of property or easements as revealed on the plat approval.

18. Borough Observation, Access and Inspections: The Borough, its consultants, employees and agents, shall be given free access to observe construction of subject development, including but not limited to roadways, sanitary sewers, water mains, storm sewers, landscaping, buffer areas and appurtenances associated with the approved plan. The purpose of such observations shall be limited to providing the Borough with a greater degree of confidence that such Improvements will be constructed in accordance with the Developer's approved submittals. The Borough, or its representatives, consultants, employees or agents, shall not supervise, direct or have control over the Developer's work during such observations or as a result thereof, nor shall they have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Developer, for safety precautions and programs incident to the work of the Developer or for any failure of the Developer to comply with applicable laws, rules, regulations, ordinances, codes or orders. The Developer is not an agent or employee of the Borough.

19. Compliance with Applicable Laws: The Developer shall comply with all laws and regulations of the State of New Jersey, the County of Monmouth and the Borough of Red Bank. In addition, the Developer shall comply with all environmental laws and regulations of the federal and state governments. Failure to comply with these laws and any violations thereof shall be deemed to be a breach of this Agreement. To

the extent the Borough must bring an action for compliance with this Agreement, defend or participate in any litigation with regard to said laws or regulations related to the Developer's development and/or actions whether purposeful or negligent, any such action shall be subject to the provisions set forth in the immediately following paragraph regarding indemnification and attorneys' fees. In addition, the Developer shall indemnify and hold the Borough harmless for such violations and shall reimburse the Borough for any and all fees, judgments or penalties entered against the Borough as a result of the purposeful or negligent acts of the Developer.

20. Indemnification and Attorney's Fees: Developer agrees to indemnify and hold the Borough, its officials, officers, consultants, agents, servants, representatives and employees, harmless from and against any and all claims, liability, cost or expense of every kind and nature arising from Developer's performance of the Developer's obligations pursuant to this Agreement, the failure by Developer to perform such obligations, any action or failure to act by the Developer with respect to the project to which this Agreement is applicable or in connection with any allegation of any of the foregoing. Such indemnification and/or hold harmless obligation shall extend not only to actual damages but shall also include reasonable costs and expenses of litigation, including but not limited to expenses and fees in connection with the engagement or utilization of any fact or expert witnesses as well as reasonable attorney fees. When requested by the Borough, the Developer agrees to aid and/or defend the Borough, its officials, officers, agents, servants, representatives and employees, in the event any or all of same are named as a defendant or defendants in any action relating to activities or obligations of the Developer arising under this Agreement or in connection with the project to which this Agreement applies.

21. Insurance: Since the construction activities proposed by the Developer will occur in areas adjacent to Borough owned properties and/or rights of way, the Developer shall name the Borough as an additional insured with respect to its property in all general liability, excess and umbrella policies it may obtain with respect to the construction activities on the Property. The Policy Limits shall be no less than \$1 million per occurrence and \$3 million aggregate.



22. Pre-construction Meeting: The Developer shall provide five (5) days' notice to the Borough Engineer prior to any clearing, grading, construction or other work at the site pursuant to Red Bank Code §490-73. In addition, there shall be a preconstruction meeting with the Borough Engineer prior to the commencement of any construction affecting public improvements. Progress meetings may also be required as necessary.

24. Reliance of Borough: The Developer further acknowledges and understands that all of the conditions contained in this Agreement and the record of the proceedings in this matter, including any agreements made by the Developer with the Zoning Board of Adjustment and incorporated in the Resolution of Approval, as well as the approved map, are hereby deemed to be essential to the Governing Body's decision to enter into this Agreement. A breach of any such conditions, the failure of the Developer to adhere to the terms of any agreement incorporated within the resolution, or this Agreement, or deviation from the approved map, shall result in a breach of this Agreement and shall terminate the right of the Developer to obtain additional construction permits, certificates of occupancy or any other governmental authorizations in order to continue developing the project until such time as such breach has been remedied.

25. Conditions of Approval: The Developer shall also comply with the following terms and conditions in connection with the final approval of the plat:

a. Compliance with all requirements of all applicable ordinances of the Borough of Red Bank and all proper recommendations of the Borough Engineer;

b. All recommendations, conditions and requirements of the Monmouth County Planning Board shall be complied with and the Developer shall pay all costs of Improvements, including the posting of any bonds, as may be required by said County Planning Board;

c. Developer shall post satisfactory performance bonds to guarantee the installation of such Improvements as may be required by Monmouth County;

d. Compliance with the Freehold Soil Conservation District for a soil erosion and sediment control plan;

e. New Jersey Department of Environmental Protection approval of wetlands and buffer delineations, if applicable;

- f. Approval of the Two River Water Reclamation Authority for sewer service;
- g. Compliance with all conditions set forth in the ZBA's Resolution of Approval Z 2014-27 dated November 6, 2014, which is attached hereto as Exhibit "A" and incorporated herein by reference.

26. Additional Conditions of Approval: As to the following conditions required by the ZBA Resolution of Approval annexed hereto as Exhibit A, and all Compliance and Review Letters issued by the Borough Engineer, and without limiting the applicability of all of the conditions set forth therein, the Developer shall be required to perform the following:

- a. The Developer shall consolidate the lots which are the subject of the Resolution of Approval. The new lot number shall be specifically reviewed/approved by the Borough's Tax Assessor. The Proposed Deed of Consolidation (including the metes and bounds description) shall be reviewed by the ZBA engineer and attorney. Thereafter, the deed of consolidation shall be recorded in the office of the Monmouth County Clerk, and proof of recording shall be submitted to the Board Secretary.

- b. The Developer's representatives shall meet with the ZBA Engineer to more formally review/discuss the possibility of installing (at the Developer's expense) an ADA compliant access ramp at the railroad crossing at the corner of Monmouth Street and Bridge Avenue. If the Board Engineer requires such improvement, the Developer shall arrange for the ramp to be installed at its sole expense.

- c. The Developer shall replace the sidewalk along Shrewsbury Avenue as deemed necessary by the Board Engineer.

- d. The Developer shall reduce the width of certain parking spaces (in the field to the west of the residential unit) by approximately 3 inches (or otherwise eliminate one parking space on the east side or west side of the property) so as to provide an approximate 4 ft. wide walkway connecting Shrewsbury Avenue and the residential container unit.

- e. Unless otherwise required by law, or by this agreement, all payments required to be posted by the Developer to the Borough under this section shall be made prior to the issuance of a Certificate of Occupancy for the project. The Developer shall post any contributions under this section with the Borough Treasurer for deposit in an interest bearing account with interest accruing in the account until such time as the road, sewer or park improvement work is actually performed, or no more than seven years after the

posting of these contributions. If the work is not commenced within that seven year period, the contribution will be returned, with accrued interest, to the Developer.

27. Affordable Housing Obligations: The Developer shall comply with all affordable housing related obligations as mandated by the State of New Jersey, the Borough of Red Bank and/or any other agency having jurisdiction over the matter, including, without limitation, creating all affordable housing units as may be required by the Borough's ordinances.

28. Affordable Housing Development Fees. The Developer shall pay to the Borough any applicable Affordable Housing Development fees, including any fees due pursuant to N.J.S.A. 40:55D-8.1 et seq., the "Statewide Non-Residential Development Fee Act," fifty (50%) percent due upon the issuance of building permits, and fifty (50%) percent upon issuance of the Certificate of Occupancy.

29. Voluntary Agreement: Developer hereby specifically and unequivocally states that the agreements, conditions and amounts to be paid as agreed upon in this Agreement have not been forced upon it by undue influence, coercion and are not being undertaken or paid under protest. The Developer has reviewed all calculations and the rationale for the agreements and payments set forth herein and is undertaking them voluntarily.

30. Recording of this Agreement:

a. Developer shall promptly record this Developer's Agreement in the Monmouth County Clerk's office where it shall remain on record until the Developer has complied with the obligations herein. At such time, the Governing Body shall adopt a Resolution authorizing the execution and delivery of a Release and Satisfaction of Developer's Agreement in recordable form at the developer's cost and expense.

31. Severability: If any terms or conditions are determined invalid by a court of competent jurisdiction, the remainder shall remain in full force and effect.

32. Interpretation of Law: This Agreement shall be interpreted under and governed by the laws of the State of New Jersey.

33. Notices: All notices required or permitted under this Agreement shall be in writing by regular mail to the addresses set forth herein or as otherwise designated by the parties in writing.

**IN WITNESS WHEREOF**, the Developer has hereunto caused these presents to be signed by its proper authorized parties and has caused its proper seals, if any, to be affixed hereto. The Borough of Red Bank has caused this instrument to be signed by its Mayor and attested by its Clerk and does cause its proper corporate seal to be affixed as of the date and year first above written.

**Metrovation Anderson, L.L.C.**

**Borough of Red Bank**

By: \_\_\_\_\_  
Name: Christopher Cole  
Title Manager

By: \_\_\_\_\_  
Pasquale Menna,  
Mayor  
Borough of Red Bank

Witnessed: \_\_\_\_\_  
Name Printed:  
Title:

Attest: \_\_\_\_\_  
Pamela Borghi  
Borough Clerk

STATE OF NEW JERSEY

SS:

COUNTY OF MONMOUTH

On this \_\_\_\_ day of \_\_\_\_\_, 201 , before me personally came Christopher Cole, Manager of Metrovation Anderson, LLC, to me known and known to me to be the individual described in and who executed the foregoing instrument, and such person duly acknowledged to me he understood the meaning of the instrument and that he executed the same as his act and deed, and as the Managing Member of the Limited Liability Company named therein, and with full authority to act on behalf of such Limited Liability Company, and that he is over the age of 18.

\_\_\_\_\_  
Notary Public of New Jersey