

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT (this “**Agreement**”) is entered into as of the _____ day of _____ 2016 (the “**Effective Date**”) by and between the **BOROUGH OF RED BANK**, a municipal corporation and body politic of the State of New Jersey, having its offices at 90 Monmouth Street, Red Bank, New Jersey 07701 (the “**Borough**”), and **WEST FRONT STREET PARTNERS, LLC**, a New Jersey limited liability company, established, operated and authorized to do business within the State of New Jersey, and having a business office located at _____ and a mailing address of 1148 Elberon Avenue, Elberon, New Jersey 07748 (the “**Redeveloper**”)(the Borough and the Redeveloper shall be collectively referred to herein as the “**Parties**”).

RECITALS

WHEREAS, on March 23, 2016, the Red Bank Borough Council (the “**Borough Council**”) adopted Resolution 16-90 directing the Red Bank Planning Board (the “**Planning Board**”) to undertake a preliminary investigation to determine whether the real property located at 55 West Front Street, Red Bank, New Jersey and identified on the Borough’s tax map as Block 30, Lot 10.01 (the “**Property**”) meets the statutory criteria to be designated as a “Non-Condensation Area In Need Of Redevelopment” under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the “**LRHL**”); and

WHEREAS, the Planning Board held a public hearing regarding the preliminary investigation of the Property on June 6, 2016 and the Planning Board subsequently adopted a resolution recommending that the Borough Council designate the Property as a “Non-Condensation Area In Need Of Redevelopment” under the LRHL; and

WHEREAS, the Borough Council reviewed the Planning Board’s recommendations and adopted Resolution 16-189 determining that the Property is a “Non-Condensation Area In Need of Redevelopment” under the LRHL; and

WHEREAS, the Borough Council subsequently prepared a redevelopment plan for the Property (the “**Redevelopment Plan**”) and sent it to the Planning Board for a consistency review; and

WHEREAS, on October 17, 2016, the Planning Board reviewed the proposed Redevelopment Plan and determined that it is consistent with the Borough’s Master Plan; and

WHEREAS, on November 21, 2016, the Borough Council adopted the Redevelopment Plan, attached hereto as **Exhibit A**; and

WHEREAS, N.J.S.A. 40A:12A-8 authorizes the Borough to enter into contracts with redevelopers for the construction of redevelopment projects within an area in need of redevelopment; and

WHEREAS, the Redeveloper owns the Property and is proposing to redevelop it with a residential housing project, as described more fully herein, which is consistent with the Redevelopment Plan; and

WHEREAS, the Borough recognizes the credentials, experience and financial capability of the Redeveloper to design and construct the Project (as defined below); and

WHEREAS, the Borough wishes to enter into a redevelopment agreement with the Redeveloper (the “**Agreement**”) in order to Parties’ respective rights and obligations with regard to the redevelopment of the Property in accordance with the Redevelopment Plan.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties, the Parties hereby agree as follows:

1. **Redeveloper Designation.** The Borough hereby designates and appoints the Redeveloper to serve as the exclusive redeveloper of the Property in accordance with the LRHL. In connection with such designation and appointment, the Redeveloper has the exclusive right and obligation to perform development and redevelopment activities on the Property under the framework and in accordance with the terms of this Agreement the Redevelopment Plan, and all applicable laws.
2. **Qualification of Redeveloper.** The Redeveloper is fully experienced and properly qualified to undertake the responsibilities and perform the work provided for in, or contemplated under, this Agreement and it is properly equipped, organized and in good financial standing so as to perform all such work and undertake all such responsibilities hereunder. Through the entry of this Agreement, the Borough Council has determined and acknowledges that the Redeveloper is a “**Qualified Entity**” capable of undertaking and successfully completing the Project pursuant to the Project Schedule (as such terms are defined below), including without limitation, the capacity to obtain financing, to provide appropriate security (such as performance and maintenance bonds), and to otherwise satisfy its obligations with respect to the development of the Property in full conformance with the Redevelopment Plan and Project approvals to be obtained in accordance therewith.
3. **The Project.** The Redeveloper shall construct a project on the Property consisting of up to thirty five (35) rental apartment units, including parking and required on-site improvements, all of which shall be consistent with the requirements of the Redevelopment Plan and the site plan approval which the Redeveloper must obtain for the project from the Borough Planning Board (collectively, the “**Project**”). The Redeveloper shall be responsible to obtain, at its sole cost and expense, all permits and approvals necessary to construct the Project on the Property.

4. **Project Development.** The Project shall be designed and constructed in accordance with the Redevelopment Plan. Any modifications that would trigger a “d” variance pursuant to N.J.S.A. 40:55D-70(d) shall require the Redeveloper to seek an amendment to the Redevelopment Plan. Any modifications from the Redevelopment Plan that would be deemed a “design waiver”, which shall be considered as the equivalent of and akin to a “c” variance pursuant to the provisions of N.J.S.A. 40:55D-70(c), shall be submitted to the Planning Board for consideration as part of the site plan application by the Redeveloper.
5. **Project Schedule.** The Redeveloper intends to Commence Construction of the Project by July 1, 2017, and shall Complete Construction of the Project by no later than July 1, 2019 (the “**Project Schedule**”), subject to the Force Majeure delays as detailed below. For purposes of this Agreement, the term “**Commence Construction**” shall mean the date on which the construction force and machinery are mobilized for construction of the Project, and the term “**Complete Construction**” shall mean the date on which the Redeveloper has completed construction of the Project and has obtained a final Certificate of Occupancy for all structures built as part of the Project.
6. **Force Majeure Event.**
 - (a) The Project Schedule may be extended if a delay is caused by the occurrence of a Force Majeure Event. For purposes of this Agreement, a “**Force Majeure Event**” shall mean causes beyond the reasonable control and not due to the fault or negligence of the Redeveloper, including, but not limited to, declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods not reasonably foreseeable at the time the Project Schedule was agreed to); litigation involving the Redevelopment Plan, the Redevelopment Agreement or the approvals required to construct and operate the Project, acts of the public enemy; acts of war; fire; epidemics; quarantine restrictions; blackouts; power failures or energy shortages; governmental embargoes; strikes or similar labor action by equipment or material suppliers or transporters; or unavailability of necessary building materials (provided that the Redeveloper has no commercially reasonable alternatives to avoid the impact thereof on the progress of the Project).
 - (b) In the event of the occurrence of a Force Majeure Event, the time or times for performance of the obligations of the Redeveloper shall be extended for the period of the delay; provided, however, that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. To invoke the tolling provisions hereunder, the Redeveloper must give written notice to the Borough of the occurrence of a Force Majeure Event as soon as practicable, but in no event more than ninety (90) calendar days after the occurrence thereof.
7. **Restrictions on Transfer.**

- (a) Prior to the issuance of a Certificate of Completion for the Project pursuant to N.J.S.A. 40A:12A-9(a), except as otherwise permitted by this Agreement or with the express prior written consent of the Borough which shall not be unreasonably withheld, delayed or conditioned, the Redeveloper agrees for itself and all successors in interest that there shall be no sale, transfer or assignment of: (i) the Property; (ii) any controlling (i.e. more than 50%) equity interest in the Redeveloper, or (iii) the Agreement. With respect to this provision, the Redeveloper and the persons signing the Redevelopment Agreement on behalf of the Redeveloper represents that each has authority to agree to this provision on behalf of the current members of the Redeveloper and to bind it with respect thereto. The foregoing shall not apply, however, to a change of form of the Redeveloper entity, provided that there is no change in the beneficial ownership of Redeveloper. The restrictions in this Section shall not apply to pledges made or security interests given in conjunction with customary Project or construction financing or to the lease of any specific unit for which a Certificate of Occupancy was issued.
- (b) The Redeveloper shall have the right to seek written Borough consent, which as detailed above, shall not be unreasonably withheld, delayed or conditioned, to an assignment of the Project and of its obligations under this Agreement to another entity subject to the terms and conditions of this Section. Any such request must be made in writing to the Borough, which shall evaluate such request based upon the following: (i) whether the proposed assignee agrees to assume all of the obligations of the Redeveloper with regard to the redevelopment of the Property under this Agreement; (ii) whether such conveyance or assignment does not violate any governmental approvals for the Project; (iii) whether the proposed assignee has the experience and expertise necessary to construct the Project on the Property within the deadlines set forth within this Agreement; and (iv) whether the proposed assignee otherwise qualifies to perform the Project. Any assignment application must include all disclosure forms required by the Borough regarding the proposed assignee and a draft of the written instrument of conveyance and assignment and assumption of the Redevelopment Agreement. A copy of the assignment request and the Borough's written response thereto shall be filed with Township Clerk.

8. **Permitted Transfers.** Notwithstanding the foregoing, the Borough hereby consents, without the necessity of any further approval, to the following conveyances:

- (a) the conveyance of driveways, roads, infrastructure, open space and other common property to a homeowners' association or similar entity;
- (b) the conveyance of utility and other necessary easements;
- (d) the conveyance of a mortgage or mortgages or leases or leasehold or other financing and other liens and encumbrances solely for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project.

- (e) the conveyance of the Property or the Project to entities affiliated with the Redeveloper or the principals of the Redeveloper provided the Redeveloper continues to guarantee the Agreement.
 - (f) the lease of an individual unit for which a Certificate of Occupancy was issued, which the Parties acknowledge may be issued prior to the Certificate of Completion being issued for the entire Project.
- 9. **Subsequent Conveyance by Redeveloper.** Upon issuance of a Certificate of Completion for the Project, the prohibitions on conveyances set forth within Section 7 herein shall no longer apply to the Property, the Project, or the Redeveloper, and the Redeveloper shall have the right to sell, lease or otherwise transfer, convey or encumber the Property or any such portion of the Project without the consent of the Borough and free of any restrictions imposed by this Agreement, except the Declarations that expressly survive such transfer or conveyance.
- 10. **Application for the Project.** The Redeveloper shall submit an application for site plan and, if applicable, subdivision approval to the Planning Board for the proposed Project pursuant to this Agreement and in compliance with applicable provisions of the Redevelopment Plan.
- 11. **Other Governmental Approvals.** It is acknowledged by the Parties that it may be necessary for the Redeveloper to obtain approvals or permits from other governmental agencies in order to undertake development of the Project, including but not limited to the County of Monmouth and New Jersey Department of Environmental Protection (“NJDEP”). The Redeveloper agrees that it will take all necessary steps to prepare and apply for and proceed diligently to attempt to obtain any needed permits and approvals for the Project in a timely fashion and utilizing commercially reasonable efforts. The Borough agrees to provide any pertinent information within its possession and to provide any reasonable assistance, without cost or expense to the Borough, which may be required of it to enable Redeveloper to properly apply for and obtain such permits or approvals in a timely fashion, including making applications in the name of the Borough if reasonably requested by Redeveloper or if required by law to do so. The Borough agrees to support and endorse any applications for any outside governmental approvals required for the Project.
- 12. **Certificate of Completion.** When the Redeveloper Completes Construction of the overall Project, for purposes of releasing the restrictions referenced in this Agreement, and under the LHRL, the Borough shall 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 in accordance with the requirements of the LHRL, the Redevelopment Plan and this Agreement. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the restrictions, obligations and covenants contained in this Agreement and in the Redevelopment Plan with respect to the Redeveloper’s construction of the Project. If the Borough shall fail or refuse to provide

the Certificate of Completion within twenty (20) days after written request thereof by the Redeveloper, the Borough shall provide to the Redeveloper a written statement setting forth in detail the respects in which it believes that the Redeveloper has failed to complete the Project, or portion thereof, 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 shall be necessary to be taken in order for the Redeveloper to be entitled to a Certificate of Completion. Notwithstanding the foregoing, it is recognized that the Redeveloper may lease specific units to third parties as Certificates of Occupancy are issued for specific units as contemplated in Sections 7 and 8 of this Agreement.

12. **Contribution To Costs and Financial Obligations.** Unless otherwise set forth herein, or pursuant to applicable law or Borough Ordinance in effect at the time of the entry of this Agreement, there shall be no additional costs, financial obligations or impositions imposed upon the Redeveloper by the Borough.
13. **Redevelopment Costs.** The Redeveloper shall be solely responsible to pay all costs and expenses incurred by the Borough in connection with this Agreement and the Project, including but not limited to the reasonable third party attorney's fees, third party engineering fees, or other outside consultants' fees (but specifically excluding compensation to the Borough for work performed internally by Borough employees) incurred by the Borough relating to the designation of the Property as a redevelopment area and the adoption of the Redevelopment Plan, the drafting and negotiation of this Agreement, and the Project (the "Borough Costs"). An Escrow Agreement has already been entered between the Borough and the Redeveloper which shall remain in full force and effect and which shall continue to be used to fund the Borough Costs until the Certificate of Completion is issued.
14. **Planning Board Costs for Site Plan Application.** The Redeveloper shall post with the Planning Board such escrow fees as necessary to reimburse the Planning Board for its professional, expert, engineering and legal costs incurred in the application review and determination process in accordance with the provisions of the Municipal Land Use Law (the "MLUL").
15. **Affordable Housing.** In conformance with the Redevelopment Plan, the Redeveloper shall be responsible for the payment to the Borough of all residential development affordable housing fees arising from this Project as set forth more fully within Section 205-17A(1) of the Borough Code of Ordinances.
16. **No Financial Incentives.** The Redeveloper is not seeking, nor is the Borough offering, any tax abatements or exemptions for the Project under the Short or Long Term Tax Exemption Laws.
17. **Representations and Warranties.** The Redeveloper makes the following representations and warranties:
 - (a) The Redeveloper has the legal capacity to enter into this Redevelopment Agreement

and perform each of the undertakings set forth herein and in the Redevelopment Plan as of the date of this Redevelopment Agreement.

- (b) The Redeveloper is a duly organized and validly existing legal entity under the laws of the State of New Jersey, and all necessary resolutions or authorizations have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Redevelopment Agreement to do so for and on the Redeveloper's behalf.
 - (c) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed or is contemplated as of the date of this Redevelopment Agreement, and no petition to reorganize the Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Redeveloper has been filed or is contemplated as of the Effective Date.
 - (d) No indictment has been returned against any member, manager or officer of the Redeveloper.
 - (e) To the best of the Redeveloper's knowledge and belief after diligent inquiry, there is no action, proceeding or investigation now pending, nor any basis therefor, known or believed to exist which: (i) questions the validity of this Redevelopment Agreement, Redeveloper's execution hereof, or any action or act taken or to be taken by the Redeveloper pursuant to this Redevelopment Agreement; or (ii) is likely to result in a material adverse change in the Redeveloper's property, assets, liabilities or condition which will materially and substantially impair the Redeveloper's ability to perform the Project under this Agreement.
 - (f) The Redeveloper's execution and delivery of this Redevelopment Agreement and its performance hereunder will not constitute a violation of any operating agreement of the Redeveloper or of any other agreement, mortgage, indenture, instrument or judgment to which the Redeveloper is a party.
 - (g) The Redeveloper is financially and technically capable of developing, designing, financing, constructing, operating and maintaining the Project.
 - (h) The party or parties signing the Redevelopment Agreement on behalf of the Redeveloper is or are fully authorized to sign on behalf of the current members of the Redeveloper and to bind it with respect thereto.
 - (i) All information and statements included in these representations and warranties, are being relied upon by the Borough and are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.
18. **Events of Default.** Any one or more of the following shall constitute an event of default hereunder (an "**Event of Default**" or "**Default**");

- (a) Failure of the Redeveloper or the Borough to observe or perform any covenant, condition, representation, warranty or agreement hereunder and any other failure, act or omission designated elsewhere in this Agreement as a “Default,” and the continuance of such failure for a period of forty-five (45) days after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure.
- (b) The Redeveloper defaults in its obligations with respect to the construction of the Project, including but not limited to not completing the Project within the time period set forth within the Project Schedule, if such failure is not cured within forty-five (45) days of the receipt of written notice.
- (c) The Redeveloper fails to pay any real estate taxes or assessments on the Property, if such failure to pay is not cured within forty-five (45) days of receipt of written notice.
- (d) The Redeveloper fails or refuses to make any payment or deposit of funds required hereunder as and when required, if such failure or refusal is not cured within forty-five (45) days of receipt of written notice.
- (f) There is a prohibited transfer in violation of the provisions of Section 7 herein.
- (g) (i) If the Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) Redeveloper, (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; or (v) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper, and shall not have been dismissed for a period of ninety (90) consecutive Days; (vii) an Order for Relief shall have been entered with respect to or for the benefit of Redeveloper under the Bankruptcy Code; (viii) an Order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; (ix) Redeveloper shall have suspended the transaction of its usual business.

19. **Borough’s Remedies Upon Redeveloper’s Event of Default.** Whenever any Event of Default of the Redeveloper shall have occurred, the Borough may, on written notice to the Redeveloper, terminate this Agreement and the Redeveloper’s designation as the Redeveloper hereunder and/or take whatever other action at law or in equity as may appear

necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper under this Agreement.

20. **Remedies Cumulative.** No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
21. **Litigation and Judgments.** No suit is pending or reasonably anticipated against the Borough or the Redeveloper which could have a materially adverse effect upon the required performance of either party under this Agreement. There are no outstanding judgments against the Redeveloper that would have a material adverse effect upon the Redeveloper or which would materially impair or limit the ability of the Redeveloper to enter into or carry out the transactions contemplated by this Agreement.
22. **No Violation of Laws.** The Redeveloper has not received any notices asserting any noncompliance in any material respect by the Redeveloper with applicable statutes, rules and regulations of the United States, the State of New Jersey or of any agency having jurisdiction over and with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on the Redeveloper's ability to perform its obligations under this Agreement. The Redeveloper is not in Default with respect to any judgment, order, injunction or decree of any court, administrative agency, or other governmental authority which is in any respect material to the transactions contemplated hereby.
23. **Covenants and Restrictions.** The Covenants and Restrictions to be imposed upon the Redeveloper, its successors and assigns, herein and recorded in the Deeds and the Declaration, shall set forth that the Redeveloper and its successors, transferees and assigns shall:
 - (a) Devote the Property to the uses specified in the Redevelopment Plan, as may be amended, and as agreed herein, and shall not devote the Property to any other uses;
 - (b) Pursuant to the applicable law, not discriminate upon the basis of age, race, color, creed, religion, ancestry, national origin, sex, disability or marital status in the sale, lease, rental, use or occupancy of the Property or any buildings or structures erected or to be erected thereon, or any part thereof;
 - (c) In the sale, lease or occupancy of the Property or any part thereof, not effect or execute any covenant, agreement, lease, conveyance or other instrument whereby the land 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, disability or marital 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, disability or marital status to the extent required by the Applicable Law;

- (d) Commence Construction and Complete Construction of the Project in accordance with the Project Schedule; and
- (e) Except as is otherwise authorized herein, not sell, lease or otherwise transfer the Property or the Project, or any part thereof, without the written consent of the Borough, prior to the issuance of a Certificate of Completion for the Project.

These covenants and restrictions shall be promptly recorded against the Property by the Redeveloper, at its sole cost and expense, immediately after the Effective Date of this Agreement and proof thereof shall be provided by the Redeveloper to the Borough. These covenants and restrictions may be recorded either through a short form Deed/Declaration, in a form acceptable to the Borough and Redeveloper.

- 24. **Effect and Term of the Covenants and Restrictions.** Subject to the provisions herein, it is intended and agreed, and the Deeds and the Declaration shall so expressly provide to the extent permitted by law, that the Covenants and Restrictions set forth herein 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 Borough, its successors and assigns, and any successor in interest to the Property, 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 Property or any part thereof, with the exception of end user purchasers of residential units.
- 25. **Limitation of Liability.** The Parties agree that in the event of any Default or breach under this Agreement, the Parties shall look solely to the Parties hereto and their respective property interest in the Project for the recovery of any judgment or damages, and agree that no member, manager, officer, principal, employee, representative or other person affiliated with such party shall be personally liable for any such judgment or damages.
- 26. **Performance and Maintenance Bonds.** The Redeveloper shall, as required pursuant to Resolution of the Planning Board for preliminary and final site plan approval, post the appropriate performance and maintenance bonds in amounts to be determined by the Planning Board and its professionals pursuant to the MLUL.
- 27. **Defense/Indemnification.**
 - (a) Using Redeveloper's counsel or such other counsel as designated by the Redeveloper or the Redeveloper's insurers, the Redeveloper agrees to indemnify and hold harmless the Borough and its agents, employees and or/representatives, against, and the Redeveloper shall pay any and all liability, loss, cost, damage, claims, judgment, or expenses, of any and all kinds or nature and however to the

extent caused by Redeveloper's gross negligence, which the Borough may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death or damage to property, whether real, personal or mixed, relating to the Redeveloper's activities in constructing the Project or based upon or arising out of contracts entered into by the Redeveloper which relate to the construction of the Project, whether as a result of Redeveloper's Default or out of the Redeveloper's acquisition, construction or installation of the Project, including but not limited to any all claims by workmen, employees or agents of the Redeveloper and unrelated third parties, which claims arise from the construction of the Project, the maintenance and functioning of improvements installed pursuant to the Project, or any other activities of the Redeveloper during the construction of the Project. The Parties agree that neither the Borough nor its officers, agents, servants or employees shall be liable in any event for any action performed under this Agreement and that the Redeveloper shall save the Borough and its officers, agents, servants or employees harmless from any claim or suit by a third party in connection with Redeveloper's obligations under this Agreement, except for any claim arising from the gross negligence, intentional or willful acts of the Borough.

- (b) The Redeveloper, at its own cost and expense, shall defend any and all claims, suits and actions, as described more fully within Section 27(a) above, which may be brought or asserted against the Borough and its officers, agents, servants or employees; but this provision shall not be deemed to relieve any insurance company which has issued a policy of insurance which may be provide for in this Agreement from its obligation to defend Redeveloper, the Borough, and any other insured named in such policy of insurance in connection with claims, suits or actions covered by such policy.
 - (c) Upon the commencement of any litigation referred to in this Section, or if and when the Borough incurs any costs, expenses or damages described in this Section, the Borough shall give the Redeveloper prompt written notice thereof.
 - (d) All covenants, stipulations, promises, agreements and obligations of the Borough contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Borough and not of any member, officer or employee of the Borough in his or her individual capacity and no recourse shall be had for any claim based hereunder against any member, officer or employee of the Borough or any natural person executing this Agreement.
 - (e) The covenants and other provisions of this Section shall survive the termination of this Agreement as to any and all claims arising from this Agreement or the Project.
28. **Notice.** 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 national overnight courier with delivery confirmation, or by electronic mail, or delivered personally

(with written acknowledgment of receipt) to the respective Parties at the following respective physical or electronic addresses:

If to the Borough, to:

ATTN: Borough Administrator
Borough of Red Bank
90 Monmouth Street
Red Bank, New Jersey 07701

With a copy to:

Andrew Bayer, Esq.
Gluck Walrath LLP
428 River View Plaza
Trenton, NJ 08611
Phone: (609) 278-3900
Email: abayer@glucklaw.com

And, if to Redeveloper, to:

55 West Front Street Partners LLC
1148 Elberon Avenue
Elberon, New Jersey 07740

With a copy to:

Brian M. Nelson, Esq.
Archer & Greiner PC
Riverview Plaza
10 Highway 35
Red Bank, New Jersey 07701
Email: bnelson@archerlaw.com
Phone: 732.268.8000

Either party may, from time to time, by written notice given to the other party, change the street address, electronic mail address or persons to which notices shall be sent.

29. **Amendment; Waiver.** No alteration, amendment or modification of this Agreement shall be valid unless executed by an instrument in writing by the Parties hereto with the same formality as this Agreement.
30. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey, without giving effect to any principle of choice of or conflicts of laws. Any lawsuit filed by either of the Parties to this Agreement shall be filed in either the Superior Court of New Jersey, Monmouth County, or in the United States District Court for the District of New Jersey in accordance with their respective rules of court.

31. **Severability.** If any article, section, subsection, term or provision of this Agreement or the application thereof to either of the Parties or any circumstance shall, to any extent, be invalid or unenforceable, the remainder of the section, subsection, term or provision of this Agreement or the application of same to the Parties or circumstances, other than those to which it is held invalid or unenforceable, shall not be affected thereby and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either party of the enjoyment of its substantial benefits under this Agreement.
32. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
33. **Prior Agreements Superseded.** With the exception of the Escrow Agreement between the Parties, which shall remain in full force and effect until a Certificate of Completion is issued for the Project, this Agreement repeals and supersedes any prior understanding or written or oral agreements (express or implied) between the Parties respecting the within subject matter. This Agreement, together with any other documents executed by the Parties contemporaneously herewith or therewith, contains the entire understanding between the Parties with respect thereto.
34. **Authorization.** Each of the Parties hereto which are business entities represent and warrant that each has complied with all necessary formalities and the undersigned signatory has been duly authorized to execute this Redevelopment Agreement on behalf of such entity.

[Signatures Appear on the Following Page]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective on the Effective Date.

WITNESS:

**REDEVELOPER
55 WEST FRONT STREET PARTNERS
LLC**

By: _____
Joseph Shabot

ATTEST:

THE BOROUGH OF RED BANK

Pamela Borghi, RMC
Borough Clerk

By: _____
Pasquale Menna
Mayor

EXHIBIT A
REDEVELOPMENT AGREEMENT

