

REDEVELOPMENT AGREEMENT

BY AND BETWEEN

**BOROUGH OF RUTHERFORD,
as Redevelopment Entity,**

and

**NATIVE DEVELOPMENT URBAN RENEWAL, LLC,
as Redeveloper.**

Dated as of September 11, 2023

REDEVELOPMENT AGREEMENT (this “**Redevelopment Agreement**”), dated as of September 11, 2023 (the “**Effective Date**”), by and between the **BOROUGH OF RUTHERFORD**, a public body corporate and politic of the State of New Jersey, with offices at 176 Park Avenue, Rutherford, New Jersey 07070, and its successors and assigns (the “**Borough**”), and **NATIVE DEVELOPMENT URBAN RENEWAL, LLC**, a limited liability company formed under the laws of the State of New Jersey, with offices at 92 Park Avenue, Rutherford, New Jersey 07070, and its successors and assigns (“**Redeveloper**”). The Borough and the Redeveloper may be referred to individually as a “**Party**” or collectively as the “**Parties.**”

W-I-T-N-E-S-S-E-T-H:

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

WHEREAS, pursuant to the Redevelopment Law, on August 22, 2016, the Mayor and Borough Council (the “**Mayor and Council**”) adopted Resolution No. 182-2016 designating the properties identified as Block 128, Lots 1, 2.01, 2.02, 2.03, and 5, Block 145, Lots 10 and 10.01, Block 146, Lots 1, 1.02, 2, 3, 4, and 5, and Block 147, Lots 1, 4, 9, 10, 14, 15, 16, 17.02, 19.01, 20 and 21, on the tax maps of the Borough (collectively, the “**Redevelopment Area**”) as a “non-condemnation area in need of redevelopment/rehabilitation” with a condition that any rehabilitation of the Williams Center Site (Block 147) is to include a theatre aspect; and

WHEREAS, on June 28, 2021, the Mayor and Council adopted an ordinance, as amended by ordinance adopted on June 27, 2022, approving and adopting a redevelopment plan for the Redevelopment Area, entitled “Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Ettrick Terrace Parking Area” (as amended, the “**Redevelopment Plan**”); and

WHEREAS, the County of Bergen (the “**County**”) previously owned that portion of the Redevelopment Area consisting of the area commonly known as 15 Sylvan Way, and identified as Block 147, Lot 1 (formerly Lots 1, 1.01, 2 & 3) on the Borough’s official tax maps (the “**Williams Theater Property**”); and

WHEREAS, pursuant to *N.J.S.A. 40A:12A-4*, the Borough 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, which includes the Redevelopment Area, and to exercise the powers contained in the Redevelopment Law; and

WHEREAS, the County determined that the Williams Theater Property was no longer needed for public use and determined to offer such property for sale at public auction; and

WHEREAS, thereafter, the Redeveloper (through an affiliate) approached the Borough and County and expressed its desire to acquire, rehabilitate and redevelop the Williams Theater Property with a project consisting of residential units, retail space, and the preservation and

operation of a black box theatre, cinema complex, and the Williams Center Main Theatre (the **“Original Proposed Theater Component”**) all in a seven (7) story building with rooftop amenities (the **“Original Proposed Project”**); and

WHEREAS, in order to facilitate the redevelopment of the Williams Theater Property, the Borough and the County entered into a purchase and sale agreement, dated August 10, 2021 (the **“County Purchase and Sale Agreement”**), pursuant to which the County agreed to sell, and the Borough agreed to purchase the Williams Theater Property for a nominal amount subject to, among other conditions, that Redeveloper rehabilitate and redevelop the Williams Theater Property and the covenant that the Williams Theater Property be used for a public purpose, including the preservation of a theatre-related use thereon; and

WHEREAS, the Borough and the Redeveloper entered into a purchase and sale agreement, dated August 10, 2021 (the **“Purchase and Sale Agreement”**), attached hereto as **Exhibit 8**, pursuant to which the Borough agreed to sell, and the Redeveloper agreed to purchase, the Williams Theater Property for a nominal amount of One Dollar (\$1.00) subject to, among other conditions, the covenant that such property be used for a public purpose, including redevelopment of the Williams Theater Property pursuant to the Redevelopment Plan the preservation and operation by the Redeveloper of a theatre-related use thereon, including, in particular, the Original Proposed Theater Component; and

WHEREAS, by Resolution No. 147-2021 and Resolution No. 148-2021, adopted on August 9, 2021, the Mayor and Council designated Redeveloper as the **“conditional redeveloper”** of the Williams Theater Property, which said designation shall no longer be considered **“conditional”** upon the Effective Date of this Agreement; and

WHEREAS, the Borough acquired title to the Williams Theater Property from the County by deed, dated August 10, 2021, subject to certain rights of the County as set forth in the deed from the County to the Borough (the **“County Deed”**); and

WHEREAS, on August 10, 2021, the Borough and Redeveloper also entered into a Funding Agreement (the **“Funding Agreement”**) to provide for the funding of certain actions taken by the Borough in connection with the transfer of title to, and redevelopment of, the Williams Theater Property; and

WHEREAS, the Redeveloper acquired title to the Williams Theater Property from the Borough on October 1, 2021, subject to certain rights of the Borough as set forth in the deed from the Borough to the Redeveloper (the **“Original Deed”**); and

WHEREAS, the Borough owns the portion of the Redevelopment Area consisting of Block 145, Lot 10.01 on the Borough’s tax maps, otherwise known as the 5 Ettrick Terrace (the **“Ettrick Terrace Lot”**), on which the Borough operates a municipal, surface parking lot; and

WHEREAS, Redeveloper proposes to rehabilitate and redevelop the Williams Theater Property with a 7-story mixed-use building consisting of the construction of Eighty (80) residential units, including Sixty-Eight (68) market rate units (the **“Market Rate Component”**)

and Twelve (12) Affordable Units (the “**Affordable Component**” and, together with the Market Rate Component, the “**Residential Component**”) and approximately Five Thousand Eight Hundred Thirty-Nine (5,839) square feet of retail space (the “**Retail Component**”); rehabilitation, preservation, and operation of a black box theatre, a cinema (movie) theater, and the Williams Center Main Theatre (the “**Williams Center Theater**”) including major upgrades and renovations to the existing building, as well as improvements to landscaping surrounding the site in accordance with the Redevelopment Plan and with the objective of transforming the Williams Theater Property into a performing arts and film destination in the Rutherford area, and after rehabilitation of the Williams Center Theater is complete, the Redeveloper will fully and continuously operate and maintain the Williams Center Theater, which shall be open to the public upon payment of usual and customary fees for such use (the “**Theater Component**”) together with certain related on-site and off-site improvements, including without limitation, roof top amenities, and the renovation and expansion of the Ettrick Terrace Lot, including repaving, striping and expanding same to include a total of one hundred twenty-four (124) surface parking spaces, consisting of approximately eighty (80) stacker parking spaces (the “**Stacker Parking Spaces**”, consisting of 40 parking stalls that will each accommodate vehicles) and approximately forty-four (44) surface parking spaces (the “**Perimeter Parking Spaces**” and, together with the Stacker Parking Spaces, the “**Ettrick Lot Component**”), all in accordance with the Parking Management Plan and the Redevelopment Plan (collectively, the “**Project**”) and as depicted and described in more detail in the concept plan (the “**Concept Plan**”), attached hereto as **Exhibit 6**; and

WHEREAS, in order to correctly reflect the terms and conditions of the conveyance of the Williams Theater Property by the Borough to the Redeveloper, as envisioned and agreed to by the Borough and Redeveloper, and to allow market related financing as hereby agreed to by the Borough and Redeveloper, certain changes are required to be made to the Original Deed; and

WHEREAS, towards those ends, the Borough shall execute and deliver a properly executed revised Original Deed to the Williams Theater Property (the “**Deed**”), in the form attached hereto as **Exhibit 4**, and Redeveloper will accept, take all actions necessary to record the Deed in the County Clerk’s office, which deed shall amend and replace the Original Deed to the Williams Theater Property; and

WHEREAS, on _____, 2023, the Borough adopted a resolution designating the Redeveloper as “redeveloper” of the Williams Theater Property and the Ettrick Terrace Lot (collectively, the “**Project Area**”), authorizing the execution of this Redevelopment Agreement and the Ettrick Lot Lease (defined in Section 2.04(b) below), and authorizing the execution and delivery of the Deed to Redeveloper; and

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

NOW, THEREFORE, for and in consideration of the mutual promises, representations, covenants and agreements contained herein and the undertakings of each Party to the other and

such other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby and to bind its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATIONS

SECTION 1.01. Definitions. In this Redevelopment Agreement, words that are capitalized, and which are not the first word of a sentence, are defined terms. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Redevelopment Agreement shall mean:

(a) Capitalized terms in the Preamble and Recitals of this Redevelopment Agreement shall have the meanings ascribed to them therein.

(b) The following terms shall have the meanings ascribed to them herein:

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

“**Affordable Units**” means residential units restricted, with appropriate controls, such as recorded deed or similar instrument, for occupancy by households of low and/or moderate income in accordance with Applicable Law, including the Uniform Housing Affordability Controls.

“**Amended County Deed**” is defined in Section 8.03(1)(iv).

“**Annual Service Charge**” is defined in Section 2.07.

“**Appeal Period**” shall mean the period of time specified by statute or court rule within which an appeal may be taken by any party from the grant of any Governmental Approval, and includes the period for filing an appeal to an appellate court after entry of a judgment or decision by a lower court or administrative agency.

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

“**Borough Costs**” is defined in Section 3.03.

“**Borough Event of Default**” means, with respect to the Borough, an Event of Default, as such term is defined in Section 13.01 hereof.

“**Borough Indemnified Parties**” means the Borough and its officers, elected and/or appointed officials, agents, employees, representatives, contractors and consultants.

“**Calculator**” is defined in Section 8.03(l)(i)(C).

“**Certificate of Completion**” means written acknowledgement by the Borough in recordable form, substantially in the form attached hereto as Exhibit 3, issued by the Borough to the Redeveloper upon Completion of the Project pursuant to Section 9.02 hereof.

“**Certificate of Occupancy**” means a Certificate of Occupancy (temporary or permanent), as such term is defined in the applicable section of the municipal code of the Borough and the applicable provisions of the New Jersey Administrative Code, issued with by the Borough to the Redeveloper with respect to the Project.

“**Commence[ment of] Construction**” means the undertaking by Redeveloper of any actual physical construction of any portion of the Project, including site preparation, environmental remediation, construction of new structures or construction or upgrading of infrastructure.

“**Comple[t]e, [ed] or [ion]**” means with respect to the Project, or any portion thereof, that (a) all work related to the Project, or a portion thereof, or any other work or actions to which such term is applied has been completed, acquired and/or installed in accordance with this Redevelopment Agreement and in compliance with Applicable Laws so that (i) the Project, or any portion thereof that has been completed, as the case may be, may, in all respects, be used and operated under the applicable provisions of this Redevelopment Agreement, or (ii) with respect to any other work or action to which such term is applied, that the intended purpose of such work or action has been completed, (b) all permits, licenses and approvals that are required in order that a Certificate of Completion can be issued for the Project, or any portion thereof that have been completed, or such other work or action to which such term is applied are in full force and effect, and (c) such “Completion” has been evidenced by a written notice provided by the Redeveloper (with respect to the Project, or any portion thereof) in the form of Schedule 1 to the form of Certificate of Completion attached hereto as **Exhibit 3**.

“**Completion Date**” means the date that the Project is Completed.

“**Completion Notice**” means written notification to the Borough of Completion of Construction of the Project and request by Redeveloper for the issuance by the Borough of a Certificate of Completion.

“**Control**” (including the correlative meanings of the terms “**controlled by**” and “**under common control with**”), as used with respect to the Redeveloper, the power, directly or

indirectly, to direct or cause the direction of the management policies of the Redeveloper, whether through the ownership of an interest in the Redeveloper, or by contract or otherwise.

“**Declaration**” is defined in Section 8.04 hereof, the form of which is attached hereto as **Exhibit 2**.

“**Deed**” means a properly executed revised Original Deed to the Williams Theater Property from the Borough to the Redeveloper, in the form attached hereto as **Exhibit 4**.

“**Effective Date**” means the date on which this Redevelopment Agreement is executed by all Parties, or, if not signed simultaneously, the date on which it is signed by the last of the Parties, which date shall be inserted at the top of the first page hereof.

“**Engineering Controls**” means any mechanism to contain or stabilize contamination or to ensure the effectiveness of a Remediation. Engineering Controls may include, without limitation, caps, covers, dikes, trenches, leachate control systems, signs, fences and physical access barriers.

“**Environmental Laws**” means all federal, state, regional, and local laws, statutes, ordinances, regulations, rules, codes, consent decrees, judicial or administrative orders or decrees, directives or judgments relating to environmental contamination, damage to or protection of the environment, environmental conditions, or the use, handling, processing, distribution, generation, treatment, storage, disposal, manufacture or transport of Hazardous Substances, materials, or wastes, presently in effect or hereafter amended, modified, or adopted including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act (“**CERCLA**”) (42 *U.S.C.* §§ 9601-9675); the Resource Conservation and Recovery Act of 1976 (“**RCRA**”) (42 *U.S.C.* §§ 6901 *et seq.*); the Clean Water Act (33 *U.S.C.* §§ 1251 *et seq.*); the New Jersey Spill Compensation and Control Act (the “**Spill Act**”) (*N.J.S.A.* 58:10-23.11 *et seq.*); the Industrial Site Recovery Act, as amended (“**ISRA**”) (*N.J.S.A.* 13:IK-6, *et seq.*); the New Jersey Underground Storage of Hazardous Substances Act (*N.J.S.A.* 58:10A-21 *et seq.*); the New Jersey Water Pollution Control Act (*N.J.S.A.* 58:10A-1 *et seq.*); the New Jersey Environmental Rights Act (*N.J.S.A.* 2A:35A-1 *et seq.*); the New Jersey Site Remediation Reform Act (*N.J.S.A.* 58:10C-1 *et seq.*); and the rules and regulations promulgated under any of the foregoing.

“**Escrow Account**” is defined in Section 3.04.

“**Estoppel Certificate**” is defined in Section 4.04.

“**Event of Default**” is defined in Section 13.01.

“**Exhibit(s)**” means any exhibit attached hereto which shall be deemed to be a part of this Redevelopment Agreement as if set forth in full in the text hereof.

“**Financial Agreement**” means a agreement, as formally approved by the Mayor and Counsel by ordinance, setting forth the terms of a PILOT for the Project pursuant to the Long

Term Tax Exemption Law and executed by the Borough and Redeveloper (or its affiliated Urban Renewal Entity).

“**Force Majeure**” is defined in Section 13.02.

“**Foreclosure**” is defined in Section 12.03(b).

“**Governmental Approvals**” means all necessary reviews, consents, permits or other approvals of any kind legally required by any local, county, state or federal governmental or quasi-governmental entity to be obtained in order to construct the Project and obtain a PILOT for the Project including, but not limited, to Rutherford Planning Board, Bergen County Planning Board, Soil Conservation District approval, TWA sewer construction permit, water allocation permit, NJDEP (if applicable) and NJDOT (if applicable).

“**Governmental Authority**” means the federal government, the State, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government and any other governmental entity with authority or jurisdiction over any part of the permitting, Remediation, construction or operation of the Project or the Project Area, or pursuant to Environmental Laws including without limitation, the Planning Board and the NJDEP.

“**Hazardous Substance**” means any element, compound, material, mixture, substance, chemical or waste that is listed as hazardous or toxic, or a pollutant or contaminant, in any Environmental Law.

“**Index**” is defined in Section 8.03(l)(i)(C).

“**Institutional Controls**” means a mechanism used to limit human activities at or near a contaminated site, or to ensure the effectiveness of a Remediation over time, when contaminants remain at the contaminated site in levels or concentrations above the applicable remediation standard that would allow unrestricted use of the site. Institutional Controls may include, without limitation, structure, land and natural resource use restrictions, classification exception areas, well restrictions areas and deed notices.

“**Limitations**” is defined in Section 8.03(l).

“**Long Term Tax Exemption Law**” or “**LTTE Law**” means *N.J.S.A. 40A:20-1 et seq.*, as amended and supplemented.

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

“**Natural Resource Damages**” means the loss, liability or damages owed to any natural resource trustee, including, without limitation, a state, the federal government or Indian tribe, to compensate for the loss or injury to natural resources.

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

“**Parking Management Plan**” shall mean the Parking Management Plan for the Project, dated May 19, 2023, a copy of which is attached hereto as **Exhibit 9**.

“**Permitted Transfers**” is defined in Section 10.03.

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

“**PILOT**” means a payment in lieu of tax program approved by the Borough and Redeveloper pursuant to and in accordance with the LTTE Law.

“**PILOT Contingency**” is defined in Section 2.07.

“**Progress Meetings**” is defined in Section 5.01.

“**Progress Report**” is defined in Section 5.02.

“**Project Costs**” means the costs of designing, permitting and constructing the Project, including soft and hard costs.

“**Project Schedule**” means the schedule for the design, permitting, financing, construction and completion of the Project by the Redeveloper, as set forth in **Exhibit 1** hereto.

“**Public Purpose**” is defined in Section 8.03(l)(i)(A).

“**Purchase and Sale Agreement Effective Date**” means August 10, 2021.

“**Redevelopment Entity**” means the Borough acting in its capacity as a redevelopment entity pursuant to *N.J.S.A. 40A:12A-4(c)*.

“**Redeveloper Covenants**” is defined in Section 8.03.

“**Redeveloper Event of Default**” means, with respect to the Redeveloper, an Event of Default as defined in Section 13.01.

“**Remediat[e], [ed], [ing] or [ion]**” means the investigation, study, planning, design, clean-up, removal, containment, disposal, dispersal, treatment (including, but not limited to, in-situ and ex-situ treatment), management, remediation (including, but not limited to, the use of Engineering Controls and Institutional Controls, stabilization, neutralization of Hazardous Substances required by Governmental Authority and/or pursuant to Environmental Laws which allows for the Project, including, but not limited to any operations, maintenance, and monitoring activities that may be required after completion of the foregoing.

“**Reverter**” is defined in Section 8.03(l)(i)(A).

“**Scheduled Completion Date**” means the anticipated Completion Date as set forth in the Project Schedule attached hereto as **Exhibit 1**, subject to any extensions granted in accordance with this Redevelopment Agreement.

“**Section**” means a section or subsection of this Redevelopment Agreement.

“**Site Plan**” means the Preliminary Site Plan or Final Site Plan, as applicable, depicting those aspects of the Project required pursuant to the Borough’s site plan ordinance and pursuant to N.J.S.A. 40:55D-7, and approved by the Planning Board.

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

“**Substantial Completion**” or “**Substantially Completed**” means that the requirements set forth in clauses (a) through (c), inclusive, of the definition of “Completion” have been satisfied, with the exception of certain immaterial portions of the work relating to the Project, or portion thereof, if applicable, that have been Completed, or such other work remains to be Completed as long as: (a) the Redeveloper, with respect to the Project, has prepared and delivered to the Borough a “punch list” of items requiring completion or correction in order for the Redeveloper to fully comply with the terms of this Redevelopment Agreement, (b) “punch list” items have been reasonably agreed to by the Borough, and (c) such “punch list” items are capable of being Completed within ninety (90) days of the date that Completion is certified, as set forth in the written notice provided under (c) of the definition of Completion, or such later date as is mutually acceptable to the Parties, as long as the public health, welfare or safety is not impaired by such additional time for Completion; and provided further however, that all such “punch list” items shall be Completed under all circumstances within (i) one hundred eighty (180) days following the date that Completion is certified, as provided above, with respect to the exterior of any buildings and (ii) three hundred sixty-five (365) days following the date that Completion is certified, as provided above, with respect to the interiors of any buildings. “Substantial Completion” shall be evidenced by issuance of a temporary Certificate of Occupancy for the Project, or any portion or phase thereof that has been Substantially Completed.

“**Term**” means that period of time from the Effective Date of this Redevelopment Agreement until the Borough issues the Certificate of Completion for the Project, or applicable portion thereof, or this Redevelopment Agreement is terminated, whichever is sooner.

“**Theater Force Majeure Events**” is defined in Section 8.03(l)(i)(B).

“**Theater Liquidated Damages Amount**” is defined in Section 8.03(l)(i)(B).

“**Transfer**” is defined in Section 10.02.

“**Uniform Housing Affordability Controls**” means N.J.A.C. 5:80-26.1 *et seq.*

“**United States Bankruptcy Code**” means 11 *U.S.C. 1 et seq.*, and the accompanying regulations.

“**Urban Renewal Entity**” means an urban renewal entity formed by the Redeveloper (including the Redeveloper itself if the Redeveloper converts to an urban renewal entity) in accordance with the Long Term Tax Exemption Law and this Redevelopment Agreement to construct the Project.

“**Utilities**” means water, sanitary sewer and storm water facilities and natural gas, electricity, and voice and data transmission facilities.

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

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

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

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

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

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

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

(g) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than twenty (20) days, unless the context dictates otherwise.

(h) Unless otherwise indicated, any “fees and expenses” shall be required to be actual, out of pocket, customary and reasonable.

[END OF ARTICLE I]

ARTICLE II

THE PROJECT

SECTION 2.01. The Project. The redevelopment of the Project Area will include the Project to be constructed by the Redeveloper. The Project shall be constructed consistent with the Parking Management Plan, the Redevelopment Plan, as it may be amended from time to time, this Redevelopment Agreement, the Site Plan and all Applicable Laws. The Theater Component, or any portion thereof may be owned or leased to a non-profit entity or government entity.

SECTION 2.02. Infrastructure Improvements. Redeveloper shall provide for the timely implementation of on-site infrastructure improvements necessary to complete the Project as may be required by any Governmental Approval. Redeveloper will cooperate with the Borough in all respects to ensure that the implementation of such infrastructure improvements does not unreasonably interfere with the operation of the existing utilities. Redeveloper agrees to provide all performance and maintenance bonds as required by the Governmental Approvals, specifically the MLUL.

SECTION 2.03. Project Schedule. If Redeveloper cannot meet the Completion Date set forth in the Project Schedule or determines that it cannot meet the Completion Date, Redeveloper, within a reasonable time, shall provide notice to the Borough stating: (a) the reason for the failure to complete the applicable task; (b) Redeveloper's schedule for completing such task; and (c) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the Completion Date. This Section shall in no way limit the rights of the Redeveloper or Borough under Article XIII or other applicable provisions of this Redevelopment Agreement.

SECTION 2.04. Parking. (a) The Parties agree that the provisions of the Parking Management Plan, attached hereto as **Exhibit 9** (the "**Parking Management Plan**"), are incorporated herein by reference as if fully set forth at length herein. Failure of the Redeveloper to implement the Parking Management Plan pursuant to its terms or failure of the Redeveloper to comply with the Parking Management Plan in any manner that would negatively or adversely impact upon or interfere with the ability of residents and visitors to use the parking facilities as described in the Parking Management Plan, after notice and a reasonable opportunity to cure by the Redeveloper, pursuant to Section 13.01 hereof, shall constitute an Event of Default hereunder. The Parties acknowledge, however, that due to the complex nature of residential, Theater, retail and public parking needs for the Project, the Parking Management Plan provides for flexibility in its application and contemplates that subsequent review and analysis will be needed and possible modifications to parking management and operations may be in order to address issues or conditions observed in the implementation of the Parking Management Plan. Accordingly, the Parties are not precluded from modifying the language, management or operational aspects of the Parking Management Plan at a later date in accordance with the observations and further site analysis and discussion between the Borough and the Redeveloper, as contemplated by the Parking Management Plan. Therefore, the Parties agree that prior to Completion of the Project, the Redeveloper may undertake alternate parking plans, with proper notification to, and the written consent of, the Borough. Additionally, the Borough will consider

reasonable and feasible modifications requested by Redeveloper, so long as the Borough determines that such proposed modifications maintain a workable, feasible and orderly parking management and operations system that provides accommodation to members of the public desiring to self-park their vehicles while effectively addressing the parking needs generated by the Project.

(b) Redeveloper shall construct the Etrick Lot Component as part of the Residential Component of the Project, pursuant to that lease agreement, to be executed by the Borough and the Redeveloper, relating to the Etrick Terrace Lot, a copy of which is attached hereto as **Exhibit 10** (the “**Etrick Lot Lease**”). Upon completion of the Residential Component, the Etrick Lot Component shall be available as follows: (i) the Stacker Parking Spaces to tenants of the Residential Component of the Project and (ii) the Perimeter Parking Spaces to current Etrick Terrace Lot permit holders and/or future Borough residents, other than residents of the Residential Component, who apply for and are granted permits for the Etrick Terrace Lot. Thereafter, pursuant to the Etrick Lot Lease, the Redeveloper will be responsible for maintaining and operating the Etrick Lot Component.

(c) Redeveloper agrees that, in accordance with Governmental Approvals, it will deposit funds in escrow with the Borough, in an amount currently estimated to be \$10,000, to fund a parking study, to be performed by an independent traffic engineer, to identify parking needs in the area surrounding the Williams Theater Property.

(d) Redeveloper agrees that, prior to requesting a Certificate of Completion from the Borough, Redeveloper will submit to the Borough a study, to be performed by an independent engineer, analyzing the structural and financial feasibility of adding a level to the existing Kip Avenue Parking Garage.

(e) Should Redeveloper seek to impose any parking fees to residential tenants for the use of the Etrick Terrace Lot, including for valet parking services in connection therewith, Redeveloper must first notify the Borough of the nature and amount of such fees, which fees shall not be greater than the fees such residential tenants would be subject to paying for the use of otherwise available public spaces. It is understood and acknowledged that the purpose for this provision is to avoid incentivizing residential parkers to forego the use of the Etrick Terrace Lot in favor of public parking opportunities, which public spaces are of critical importance to keep available to the public.

(f) Redeveloper shall not place, or cause or allow to be placed, any sign, placard, picture, advertisement, notice or lettering whatsoever, in, about or on the exterior of the Etrick Terrace Lot, except in and at such places as may be designated by Borough and consented to by Borough in writing, which consent may be withheld by the Borough in its sole and absolute discretion. Any such sign, placard, advertisement, picture, notice or lettering so placed without such consent may be removed by Borough without notice to and at the expense of Redeveloper.

Section 2.06 Disclosures to Prospective Theater Component Attendees, Residential Component Tenants, and future users of the Williams Theater Property. Redeveloper shall disclose all parking rules, restrictions, and requirements impacting or affecting residential

condominium parkers to prospective Theater Component Attendees, Residential Component Tenants, and future users of the Williams Theater Property. Specifically, Redeveloper and its sales representatives and agents shall advise any prospective Theater Component Attendees, Residential Component Tenants, and future users of the Williams Theater Property of the valet parking plans described in the Parking Management Plan, and a copy of the Parking Management Plan shall be made available upon request by any prospective Theater Component Attendees, Residential Component Tenants, and future users of the Williams Theater Property. The Parking Management Plan shall be incorporated as an exhibit to the master deed of the condominium association.

2.07 PILOT Contingency and Financial Agreement. Redeveloper has applied to the Borough for approval of (1) a long term tax exemption for the Project pursuant to and in accordance with the Long Term Tax Exemption Law and (2) a Financial Agreement for the Project providing for, among other things, a provision for a long-term tax exemption for the Project for a period of thirty (30) years, and the payment by the Redeveloper (or its successors and/or assigns), to the Borough, of a PILOT in the form of an annual service charge (“**Annual Service Charge**”). In the event that the Borough fails to duly approve the PILOT and execute a Financial Agreement for the Project in a form satisfactory to both the Redeveloper and the Borough, within sixty (60) days following the Effective Date, or at such time as otherwise reasonably agreed upon by the Parties, then Redeveloper may elect, in its sole and absolute discretion, to terminate this Redevelopment Agreement by providing written Notice to that effect to the Borough. Upon such termination, this Redevelopment Agreement shall be void and of no further force and effect and neither Party hereto shall have any rights, liabilities and/or obligations hereunder except with respect to the provisions set forth in Section 8.03 (I). This contingency concerning the adoption of the PILOT and execution of the Financial Agreement by the Borough shall be referred to herein as the “**PILOT Contingency**”. Notwithstanding anything to the contrary herein, the Borough is not obligated to approve a long term tax exemption for the Project or enter into a Financial Agreement for the Project.

[END OF ARTICLE II]

ARTICLE III

FINANCIAL OBLIGATIONS

SECTION 3.01. The Redeveloper's Financial Commitment. The Redeveloper represents and warrants that to the best of Redeveloper's knowledge and belief and subject to the terms of Section 12.01(d), it has obtained or can obtain and intends to commit the requisite equity and debt financing in an amount necessary to implement and complete the Project.

SECTION 3.02. Project Costs. All costs of implementing this Redevelopment Agreement and completing the Project will be borne by the Redeveloper, including Borough Costs as specified in Section 3.03 hereof.

SECTION 3.03. Borough Costs. In addition to the Redeveloper's costs for the Project, the Redeveloper agrees to provide funding to the Borough for all reasonable out-of-pocket costs incurred thereby in connection with the redevelopment of the Project Area ("**Borough Costs**"). Borough Costs shall include, but not be limited to, any reasonable and customary fees and costs of any professional consultant retained by the Borough in connection with the Project, including attorneys, technical consultants, planners, and financial consultants, among others, and all out-of-pocket costs and expenses of the Borough.

SECTION 3.04. Payment of Borough Costs. The Redeveloper agrees that it will reimburse the Borough for all Borough Costs in accordance with the terms hereof. The Redeveloper agrees that it will establish an escrow account (the "**Escrow Account**"), having an initial balance of Twenty-Five Thousand Dollars (\$25,000). The Redeveloper agrees that it will replenish the Escrow Account in the event that the balance drops below Seven Thousand Five Hundred Dollars (\$7,500). Funds in the Escrow Account will be applied to the payment or reimbursement of the Borough Costs as provided in this Redevelopment Agreement, including costs that were incurred prior to the Effective Date in accordance with the terms of this Section 3.04. At least ten (10) days prior to making any disbursement from the Escrow Account, written notice of the proposed disbursement shall be mailed to the Redeveloper, setting forth: (a) the amount of the disbursement; (b) the name of the person, company or entity designated to receive payment; and (c) a description, in reasonable detail, of the particular cost to be paid or reimbursed in accordance with this Redevelopment Agreement (including hours worked and billing rates). If the Redeveloper does not object to such disbursement within thirty (30) days of receipt of such notice, the Redeveloper will be deemed to have acquiesced to the same. The Parties hereby reference the Funding Agreement, which established an escrow account to pay certain costs prior to the date of this Redevelopment Agreement. To the extent there is any balance in the escrow account established pursuant to the Funding Agreement as of the Effective Date, such balance shall be transferred to the Escrow Account and shall be credited against the initial required balance set forth above. To the extent there is a deficiency in that escrow account to pay for such costs incurred prior to the date of this Redevelopment Agreement that are required to be paid in accordance with the terms of the Interim Cost Agreement, then such costs shall be paid from the funds in the Escrow Account in accordance with the terms hereof. The Funding Agreement is hereby terminated.

SECTION 3.05. Governmental Approval Fees. The Redeveloper will pay all fees for permits required by any Governmental Authority for the construction and development of the Project, including any permit fees payable to all required Governmental Authorities for any Governmental Approvals.

[END OF ARTICLE III]

ARTICLE IV

CONSTRUCTION OF THE PROJECT

SECTION 4.01. Construction of the Project. (a) Subject to the terms of this Redevelopment Agreement, (i) the Project shall be constructed in accordance with the Redevelopment Plan, the Site Plan and the Project Schedule, including obtaining all Governmental Approvals, and (ii) Redeveloper shall commence physical work on the Project in accordance with the Project Schedule, and Complete the Project on or prior to the Scheduled Completion Date, as set forth on **Exhibit 1** hereto. Except as otherwise provided in this Redevelopment Agreement, the Redeveloper will construct, or cause to be constructed, the Project at its sole cost and expense.

(b) In the event that the Redeveloper is unable, for reasonable cause, to comply with any time frame set forth on the Project Schedule, the Redeveloper shall provide written notice to the Borough at least thirty (30) days prior to such Date (or such lesser period of time as the circumstances may require), setting forth in reasonable detail (i) the reason for the failure to satisfy the required tasks necessary to comply with the Project Schedule, (ii) the Redeveloper's proposed actions to remedy any delay, and (c) the Redeveloper's proposal for revising the Project Schedule. In such event the Project Schedule shall be modified accordingly, subject to the Borough's consent, which shall not be unreasonably withheld, conditioned or delayed. The Borough's approval of any such extension shall not limit in any manner the rights of the Redeveloper or Borough or diminish the obligations of the Borough or Redeveloper with respect to the Project under this Redevelopment Agreement.

SECTION 4.02. Relocation of Utilities. The Borough and Redeveloper acknowledges that providers of Utilities may have certain rights with respect to the Project Area and may own certain facilities located therein. The Redeveloper agrees that, except as otherwise set forth herein, it is its sole responsibility to undertake the appropriate measures to negotiate with, acquire, remove, relocate or otherwise address the existence of these Utilities and improvements and easements therefor, in order to complete construction of the Project, as provided by this Redevelopment Agreement. Notwithstanding the foregoing, to the extent reasonably requested by the Redeveloper, the Borough shall cooperate in facilitating the installation and/or relocation of any such affected Utilities.

SECTION 4.03. Maintenance of Williams Theater Property. Following commencement of physical construction of the Project, the Redeveloper will maintain, in accordance with Applicable Law, all areas of the Williams Theater Property including the buildings, parking areas, landscaping, streetscaping, sidewalks including curbing and traffic calming devices (but not the paved roadway, unless disturbed by the Redeveloper), and trash collection and receptacles.

SECTION 4.04. Estoppel Certificates. Within thirty (30) days following written request therefore by a Party hereto, or of any Holder, purchaser, tenant or other party having an interest in the Project Area, or portion thereof, the other party shall issue a signed certificate ("**Estoppel Certificate**") stating that (i) this Redevelopment Agreement is in full force and

effect, (ii) there is no default or breach under this Redevelopment Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Redevelopment Agreement), or stating the nature of the default or breach or event, if any, and (iii) any other matter reasonably requested.

SECTION 4.05. Affordable Housing Obligation.

(a) The Redeveloper agrees that it will construct, as part of the Project, twelve (12) Affordable Units; and

(b) The Redeveloper shall construct the Affordable Units in accordance with the Uniform Housing Affordability Controls, *N.J.A.C. 5:58-26.1 et seq.* (the “UHAC”). The bedroom distribution of the Affordable Units shall include not less than three (3) three-bedroom units, not greater than three (3) one-bedroom units, and not less than six (6) two-bedroom units. All Affordable Units shall be constructed with the same quality and in the same manner as the market units except that the size of the Affordable Units may vary and there shall be no studio units included as part of the Affordable Units.

[END OF ARTICLE IV]

ARTICLE V

PROJECT PROGRESS

SECTION 5.01. Progress Meetings. At the written request of either Party, the Parties agree to attend and participate in progress meetings (“**Progress Meetings**”) to report on the status of the Project and to review the progress under the Project Schedule. The requesting Party shall give the other Party at least two (2) days advance written notice of any Progress Meetings, but such notice shall in all events be reasonable. The Progress Meetings shall be held at Borough Hall. Prior to the meeting, representatives of the Borough may visit the Project Area to inspect the progress of the work on the Project, in accordance with Section 5.03.

The agenda for the Progress Meetings shall, at the request of the Borough, include, but not be limited to, (a) a status report with regard to Governmental Approval submissions and approvals, (b) financial commitments, (c) construction of the Project, (d) compliance with the Project Schedule and (e) compliance with the Redevelopment Plan. The Borough shall have the right at all reasonable times to inspect the construction site and the Project Area.

SECTION 5.02. Progress Reports. Upon the Borough’s request, the Redeveloper shall submit to the Borough a written progress report (“**Progress Report**”) which shall include, in sufficient detail, a description of activities completed, the activities expected to be undertaken over the next quarter, the status of all Governmental Approvals, an explanation of each activity, if any, which is causing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and completion dates in the Project Schedule and an explanation of corrective action taken or proposed. The written progress report shall also contain the most current Estoppel Certificate, if any.

SECTION 5.03. Access to Project Area. The Borough and its authorized representatives shall have the right to enter the Project Area in accordance with Applicable Law to inspect the Project and any and all work in progress for the purpose of furthering its interest in this Redevelopment Agreement provided that such inspections shall not interfere with work in progress. In no event shall the Borough’s inspection of the Project (or any construction activities related thereto) be deemed acceptance of the work or be deemed to waive any right the Borough has under this Redevelopment Agreement, except to the extent such inspection is part of official Borough approval process. The Borough acknowledges hereby that the Project Area will be an active construction site and that the Redeveloper shall not be liable or responsible to the Borough, its employees or agents for injury to person or property sustained in connection with any such inspection, except to the extent that the Redeveloper willfully or negligently violates its standard of due care owed to invitees.

SECTION 5.04. Submissions. The Redeveloper shall be required to provide the Borough with a copy of each and every application for Governmental Approvals submitted to Governmental Authorities within a reasonable time, but in no event later than ten (10) calendar days, after the Redeveloper submits those applications to such Governmental Authorities.

[END OF ARTICLE V]

ARTICLE VI

GENERAL DEVELOPMENT REQUIREMENTS AND RECORDING DEED TO WILLIAMS THEATER PROPERTY

SECTION 6.01. Scope of Undertaking. Except as expressly provided, herein, the services and responsibilities undertaken by the Redeveloper hereunder include all aspects of the design, development, and construction of the Project, including without limitation, all design, engineering, permitting and administrative aspects, the performance of or contracting for and administration and supervision of all physical work required in connection with the Project, arrangement for interim and final inspections and any other actions required to satisfy the requirements of any applicable Governmental Approvals, the administration, operation and management, or contracting for the administration, operation and management of the Project and all aspects of the funding of the Project, including equity funding and construction, interim and permanent financing, and with the exception of the PILOT, all at the sole cost and liability of the Redeveloper.

SECTION 6.02. Standards of Construction. Without limitation, all work on the Project shall be performed in a good and workmanlike manner, with the materials called for under the Governmental Approvals being of such quality as is required by such approvals.

SECTION 6.03. Compliance with Applicable Law. The Project and all materials, fixtures and equipment used or installed in connection therewith shall be in full compliance with all Applicable Law, subject to any waivers, variances, deviations, exceptions or similar approval granted in accordance with Applicable Law.

SECTION 6.04. Payment of Project Costs. The Redeveloper shall pay (or cause to be paid) when in a timely manner, all costs and expenses incurred by Redeveloper, including, without limitation, all contractors' requisitions and the cost of materials and equipment incurred in connection with work on the Project and all fees and expenses of any consultants and professionals and like providers acting for (or on behalf of) the Redeveloper, provided, however, nothing herein shall be construed to prohibit Redeveloper from withholding any payments if, for any reason, in Redeveloper's reasonable business judgment, Redeveloper disputes the amount alleged to be owed.

SECTION 6.05 Deed. On or before the Effective Date of this Agreement, the Borough agrees to execute and deliver and Redeveloper agrees to accept, take all actions necessary to record, and record the Deed to the Williams Theater Property, attached hereto as **Exhibit 4**, in the County Clerk's office, which Deed shall amend and replace the Original Deed to the Williams Theater Property. Upon Redeveloper's receipt of the recorded Deed, Redeveloper shall transmit an electronic copy of same to the Borough and Borough's redevelopment counsel.

[END OF ARTICLE VI]

ARTICLE VII

APPROVAL OF APPLICATIONS FOR GOVERNMENTAL APPROVALS

SECTION 7.01. Applications for Governmental Approvals. (a) The Redeveloper (at its sole cost and expense) shall apply for and obtain all Governmental Approvals necessary to construct and use the Project. The Redeveloper shall provide the Borough with a copy of each application for Governmental Approvals at such time as such applications are submitted. The Redeveloper shall provide the Borough with a copy of each Governmental Approval received by the Redeveloper with respect to the Project.

(b) To the extent reasonably requested by the Redeveloper, and to the extent applicable, the Borough shall, to the extent permissible under Applicable Law, provide reasonable assistance and support to the Redeveloper in connection with all applications for all Governmental Approvals required to be obtained for or with respect to the Project.

(c) In the event that all necessary Governmental Approvals for the Project are not obtained from the required Governmental Authorities prior to the 180th day after the Effective Date of this Redevelopment Agreement, on terms and conditions acceptable to Redeveloper in its sole and exclusive discretion, or if Redeveloper determines that the Governmental Approvals for the Project cannot be obtained on terms and conditions reasonably acceptable to Redeveloper, then Redeveloper shall have the right to terminate this Redevelopment Agreement upon written notice to the Borough. No Governmental Approval shall be deemed to have been obtained (i) until the Appeal Period relating thereto has expired and no appeal has been taken, or (ii) if an appeal is filed within the applicable Appeal Period, until such appeal shall have been finally resolved in a manner sustaining the challenged Governmental Approval. If this Redevelopment Agreement is terminated pursuant to the terms of this Section 7.01(c), then, except as expressly set forth herein to the contrary, this Redevelopment Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder, except that the Redeveloper shall be responsible for the payment of all Borough Costs incurred prior thereto.

[END OF ARTICLE VII]

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES; REDEVELOPER COVENANTS

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

(a) The Redeveloper is a limited liability company organized under the laws of the State, is in good standing under the laws of the State, and has all requisite power and authority to carry on its business as now and whenever conducted, and to enter into and perform its obligations under this Redevelopment Agreement.

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

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

(d) No receiver, liquidator, custodian or trustee of the Redeveloper has been appointed as of the Effective Date, 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 as of the Effective Date.

(e) No adjudication of bankruptcy of the Redeveloper or a filing for voluntary bankruptcy by the Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to the Redeveloper has been filed as of the Effective Date.

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

(g) There are no suits, other proceedings or investigations pending or, to the best of the Redeveloper's knowledge, threatened against the Redeveloper that would have a material adverse effect on the financial condition of the Redeveloper.

(h) All materials and documentation submitted by the Redeveloper and its agents to the Borough and their agents were, to the best of Redeveloper's knowledge, at the time of such submission, and as of the Effective Date, materially accurate, and the Redeveloper shall continue

to inform the Borough of any material and adverse changes in the documentation submitted. The Redeveloper acknowledges that the facts and representations contained in the information submitted by the Redeveloper are a material factor in the decision of the Borough to enter into this Redevelopment Agreement.

(i) Subject to obtaining construction financing, the Redeveloper is financially and technically capable of developing, designing, financing and constructing the Project.

(j) Except as otherwise provided in this Redevelopment Agreement, the cost and financing of the Project is the responsibility of the Redeveloper.

(k) The ownership structure of the Redeveloper is set forth in **Exhibit 5**. The Redeveloper shall, at such times as the Borough may reasonably request, furnish the Borough with a complete statement subscribed and sworn to by the managing member of the Redeveloper, setting forth all of the ownership interests in the Redeveloper greater than ten percent (10%), or other owners of equity interests of the Redeveloper greater than ten percent (10%) and the extent of their respective holdings, and in the event any other parties have a beneficial interest in the Redeveloper greater than ten percent (10%), their names and the extent of such interest.

If reasonably requested by the Borough, the Redeveloper shall, from time to time, update and reaffirm the representations and warranties set forth in this Section 8.01.

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

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

(b) This Redevelopment Agreement has been duly authorized, executed and delivered by the Borough and is valid and legally binding upon the Borough and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery thereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which the Borough is a party.

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

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

SECTION 8.03. Redeveloper Covenants. Redeveloper covenants and agrees that, subject to the terms hereof, and except as explicitly provided herein, including Section 8.05 below (collectively, “**Redeveloper Covenants**”):

(a) The Redeveloper shall, at its sole cost and expense, use diligent efforts to obtain all Government Approvals necessary and acceptable financing necessary for the acquisition, remediation, construction and development of the Project. The Redeveloper shall construct, improve, operate and maintain the Project in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws.

(b) The Redeveloper shall use commercially reasonable efforts to (i) obtain financing for the Project, (ii) construct and develop the Project with due diligence, and (iii) commence and Complete each item in the Project Schedule on or prior to the applicable date set forth in the Project Schedule and, for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period. All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project.

(c) The Redeveloper shall construct the Project in accordance with this Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law and, in the event that the Redeveloper wishes to materially change or modify the Project, notwithstanding the fact that such material change or modification is authorized by the Redevelopment Plan, the Borough’s written approval (which shall not be unreasonably withheld, conditioned or delayed) must be secured prior to proceeding with any activities relating to such proposed material modifications. The Redeveloper acknowledges that the Borough and the Redeveloper have relied on the Project Schedule in entering into its obligations under this Redevelopment Agreement including the timeframe for the Borough’s approval of PILOT for the Project.

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

(e) The Redeveloper shall use commercially reasonable efforts to complete the Project or cause same to be completed, on or prior to the date set forth in the Project Schedule at its sole cost and expense; provided, however, that the Parties acknowledge that moneys may be made available towards the completion of same from other outside sources. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs

necessary to complete the Project, the Redeveloper shall not be entitled to any funds from the Borough.

(f) Upon completion of the development and construction of the Project, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated hereby.

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

(h) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference, sex or gender of any person.

(i) The Redeveloper shall, within ten (10) calendar days, notify the Borough of any material adverse change in its financial condition from the information provided to the Borough by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project in furtherance of the Borough's consideration in designating the Redeveloper as the redeveloper of the Project Area.

(j) The Redeveloper shall not use the Project Area, Project or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(k) The Redeveloper shall not use the Project Area, Project or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

(l) The Redeveloper hereby affirms, represents, covenants and agrees that it is the owner of the Williams Theater Property subject to the following limitations, as set forth in the Purchase and Sale Agreement and the Deed (the "**Limitations**"):

(i) Use of the Williams Theater Property for Public Purposes and Liquidated Damages.

(A) Public Purpose and Reverter. The Williams Theater Property was transferred to the Redeveloper by the Borough with the limitation that said land or buildings thereon shall be used for the following public purposes of the Borough including: redevelopment and rehabilitation of the Williams Theater Property, constructing the Theater Component and operating the rehabilitated Williams Center Theater, including a black box theater, a cinema complex, and Williams Center Main

Theatre, a venue that is open for use, patronage, and enjoyment by the public, all in accordance with this Redevelopment Agreement, the Redevelopment Law, and the Redevelopment Plan (the “**Public Purpose**”) and that if said land or buildings that comprise the Williams Theater Property are not used in accordance with said limitation, title thereto shall revert back to the Borough without entry or reentry made thereon by the Borough (the “**Reverter**”), on notice from the Borough to the Redeveloper with an opportunity for Redeveloper to cure said failure in accordance with Article 13 of this Agreement.

(B) **Theater Liquidated Damages Amount.** Redeveloper understands, acknowledges and agrees that Redeveloper’s proposed, and anticipated, rehabilitation and operation of the Williams Center Theater through the Theater Component of the Project was a material inducement for the Borough to enter into the Purchase Agreement, to convey the Williams Theater Property to Redeveloper, and to enter into this Redevelopment Agreement, and said inducement was reflected in the purchase price of One Dollar (\$1.00) for the Williams Theater Property. Further, Redeveloper understands, acknowledges and agrees that if Redeveloper: (a) fails to complete the Theater Component within five (5) years from the Purchase and Sale Agreement Effective Date, or (b) if, for a period greater than six (6) continuous months (the only exception being the construction of, or pre-development in connection with, the construction of the Theater Component pursuant to this Redevelopment Agreement), due solely to the actions or omissions of Redeveloper (and not to the failure of the Borough or any tenant or occupant to operate same as required) the Williams Center Theater ever ceases to (i) function as a black box theater, a cinema complex, and the Williams Center Theater for a period greater than six (6) continuous months, absent force majeure or such other factors outside the reasonable control of Redeveloper, including, without limitation, casualties and a pandemic (collectively “**Theater Force Majeure Events**”), (ii) be open for use and enjoyment by the public for a period greater than six (6) continuous months absent Theater Force Majeure Events; then the Borough will have suffered immeasurable loss, by and through the loss to the community, and in such an event, Redeveloper, its successors, heirs and assigns agree to pay the Borough the sum of One Million and 00/100 Dollars (\$1,000,000.00) (the “**Theater Liquidated Damages Amount**”) as liquidated damages and not as penalty. The Borough and Redeveloper agree that Borough’s damages resulting from Redeveloper’s failure to construct the Theater Component and operate a black box theater, a cinema complex, and the Williams Center Main Theatre on the Williams Theater Property are difficult, if not impossible, to determine and the Theater Liquidated Damages Amount is a fair estimate of those damages which has been agreed to by the Parties in an effort to cause the amount of such damages to be certain. The Borough shall be entitled to Attorney fees and costs from Redeveloper, if any, that the Borough incurs in connection with any effort to recover the Theater Liquidated Damages Amount. Nothing herein shall limit the Redeveloper or any tenant of the Williams Theater Property from charging reasonable and customary fees to use the Williams Center Theater. Notwithstanding anything to the contrary in the Purchase and Sale Agreement, the Parties understand, acknowledge, and hereby agree that the Theater Liquidated Damages amount shall not be adjusted by inflation. **The Theater Liquidated Damages Amount is in addition to**

and not in limitation of any re-sale amount due to the Borough upon future sale of the Williams Theater Property as set forth in Section 8.03 (l) (ii) herein.

(C) The restrictive use covenant set forth in this Section 8.03 (l) is set out in the Deed, a copy of which is attached hereto as **Exhibit 4** and made a part hereof, and runs with the land and shall be binding upon and (except as expressly provided otherwise herein) shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable. The intention of the Parties is that the covenants and restrictions are intended to last in perpetuity, except as expressly provided otherwise in the Purchase and Sale Agreement, Section 8.03 (l)(iv) or this Redevelopment Agreement.

(ii) Re-Sale of the Williams Theater Property. The Williams Theater Property was transferred to the Redeveloper for the sum of One Dollar (\$1.00) subject to the restrictive covenant set forth above. However, in the event that the Williams Theater Property, at any time prior to the completion of construction of the Project in accordance with the terms of this Redevelopment Agreement is sold by the Redeveloper to another Party for an amount greater than One Thousand and 00/100 Dollars (\$1,000.00) the Redeveloper shall be obligated to pay the Borough in accordance with the following:

Sale price	Amount Due the Borough Upon Sale
\$1,001.00 to \$999,999.99	Fifty (50%) Percent of the Sale Price
\$1,000,000.00 to \$1,999,999.99	\$500,000.00
\$2,000,000.00 to 3,999,999.99	\$750,000.00
\$4,000,000.00 or more	\$1,000,000.00

This within restrictive re-sale covenant is set out in the Deed, a copy of which is attached as **Exhibit 4** hereto and made a part hereof, and shall be binding upon and (except as expressly provided otherwise herein) shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable, only but shall not apply to any third party successor of interest who acquires such interest after completion of construction of the Project. **The amounts set forth in this section are in addition to, and not in limitation of, the Redeveloper's obligation to pay the Theater Liquidated Damages Amount as set forth in Section 8.03 (l)(i).**

(iii) Recording revised Deed. Redeveloper agrees to record the Deed, attached hereto as **Exhibit 4**.

(iv) Deed Restriction Contingency. The Parties acknowledge, understand and agree that the Reverter set forth in Section 8.03(l)(i)(A) of this Agreement was included in the County Deed and, as such, was included in the Original Deed and the Deed attached hereto. In event the County consents, by County Ordinance, to release the reverter provision set forth in Section 4 of the County Deed, and records a document with the County Clerk's Office in the County Deed Indices, or produces a document in recordable form to the Borough to be recorded in County Clerk's Office in the County Deed Indices, removing the reverter provision set forth in Section 4 of the County Deed

(the “**Amended County Deed**”), then upon recording of the Amended County Deed with the County Clerk’s office in the County Deed Indices, the Borough agrees, at the Redeveloper’s sole cost and expense, to: (1) relinquish the Borough’s Reverter right set forth in Section 8.03(l)(i)(A) of this Agreement, the Original Deed, and the Deed attached hereto, and record, at the Redeveloper’s cost, a document or amended deed in recordable form with the County Clerk’s office releasing said Reverter, and (2) execute an amendment to this Agreement, if necessary to effectuate said release. Notwithstanding the foregoing, all other restrictive covenants and Liquidated Damages set forth in this Agreement and Deed shall remain in full force and effect unless otherwise agreed to in writing by the Parties.

(m) Redeveloper hereby affirms, represents, covenants and agrees that the Limitations set forth in Section 8.03 (l) shall run with the land and survive termination of this Redevelopment Agreement and Completion of the Project.

SECTION 8.04. Declaration of Covenants and Restrictions. The Redeveloper shall execute and record one or more declaration(s) of project covenant(s) in form of **Exhibit 2** attached hereto (the “**Declaration**”) imposing on the Project and the Project Area, the Redeveloper Covenants set forth in Section 8.03 (as may be limited by the terms of this Redevelopment Agreement, including Section 8.05 hereof), and those other matters indicated in this Redevelopment Agreement to be included in the Declaration.

SECTION 8.05. Effect and Duration of the Covenants. It is intended and agreed, and the Declaration shall so expressly provide, that the agreements and covenants set forth in Section 8.04 hereof and those elsewhere in this Redevelopment Agreement designated for inclusion in the Declaration shall be covenants running with the land until the Project is Completed, except as otherwise specified in this Redevelopment Agreement, and such covenants shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Redevelopment Agreement, be binding, to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Project, or any part thereof, the Redeveloper, its successors and assigns and every successor in interest therein, and any Party in possession or occupancy of the Project, or any part thereof; provided, however, that such covenants shall not be binding on any Holder except in accordance with the terms of Article XII hereof. Such agreements and covenants, however, shall be binding on the Redeveloper itself, each successor in interest to the Redeveloper and each party in possession or occupancy, respectively, only for such period as the Redeveloper or such successor or party shall be in possession or occupancy of the Project Area, the buildings and structures thereon, or any part thereof.

SECTION 8.06. Enforcement of Covenants by the Borough. In amplification, and not in restriction of the provisions of this Article VIII, it is intended and agreed that the Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and

covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to terminate this Redevelopment Agreement in accordance with the terms of Section 13.03 hereof. Upon redevelopment of the Project Area and completion of the Project (as evidenced by the Borough's issuance of a Certificate of Completion), the conditions that were found and determined to exist at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist and the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Project.

SECTION 8.07 Borough Covenants. The Borough hereby covenants and agrees that:

(a) The Borough agrees to support any applications for Governmental Approvals that are consistent with the terms of the Redevelopment Plan and this Redevelopment Agreement, and to otherwise cooperate with the Redeveloper with respect to the Governmental Approvals; provided that nothing contained in this Section 8.07(a) shall be deemed: (i) to constitute an approval of all or any portion of the Project for which applications have been submitted or are required or (ii) a waiver of the ability of any Governmental Authority, to exercise its statutorily authorized responsibilities with respect to such applications or Governmental Approvals. Without limiting the generality of the foregoing, the Borough shall (A) schedule, convene and conclude all required public hearings in an expeditious manner consistent with Applicable Laws, and (B) cause all of the planners, engineers and other consultants engaged by the Borough to review and comment on all submittals by Redeveloper in an expeditious manner. The Borough shall fully cooperate with Redeveloper to obtain a minimum of two (2) alcohol beverage licenses for the Williams Center Property in accordance with Applicable Law. Should said alcohol beverage licenses not be immediately available to the Redeveloper, the Borough shall issue, upon the written request of Redeveloper, in accordance with Applicable Law a plenary retail consumption license for non-profit theatrical corporations pursuant to *N.J.S.A. 33:1-19.8*. The Borough's obligations hereunder are contingent upon Redeveloper, or the end user of said licenses, being compliant with all requirements under Applicable Law to obtain, hold and use said licenses.

(b) The Borough shall undertake and complete, with due diligence, all of its obligations under this Redevelopment Agreement.

(a) The Redeveloper has been designated as the exclusive redeveloper of the Project Area and shall have the exclusive right and obligation to redevelop the Project Area and implement the Project in accordance with the terms and conditions of this Redevelopment Agreement.

(b) The Borough shall not exercise its power of eminent domain to condemn the Williams Theater Property during the Term.

SECTION 8.09. Certification of Non-Involvement in Prohibited Activities in Russia or Belarus. Redeveloper represents, warrants and certifies that it is not engaged in any Prohibited Activities in Russia or Belarus pursuant to P.L.2022, c.3., except as permitted by Federal Law. Simultaneously with the execution of this Redevelopment Agreement, Redeveloper agrees to submit to the Borough a signed form Certification of Non-Involvement in Prohibited Activities in Russia or Belarus pursuant to P.L.2022, c.3, which shall be attached to this Redevelopment Agreement **Exhibit 7**.

[END OF ARTICLE VIII]

ARTICLE IX

CERTIFICATES OF OCCUPANCY AND COMPLETION

SECTION 9.01. Certificate of Occupancy. The Redeveloper shall apply to the appropriate governmental officer or body for a Certificate of Occupancy for any building constructed as part of the Project. The Redeveloper shall take all actions required for issuance of a Certificate of Occupancy.

SECTION 9.02. Certificate of Completion. Following the issuance of the Certificate of Occupancy, Completion or Substantial Completion of the Project, the satisfaction of the terms and conditions of this Redevelopment Agreement, the Borough shall, within thirty (30) days after Completion or Substantial Completion and the Borough's receipt of a Completion Notice issue a Certificate of Completion, provided there is not then an existing Redeveloper Event of Default. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction (in accordance with the terms of this Redevelopment Agreement, the Redevelopment Plan and Applicable Law) and termination of this Redevelopment Agreement, and of all of Redeveloper's agreements and covenants in this Redevelopment Agreement and shall discharge and release the lien of this Redevelopment Agreement and the Declaration from the Project Area, or applicable portion thereof, as the case may be. If the Borough determines that the Redeveloper is not entitled to a Certificate of Completion, the Borough shall, at the written request of the Redeveloper, within thirty (30) days of receipt of the written request, provide the Redeveloper with a written statement of the reasons the Borough refused or failed to furnish a Certificate of Completion. Notwithstanding the foregoing, if the Project is Substantially Complete, the Borough will issue its Certificate of Completion upon the posting of a bond (or other reasonably satisfactory security) by the Redeveloper with the Borough in an amount representing 125% of the estimated value of the work not yet completed less the amount of any completion guaranty posted for such work in accordance with the Municipal Land Use Law.

Section 9.03. Borough Cooperation with Issuance of Certificate of Occupancy and Certificate of Completion. To the extent permitted by Applicable Law, the Borough agrees to process any application made by Redeveloper for a Certificate of Occupancy or Certificate of Completion in a reasonably expeditious manner.

[END OF ARTICLE IX]

ARTICLE X

TRANSFERS

SECTION 10.01. Prohibition Against Speculative Development. The Redeveloper covenants that its undertakings pursuant to this Redevelopment Agreement shall be for the purpose of redevelopment of the Project Area and not for speculation in land holding.

SECTION 10.02. Prohibition Against Transfers. The Redeveloper recognizes the importance of the redevelopment to the general welfare of the community and the public assistance to be made available by law and by the Borough on the conditions stated herein for the purpose of making such redevelopment possible. The Parties acknowledge and agree that a change in control of the Redeveloper is a transfer of the property interest then owned by the Redeveloper, and that, therefore, the qualifications and identity of the Redeveloper and its principals are of particular concern to the Borough.

In light of the foregoing, except for Permitted Transfers, during the Term of this Redevelopment Agreement, the Redeveloper shall not, without the prior written consent of the Borough, which shall not be unreasonably withheld, conditioned or delayed: (a) effect or permit any change, directly or indirectly, in the control of the Redeveloper prior to the issuance of the final Certificate of Completion for the Project or any portion thereof, (b) assign or attempt to assign this Redevelopment Agreement or any rights herein, or (c) make any total or partial sale, transfer, or conveyance of the whole or any part of the Williams Theater Property or Project (individually and collectively, a "**Transfer**").

SECTION 10.03. Permitted Transfers. (a) The Redeveloper, without violating the provisions of Section 10.01 or Section 10.02 hereof, may effect the following Transfers, to which the Borough hereby consents upon receipt of notice thereof, without the necessity of further action by the Borough ("**Permitted Transfers**"):

(i) security for the purpose of obtaining the financing necessary to enable the Redeveloper to perform its obligations under this Redevelopment Agreement with respect to completing the Project and any other purpose authorized by this Redevelopment Agreement;

(ii) the Declaration;

(iii) a mortgage or mortgages and other liens and encumbrances (but not including mechanic's liens) for the purposes of financing costs associated with the acquisition, development, construction and marketing of the Project;

(iv) utility and other development easements;

(v) environmental covenants and restrictions imposed by a regulatory Governmental Authority as a condition of any permit or approval;

(vi) a lease, option agreement or contract of sale to a tenant or end user of the Project for the purpose of operating a permitted business as a part of the Project;

(vii) a transfer to an Affiliate of the Redeveloper, including without limitation a qualified Urban Renewal Entity, or a transfer among members of the Redeveloper and their family members and/or trustees for their benefit;

(viii) a Transfer pursuant to a foreclosure or deed in lieu of foreclosure, and any Transfer by any Holder or any Holder's successor and/or assigns after foreclosure.

(ix) any contract or agreement with respect to any of the foregoing exceptions.

SECTION 10.04. Notice of Permitted Transfers. With respect to any Permitted Transfers, the Redeveloper shall provide to the Borough written notice at least thirty (30) days prior to such Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. The Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by the Borough, in light of the context of such Permitted Transfer, in order to assure that the transferee has assumed all of the Redeveloper's obligations under this Redevelopment Agreement and the Declaration as to the Project (if the Redeveloper's right, title and interest in the Project is being transferred) or any portion thereof (if the Redeveloper's right, title and interest in a portion of the Project is being transferred).

SECTION 10.05. Transfers Void. Any transfer of the Redeveloper's interest in violation of this Redevelopment Agreement shall be a Redeveloper Event of Default and shall be null and void *ab initio*. Such default shall entitle the Borough to seek all remedies available under the terms hereof, and those available pursuant to law or equity, including termination of this Redevelopment Agreement. In the absence of specific written consent by the Borough, or a deemed approval in accordance with the terms hereof, no such sale, transfer, conveyance or assignment or approval thereof by the Borough, shall be deemed to relieve the Redeveloper from any obligations under this Redevelopment Agreement. The Declaration shall contain a restriction against transfers as set forth in this Article and, in addition, shall provide that in the event of any attempted transfer in violation of the restrictions in this Article, the Borough shall be entitled to the *ex parte* issuance of an injunction restraining such transfer, and the award of legal fees and related expenses of the Borough in connection with any such legal action. Upon recording of the final Certificate of Completion, the provisions of the Declaration set forth in this Article as to the Project shall be deemed terminated, and the Declaration shall so state.

SECTION 10.06. Transfer Fee. Notwithstanding anything to the contrary contained herein, prior to any Transfer not specifically permitted but to which the Borough consents, the Redeveloper will pay or cause to be paid to the Borough the reasonable and actual costs incurred by the Borough associated with such Transfer and the ongoing oversight thereof. This section shall not be applicable to the transfer of a portion of the membership interest in Redeveloper (provided that the same shall not exceed 49% of the Project interests) to an equity participant.

[END OF ARTICLE X]

ARTICLE XI

INDEMNIFICATION; INSURANCE

SECTION 11.01. Redeveloper Indemnification. (a) To the fullest extent permitted by law, the Redeveloper covenants and agrees, at its expense, to pay and to indemnify, protect, defend and hold the Borough Indemnified Parties harmless from and against all liability, losses, damages, demands, costs, claims, lawsuits, administrative proceedings, fines, penalties, and expenses (including attorneys' fees and court costs) of every kind, character and nature resulting, wholly or partially, from the condition, use, possession, conduct, management, planning, design, acquisition, construction, installation, financing, leasing or sale of the Project, including but not limited to any lawsuit or proceeding relating to the death of any person or any accident, injury, loss, and damage whatsoever to any person or to the property of any person which shall occur on or adjacent to the Project Area and results from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors, but excluding damage, liability, costs and expenses to the extent that same may result from the negligence or willful misconduct of the Borough, its employees, representatives or agents.

(b) To the fullest extent permitted by law, the Redeveloper shall defend, indemnify and hold harmless the Borough Indemnified Parties and their officers, agents, employees, contractors, and consultants from any claims, investigations, liability, loss, injury, damage, remediation costs, lawsuits, civil proceedings, fines, penalties, and expenses including reasonable attorneys' fees and disbursements which result, wholly or partially, from (i) the performance or any failure or delay of performance by the Redeveloper of its obligations under the Redevelopment Agreement; or (ii) any bodily injury or property damage that may occur in the Project Area during the term of the Redevelopment Agreement; provided, however, that such indemnity shall not include the actions or inactions of third-parties over whom the Redeveloper does not exercise control, as long as the Redeveloper maintains and enforces commercially reasonable security measures and commercial liability insurance to protect against such actions or inactions.

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

liability by reason of such settlement or judgment for which the Borough Indemnified Party is entitled to indemnification hereunder. The Redeveloper shall have the right to settle any such action on terms it deems appropriate provided that a full release of the Borough Indemnified Party is obtained and no admission of liability by the Borough Indemnified Party is required. In the event the Borough refuses to provide a release of such action, and a final judgment is rendered against the Redeveloper, the Borough shall be responsible for the Redeveloper's counsel fees and costs incurred subsequent to the refusal by the Borough to release the action and for that amount of the judgment which is in excess of the sum for which the Redeveloper would have otherwise settled the action.

(d) The Redeveloper's indemnity provided under this Section 11.01 shall survive the termination of this Redevelopment Agreement with respect to occurrences prior to the date of termination and shall run with the land and be referenced in the Declaration.

[END OF ARTICLE XI]

ARTICLE XII

MORTGAGE FINANCING; NOTICE OF DEFAULT TO MORTGAGEE; RIGHT TO CURE

SECTION 12.01. Mortgage Financing. (a) Neither the Redeveloper nor any successor in interest to the Project, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Project, whether by express agreement or operation of law, or suffer any encumbrance or lien (other than liens for governmental impositions) to be made or attach to the Project, in excess of ninety-nine percent (99%) of Project Costs, except as may be approved by the Borough (which approval shall not be unreasonably withheld, delayed or conditioned) for the purpose of obtaining funds in connection with the payment of such Project Costs; provided, however, that upon the issuance of a Certificate of Completion for the Project, or any portion thereof, such prohibition shall no longer apply with respect to the corresponding parcel of land and improvements. The Redeveloper, or its successor in interest, shall notify the Borough in advance of any such financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Project, or any part thereof (the mortgagee thereunder, a “**Holder**”) and, in any event, the Redeveloper shall promptly notify the Borough of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Project, whether by voluntary act of the Redeveloper or otherwise, upon obtaining knowledge or notice of same.

(b) If the Holder reasonably requires any change(s) or modification(s) to the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Holder and the Redeveloper in reviewing and approving such proposed change(s) or modification(s); provided, however, that any such proposed change or modification shall not materially and adversely alter or modify the rights and obligations of the Redeveloper or the Borough, as provided in this Redevelopment Agreement.

(c) To the extent reasonably requested by the Redeveloper, the Borough shall execute such other agreements and/or documents, to the extent same are in form and content reasonably acceptable to the Borough, as may be requested or required by any Holder (or any equity participant of the Redeveloper); provided, however, that any such agreement or document shall not materially or adversely alter any of the rights, liabilities or obligations of the Redeveloper or the Borough under this Redevelopment Agreement.

(d) In the event that the Redeveloper is unable to obtain financing for the Project on terms and conditions acceptable to Redeveloper in its sole discretion, then Redeveloper shall have the right to terminate this Redevelopment Agreement upon written notice to the Borough.

(e) If this Redevelopment Agreement is terminated pursuant to the terms of this Section 12.01 then, except as expressly set forth herein to the contrary and upon full payment of all Borough Costs accruing until the date of such termination, this Redevelopment Agreement (including, without limitation, all the covenants contained herein) shall be of no further force and effect and the Parties hereto shall have no further rights, liabilities and/or obligations hereunder.

SECTION 12.02. Notice of Default to the Redeveloper and Right to Cure.

Whenever the Borough shall deliver any notice or demand to the Redeveloper with respect to any breach or default by the Redeveloper under this Redevelopment Agreement, the Borough shall at the same time deliver to each Holder a copy of such notice or demand; provided that the Redeveloper has delivered to the Borough a written notice of the name and address of such Holder. Each such Holder shall (insofar as the rights of the Borough are concerned) have the right at its option within ninety (90) days after the receipt of such notice (and the expiration of all applicable cure periods), to cure or remedy, or to commence to cure or remedy, any such default which is subject to being cured and to add the cost thereof to the debt and the lien which it holds. The Borough shall not seek to enforce any of its remedies under this Redevelopment Agreement during the period in which any such Holder or Redeveloper is proceeding diligently and in good faith to cure a Redeveloper Event of Default. If possession of the Williams Theater Property is necessary to cure any default or breach, any Holder will be allowed to complete any proceedings required to obtain possession of the Williams Theater Property.

SECTION 12.03. No Guarantee of Construction or Completion by Holder.

(a) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or complete the Project, or to guarantee such construction or completion; nor shall any covenant or any other provisions be construed so to obligate a Holder. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or completion of the Project (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made) without the Holder or Affiliate of Holder first having expressly assumed the Redeveloper's obligations to the Borough with respect to the Project by written agreement reasonably satisfactory to the Borough.

(b) If a Holder forecloses its mortgage secured by the Williams Theater Property, or takes title (in its name or the name of an Affiliate) to the Williams Theater Property by deed-in-lieu of foreclosure or similar transaction (collectively a "**Foreclosure**"), the Holder or its Affiliate shall have the option to either (i) sell the Williams Theater Property, as applicable, to a responsible Person reasonably acceptable to the Borough, which Person shall assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law, and/or (ii) itself, or its affiliate, assume the obligations of the Redeveloper under this Redevelopment Agreement in accordance with Applicable Law. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, the Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to the Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the obligations of the Redeveloper as to the parcel affected by such Foreclosure or sale, in that event must agree to complete the Project in accordance with the terms of this Redevelopment Agreement, but subject to reasonable extensions of the Project Schedule, and shall submit evidence reasonably satisfactory to the Borough that it has the qualifications and financial responsibility necessary to perform such obligations. Any such Holder, or other entity assuming such obligations of the Redeveloper, properly completing the Project shall be entitled, upon written request made to the Borough, to Certificates of Completion. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or

such other entity assuming such obligations of the Redeveloper, to devote the Project Area, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement and the Redevelopment Plan. The Holder or such other entity that assumes the obligations of the Redeveloper shall be entitled to develop the Project Area and Project in accordance herewith.

[END OF ARTICLE XII]

ARTICLE XIII

EVENTS OF DEFAULT AND REMEDIES

SECTION 13.01. Events of Default. Any one or more of the following shall, beyond the expiration of the applicable cure period, constitute an event of default hereunder (“**Event of Default**”), subject to the occurrence of an event of Force Majeure (with none of the following to be construed as a limitation on any other):

(a) Failure of the Redeveloper or the Borough to observe and perform any covenant, condition or agreement under this Redevelopment Agreement, and continuance of such failure for a period of thirty (30) days, after receipt by the defaulting party of written notice from the non-defaulting party specifying the nature of such failure and requesting that such failure be remedied; provided, however, if the failure is one which cannot be remedied within the thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting party is proceeding with due diligence to remedy the same as soon as practicable but in no event later than one hundred twenty (120) days after such written notice.

(b) (i) The Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of the Redeveloper; (iii) the Redeveloper (A) has made a general assignment for the benefit of creditors, or (B) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) the Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (v) the Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against the Redeveloper and shall not have been dismissed for a period of ninety (90) consecutive days; (vii) an order for relief shall have been entered with respect to or for the benefit of the Redeveloper under the Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of the Redeveloper by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of the Redeveloper or a substantial part of its assets and such order, judgment or decree shall have continued unstated and in effect for any period of ninety (90) consecutive days; or (ix) the Redeveloper shall have suspended the transaction of its usual business.

(c) The Redeveloper shall materially default in or violate its obligations with respect to the design, development and/or construction of the Project in accordance with this Redevelopment Agreement (including, but not limited to, the Project Schedule) and the Site Plan, or shall abandon or substantially suspend construction work (unless such suspension arises out of an event of Force Majeure), and any such default, violation, abandonment or suspension shall not be cured, ended, or remedied within ninety (90) days after written demand by the Borough to do so; provided however, that if the default or violation is one which cannot be completely remedied within the ninety (90) days after such written notice has been given, it shall not be an Event of Default as long as the Redeveloper is proceeding with due diligence to

remedy the same as soon as practicable, but in no event later than one hundred eighty (180) days after such written notice.

(d) The Redeveloper or its successor in interest (except for third parties to which a portion of the Project has been conveyed in the ordinary course of business) shall fail to pay any real estate taxes or assessments on any real property or any part thereof owned by it in the Borough when due, or shall place thereon any encumbrance or lien unauthorized by this Redevelopment Agreement, or shall suffer any levy or attachment to be made, or any materialman's, mechanics' or construction lien, or any other unauthorized encumbrance or lien to attach and such real estate taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Borough made for such payment, removal, or discharge, within sixty (60) days after written demand by the Borough to do so.

(e) There is, in violation of this Redevelopment Agreement, any Transfer.

SECTION 13.02. Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of events or conditions beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such party under the terms of this Redevelopment Agreement, including, without limitation, the following (a “**Force Majeure**”):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, pandemic or other state or national declared health emergency coupled with government imposed quarantine restrictions, economic disruptions including the scarcity of material necessary for the construction of the Project, but not including reasonably anticipated weather conditions for the geographic area of the Project Area, other than those set forth above (such events being required to physically affect a Party’s ability to fulfill its obligations hereunder;

(b) A landslide, fire, explosion, flood, release of nuclear radiation, damage to or theft of any part of the Project, or any casualty not created by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure;

(c) The order, judgment, action or inaction and/or determination of any Governmental Authority (other than the Borough when acting in conformance with this Redevelopment Agreement) excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers; provided, however, that such order, judgment, action or inaction and/or determination shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such order, judgments, action or inaction and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party;

(d) The suspension, termination, interruption, denial, or failure of or delay in renewal or issuance of any Governmental Approval (including due to any appeal), provided, however, that such suspension, termination, interruption, denial, or failure of or delay in renewal or issuance shall not be the result of the willful misconduct or grossly negligent action or inaction of the Party relying thereon. Neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as willful misconduct or grossly negligent action or inaction by such Party. Delay in issuance of a Governmental Approval resulting from the Redeveloper's failure to make an administratively complete submission for a Governmental Approval in accordance with Applicable Law shall not be an event of Force Majeure; or

(e) An inability to procure goods or services for any reason not caused by the willful misconduct or grossly negligent act or omission of the party claiming Force Majeure, including, without limitation, the limited manufacturing capacity of any suppliers; a general shortage of labor, equipment, facilities, energy, materials or supplies in the open market; failure of transportation, strikes, lockouts, slowdowns or similar labor action by trade unions or any of their members, equipment manufacturers, suppliers of material and/or transporters of same; or

(f) Acts or omissions of the other Party (except in conformance with this Redevelopment agreement or Applicable Law) *e.g.* as to the Redeveloper, acts or omissions of the Borough.

Any event of Force Majeure affecting any counterparty to an agreement with any or all of the Parties hereto shall be considered an event of Force Majeure hereunder. Notice by the Party claiming such extension shall be sent to the other Party within thirty (30) calendar days of the commencement of the cause. During any Force Majeure event that affects part of the Project, to the extent reasonably practicable, the Redeveloper shall continue to perform its obligations for the remainder of the Project. The existence of an event of Force Majeure shall not prevent a Party from declaring the occurrence of an Event of Default by the Party relying on such Force Majeure event; provided that the event that is the basis of the Event of Default is not a result of the Force Majeure event. Except for an event or events of Force Majeure resulting from acts or omissions of the Borough, any event or events of Force Majeure will be deemed to have ceased to exist as of a date twenty four (24) months from its initial occurrence.

SECTION 13.03. Remedies Upon Events of Default by the Redeveloper. If an Event of Default by the Redeveloper occurs, and during its continuance, the Borough may take whatever action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of the Redeveloper, as applicable, under this Redevelopment Agreement, including enforcement of the terms stated in Sections 3.03 and 3.04 above, and the seeking of damages. Further, but subject to any cure provisions afforded the Redeveloper hereunder, the Borough shall have the reasonable right, in its sole and absolute discretion, upon notice to the Redeveloper and any Holder, to terminate this Redevelopment Agreement and the Redeveloper's designation as the redeveloper of the Project Area.

SECTION 13.04. Remedies Upon Events of Default by the Borough. In the event of an Event of Default by the Borough, the Redeveloper may take whatever action at law or in

equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements or covenants of the Borough under this Redevelopment Agreement, including an action for specific performance and/or damages. Further, but subject to any cure provisions afforded the Borough hereunder, the Redeveloper shall have the right, in its sole and absolute discretion, upon sixty (60) days' notice to the Borough to terminate this Redevelopment Agreement. Notwithstanding the foregoing, neither the Borough nor any of its respective Affiliates, directors, officers, managers, agents, employees, or representatives shall be liable in any action, at law or in equity, in contract, tort, strict liability or otherwise, to Redeveloper or to any other person, including Redeveloper's Affiliates, partners, shareholders, members, directors, officers, managers, agents, employees, or representatives for loss of profits, revenues or expectancies, loss of use or loss of business opportunities or for any special, consequential, indirect or incidental damages, or punitive, exemplary or multiplier damages with respect to the redevelopment of the Project Area and/or construction of the Project.

SECTION 13.05. Failure or Delay. Except as otherwise expressly provided in this Redevelopment Agreement, any failure or delay by either party in asserting any of its rights or remedies as to any default, shall not operate as a waiver of any default, or of any such rights or remedies, or deprive either party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

SECTION 13.06. Remedies Cumulative. No remedy in favor of either Party conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by a Party shall not constitute a waiver of the right to pursue other available remedies.

SECTION 13.07. Continuance of Obligations. The occurrence of an Event of Default shall not relieve the defaulting party of its obligations under this Redevelopment Agreement unless this Redevelopment Agreement is terminated as a result of such Event of Default, as and to the extent permitted hereunder.

SECTION 13.08. Mitigation. The Parties shall act reasonably to mitigate any damages that may be incurred as a result of an Event of Default hereunder; provided, however, that the costs of any mitigation efforts shall be at the sole cost of the defaulting Party.

SECTION 13.09. Documents to be Delivered Upon Termination. In the event this Redevelopment Agreement is terminated for any reason, except as a result of the default of the Borough, the Redeveloper shall deliver to the Borough, within ten (10) days after such termination, copies of all reports, studies, data, plans, surveys, title reports, subdivision maps and specifications prepared by the Redeveloper and third parties with respect to the Project Area and all documents, reports, permits and approvals obtained by the Redeveloper relating to the Project; provided, however, Redeveloper shall not be obligated to deliver any materials to the Borough that Redeveloper reasonably deems to be confidential and proprietary in nature.

[END OF ARTICLE XIII]

ARTICLE XIV

MISCELLANEOUS

SECTION 14.01. Notices. Formal notices, demands and communications between the Borough and the Redeveloper shall be deemed given if dispatched to the address set forth below by a commercial overnight delivery service with package tracking capability and for which proof of delivery is available or by facsimile or electronically followed by overnight courier. In this case such notice is deemed effective upon delivery. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by written notice.

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

If to the Borough:

Borough of Rutherford
Municipal Building
176 Park Avenue
Rutherford, New Jersey 07070
Attn: Borough Clerk

with a copy to:

Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

If to the Redeveloper:

Charles Olivo
Native Development Urban Renewal, LLC
c/o Native Center Development, LLC
92 Park Avenue
Rutherford, New Jersey 07070

with a copy to:

Jason Tuvel, Esq.
Prime & Tuvel
1 University Plaza Drive
Suite 500
Hackensack, New Jersey 07601

SECTION 14.02. Conflict of Interest. No member, official or employee of the Borough shall have any direct or indirect interest in this Redevelopment Agreement, nor participate in any decision relating to this Redevelopment Agreement which is prohibited by law.

SECTION 14.03. No Consideration for Redevelopment Agreement. The Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration in connection with obtaining this Redevelopment Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. The Redeveloper further warrants it has not paid or incurred any obligation to pay any officer or official of the Borough, any money or other consideration for or in connection with this Redevelopment Agreement.

SECTION 14.04. Lender Changes. If the Redeveloper's construction or permanent mortgage lender or equity participants require a change in the terms of this Redevelopment Agreement, the Borough shall reasonably cooperate with the Redeveloper in approving such change, so long as such change, if any, does not modify or change the substantial rights or obligations of the Parties as set forth in this Redevelopment Agreement. In addition, the Borough agrees to enter into such agreements as the Redeveloper's lender (or its equity participants) may reasonably require provided that such agreement shall not be inconsistent with the terms of this Redevelopment Agreement (*i.e.* shall not increase the responsibilities of the Borough, or decrease its benefits hereunder).

SECTION 14.05. Non-Liability of Officials and Employees of the Borough. No member, official or employee of the Borough shall be personally liable to the Redeveloper, or any successor in interest, in the event of any default or breach by the Borough, or for any amount which may become due to the Redeveloper or its successor, or on any obligation under the terms of this Redevelopment Agreement.

SECTION 14.06. Non-Liability of Officials and Employee of Redeveloper. No member, officer, shareholder, director, partner or employee of the Redeveloper shall be personally liable to the Borough, or any successor in interest, in the event of any default or breach by the Redeveloper or for any amount which may become due to the Borough, or its successors, on any obligation under the terms of this Redevelopment Agreement.

SECTION 14.07. No Brokerage Commissions. The Borough and the Redeveloper each represent one to the other that no real estate broker initiated, assisted, negotiated or consummated this Redevelopment Agreement as broker, agent, or otherwise acted on behalf of the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

SECTION 14.08. Provisions Not Merged with Deeds. With the exception of Limitations set forth in Section 8.03 (l) and (m) herein, the restrictive covenants set forth in the Deed, and the Redeveloper Covenants, to the extent that the provisions of this Redevelopment Agreement are intended to bind the Redeveloper's assigns and successors, its provisions shall not be merged by reason of any deeds transferring title to any portion of the Williams Theater Property from the Redeveloper or any successor in interest, and any such deeds shall not be deemed to affect or impair the provisions and covenants of this Redevelopment Agreement.

SECTION 14.09. Successors and Assigns. This Redevelopment Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Parties, and their heirs, executors, and administrators.

SECTION 14.10. Titles of Articles and Sections. The titles of the several Articles and Sections of this Redevelopment Agreement are inserted for the convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SECTION 14.11. Severability. If any term or provision of this Redevelopment Agreement or the application thereof shall be held invalid or unenforceable, the remainder of this Redevelopment Agreement, or the application of such term or provision to circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Redevelopment Agreement shall be valid and shall be enforced.

SECTION 14.12. Modification of Redevelopment Agreement. No modification, waiver, amendment, discharge, or change of this Redevelopment Agreement shall be valid unless the same is in writing, duly authorized, and signed by the party against which the enforcement of such modification, waiver, amendment, discharge, or change is or may be sought.

SECTION 14.13. Execution of Counterparts. This Redevelopment Agreement may be executed in one or more counterparts (which may be copies delivered electronically in pdf format or by facsimile) and when each party has executed and delivered at least one counterpart, this Redevelopment Agreement shall become binding on the parties and such counterparts shall constitute one and the same instrument.

SECTION 14.14. Waivers and Amendments in Writing. All waivers of the provisions of this Redevelopment Agreement must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper and all amendments hereto must be in writing and signed by the appropriate authorities of the Borough and the Redeveloper.

SECTION 14.15. Drafting Ambiguities; Interpretation. In interpreting any provision of this Redevelopment Agreement, no weight shall be given to, nor shall any construction or interpretation be influenced by, the fact that counsel for one of the parties drafted this Redevelopment Agreement, each party acknowledging that it and its counsel and advisers have had an opportunity to review this Redevelopment Agreement and contributed to the final form of same.

SECTION 14.16. Governing Law. This Redevelopment Agreement shall be governed by and construed in accordance with the Applicable Laws of the State, and any disputes arising hereunder shall be resolved in the Superior Court, State of New Jersey, Bergen County Vicinage.

[END OF ARTICLE XIV]

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SIGNATURES APPEAR ON THE FOLLOWING PAGE].**

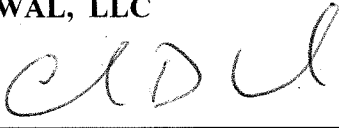
IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed, all as of the date first above written.

ATTEST:

NATIVE DEVELOPMENT URBAN
RENEWAL, LLC

Victoria Lotorto

VICTORIA LOTORTO
NOTARY PUBLIC OF NEW JERSEY
ID # 50130175
My Commission Expires June 29, 2025

By: 

Name: Charles Olivo
Title: Managing Member

ATTEST:

BOROUGH OF RUTHERFORD

By: _____
Frank Nunziato, Mayor

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

ATTEST:

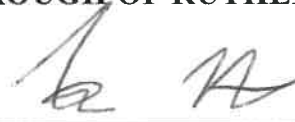
**NATIVE DEVELOPMENT URBAN
RENEWAL, LLC**

By: _____
Name: Charles Olivo
Title: Managing Member

ATTEST:

BOROUGH OF RUTHERFORD

Margaret Carlon

By: 

Frank Nunziato, Mayor

EXHIBIT 1

PROJECT SCHEDULE

1	The Borough and the Redeveloper execute the Redevelopment Agreement	Effective Date
2	The Borough and the Urban Renewal Entity Execute and Deliver the Financial Agreement (if applicable)	Within 75 days after the Effective Date
3	Redeveloper obtains all Governmental Approvals required for Commencement of Construction	Within 240 days after the Effective Date
4	Commencement of Construction	Within 360 days after the Effective Date
5	Completion of Construction	Within 24 months after Commencement of Construction

EXHIBIT 2

FORM OF DECLARATION OF PROJECT COVENANTS

Record and Return to:

Kevin P. McManimon, Esq.
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068

DECLARATION OF COVENANTS AND RESTRICTIONS

(respecting Block 147, Lot 1 and Block 145, Lot 10.01 on the tax maps of the Borough of Rutherford)

THIS REDEVELOPMENT PROJECT COVENANT (the “**Project Covenant**”) is made this ____ day of _____, 202___, by **Native Development Urban Renewal, LLC**, a limited liability company formed under the laws of the State of New Jersey, with offices at 92 Park Avenue, Rutherford, New Jersey 07070, and its successors and assigns (the “**Redeveloper**”).

W-I-T-N-E-S-S-E-T-H:

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

WHEREAS, pursuant to the Redevelopment Law, on August 22, 2016, the Borough of Rutherford (the “**Borough**”) Mayor and Borough Council (the “**Mayor and Council**”) adopted Resolution No. 182-2016 designating the properties identified as Block 128, Lots 1, 2.01, 2.02, 2.03, and 5, Block 145, Lots 10 and 10.01, Block 146, Lots 1, 1.02, 2, 3, 4, and 5, and Block 147, Lots 1, 4, 9, 10, 14, 15, 16, 17.02, 19.01, 20 and 21, on the tax maps of the Borough (collectively, the “**Redevelopment Area**”) as a “non-condemnation area in need of redevelopment/rehabilitation” with a condition that any rehabilitation of the Williams Center Site (Block 147) is to include a theatre aspect; and

WHEREAS, on June 28, 2021, the Mayor and Council adopted an ordinance, as amended by ordinance adopted on June 27, 2022, approving and adopting a redevelopment plan for the Redevelopment Area, entitled “Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Etrick Terrace Parking Area” (as amended, the “**Redevelopment Plan**”); and

WHEREAS, the County of Bergen (the “**County**”) previously owned that portion of the Redevelopment Area consisting of the area commonly known as 15 Sylvan Way, and identified as Block 147, Lot 1 (formerly Lots 1, 1.01, 2 & 3) on the Borough’s official tax maps (the “**Williams Theater Property**”); and

WHEREAS, the County determined that the Williams Theater Property was no longer needed for public use and determined to offer such property for sale at public auction; and

WHEREAS, thereafter, the Redeveloper (through an affiliate) approached the Borough and County and expressed its desire to acquire, rehabilitate and redevelop the Williams Theater Property with a project consisting of residential units, retail space, and the preservation and operation of a black box theatre, cinema complex, and the Williams Center Main Theatre (the **“Original Proposed Theater Component”**) all in a seven (7) story building with rooftop amenities (the **“Original Proposed Project”**); and

WHEREAS, in order to facilitate the redevelopment of the Williams Theater Property, the Borough and the County entered into a purchase and sale agreement, dated August 10, 2021 (the **“County Purchase and Sale Agreement”**), pursuant to which the County agreed to sell, and the Borough agreed to purchase the Williams Theater Property for a nominal amount subject to, among other conditions, that Redeveloper rehabilitate and redevelop the Williams Theater Property and the covenant that the Williams Theater Property be used for a public purpose, including the preservation of a theatre-related use thereon; and

WHEREAS, the Borough and the Redeveloper entered into a purchase and sale agreement, dated August 10, 2021 (the **“Purchase and Sale Agreement”**), pursuant to which the Borough agreed to sell, and the Redeveloper agreed to purchase, the Williams Theater Property for a nominal amount of One Dollar (\$1.00) subject to, among other conditions, the covenant that such property be used for a public purpose, including redevelopment of the Williams Theater Property pursuant to the Redevelopment Plan the preservation and operation by the Redeveloper of a theatre-related use thereon, including, in particular, the Original Proposed Theater Component; and

WHEREAS, the Borough acquired title to the Williams Theater Property from the County by deed, dated August 10, 2021, subject to certain rights of the County as set forth in the deed from the County to the Borough (the **“County Deed”**); and

WHEREAS, the Redeveloper acquired title to the Williams Theater Property from the Borough on October 1, 2021, subject to certain rights of the Borough as set forth in the deed from the Borough to the Redeveloper (the **“Original Deed”**); and

WHEREAS, Redeveloper proposes to rehabilitate and redevelop the Williams Theater Property with a 7-story mixed-use building consisting of the construction of Eighty (80) residential units, including Sixty-Eight (68) market rate units (the **“Market Rate Component”**) and Twelve (12) Affordable Units (the **“Affordable Component”**) and, together with the Market Rate Component, the **“Residential Component”**) and approximately Five Thousand Eight Hundred Thirty-Nine (5,839) square feet of retail space (the **“Retail Component”**); rehabilitation, preservation, and operation of a black box theatre, a cinema (movie) theater, and the Williams Center Main Theatre (the **“Williams Center Theater”**) including major upgrades and renovations to the existing building, as well as improvements to landscaping surrounding the site in accordance with the Redevelopment Plan and with the objective of transforming the Williams Theater Property into a performing arts and film destination in the Rutherford area, and after rehabilitation of the Williams Center Theater is complete, the Redeveloper will fully and continuously operate and maintain the Williams Center Theater, which shall be open to the public upon payment of usual and customary fees for such use (the **“Theater Component”**) together with certain related on-site

and off-site improvements, including without limitation, roof top amenities, and the renovation and expansion of the Etrick Terrace Parking Lot, identified as Block 145, Lots 10.01 on the tax maps of the Borough (“**Etrick Terrace Lot**”) including repaving, striping and expanding same to include a total of one hundred twenty-four (124) surface parking spaces, consisting of approximately eighty (80) stacker parking spaces (the “**Stacker Parking Spaces**”, consisting of 40 parking stalls that will each accommodate vehicles) and approximately forty-four (44) surface parking spaces (the “**Perimeter Parking Spaces**” and, together with the Stacker Parking Spaces, the “**Etrick Lot Component**”), all in accordance with the Parking Management Plan, attached to the Redevelopment Agreement (as that term is defined herein) as **Exhibit 9**, and the Redevelopment Plan (collectively, the “**Project**”) and as depicted and described in more detail in the concept plan (the “**Concept Plan**”), attached to the Redevelopment Agreement (as that term is defined herein) as **Exhibit 6**; and

WHEREAS, on [_____], 202____, the Borough and the Redeveloper executed that certain Redevelopment Agreement (the “**Redevelopment Agreement**”) setting forth the terms and conditions under which the Redeveloper will construct the Project on the Williams Theater Property and Etrick Terrace Lot (collectively, the “**Project Area**”); and

WHEREAS, at such time as the Project is completed in accordance with the terms of the Redevelopment Plan and the Redevelopment Agreement, this Project Covenant and the existing conditions which rendered the Project Area an area in need of redevelopment, will no longer exist.

NOW, THEREFORE, the Redeveloper, intending to be legally bound hereby and to bind its successors and assigns, does promise, covenant, and declare as follows:

The Redeveloper hereby declares and covenants that the Project Area shall be used only for the uses allowed under the Redevelopment Plan, and subject to and in accordance with the covenants and restrictions herein, which covenants and restrictions shall, subject to the terms hereof, run with the Project Area and shall be binding upon the Redeveloper, and its successors and assigns and, to the extent applicable, to all future lessees and occupants of all or any portion of the Project Area including, without limitation, the rights or easements appurtenant thereto.

1. **Terms and Definitions.** Capitalized terms used but not defined herein shall be afforded the meanings provided in the Redevelopment Agreement.

2. **Applicable Laws.** The Redeveloper’s development, construction, use, operation, and maintenance of the Project Area and all improvements thereon and thereto, as provided in the Redevelopment Plan and the Redevelopment Agreement shall be undertaken and carried out in accordance with all Applicable Laws, including without limitation, the Redevelopment Plan, as it may be amended from time to time by the agreement of the Redeveloper and the Borough.

3. **Redeveloper Covenants.**

3.1. The Redeveloper covenants and agrees as follows, provided, however that all such covenants and agreements shall be subject to the terms of the Redevelopment Agreement

and that in case of a conflict between the Redevelopment Agreement and this Project Covenant, the terms of the Redevelopment Agreement shall control:

(a) The Redeveloper shall, at its sole cost and expense, use diligent efforts to obtain all Government Approvals necessary and acceptable financing necessary for the acquisition, remediation, construction and development of the Project. The Redeveloper shall construct, improve, operate and maintain the Project in compliance with all Governmental Approvals, and other laws, ordinances, approvals, rules, regulations and requirements applicable thereto including, but not limited to, such zoning, sanitary, pollution and other environmental safety ordinances, laws and such rules and regulations thereunder as shall be binding upon the Redeveloper under applicable laws.

(b) The Redeveloper shall use commercially reasonable efforts to (i) obtain financing for the Project, (ii) construct and develop the Project with due diligence, and (iii) commence and Complete each item in the Project Schedule on or prior to the applicable date set forth in the Project Schedule and, for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period. All activities performed under the Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by reputable developers of similar developments of the character, scope and composition of the Project.

(c) The Redeveloper shall construct the Project in accordance with the Redevelopment Agreement, the Redevelopment Law, the Redevelopment Plan, and all other Applicable Law and, in the event that the Redeveloper wishes to materially change or modify the Project, notwithstanding the fact that such material change or modification is authorized by the Redevelopment Plan, the Borough's written approval (which shall not be unreasonably withheld, conditioned or delayed) must be secured prior to proceeding with any activities relating to such proposed material modifications. The Redeveloper acknowledges that the Borough and the Redeveloper have relied on the Project Schedule in entering into its obligations under the Redevelopment Agreement including the timeframe for the Borough's approval of PILOT for the Project.

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

(e) The Redeveloper shall use commercially reasonable efforts to complete the Project or cause same to be completed, on or prior to the date set forth in the Project Schedule at its sole cost and expense; provided, however, that the Redeveloper and Borough (the "**Parties**") acknowledged, in the Redevelopment Agreement, that moneys may be made available towards the completion of same from other outside sources. In the event that moneys made available pursuant to any outside source are not sufficient to pay the costs necessary to complete the Project, the Redeveloper shall not be entitled to any funds from the Borough.

(f) Upon completion of the development and construction of the Project, the Redeveloper shall use diligent efforts to obtain all Governmental Approvals authorizing the occupancy and uses of the Project for the purposes contemplated hereby.

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

(h) The Redeveloper shall not restrict the sale, lease, sublease, rental, transfer, use, occupancy, tenure, or enjoyment of the Project on the basis of race, color, religion, creed, national origin, ancestry, physical handicap, age, marital status, affectional preference, sex or gender of any person.

(i) The Redeveloper shall, within ten (10) calendar days, notify the Borough of any material adverse change in its financial condition from the information provided to the Borough by the Redeveloper indicating the Redeveloper's financial capability to develop, finance and construct the Project in furtherance of the Borough's consideration in designating the Redeveloper as the redeveloper of the Williams Theater Property.

(j) The Redeveloper shall not use the Williams Theater Property, Project or any part thereof, for which a Certificate of Completion has not been issued, in a manner that is inconsistent with the Redevelopment Plan and the Redevelopment Agreement.

(k) The Redeveloper shall not use the Williams Theater Property, Project or any part thereof for which a Certificate of Completion has not been issued, as collateral for an unrelated transaction.

(l) The Redeveloper hereby affirms, represents, covenants and agrees that it is the owner of the Williams Theater Property subject to the following limitations, as set forth in the Purchase and Sale Agreement and the Deed (the "**Limitations**"):

(i) Use of the Williams Theater Property for Public Purposes and Liquidated Damages.

(A) **Public Purpose and Reverter.** The Williams Theater Property was transferred to the Redeveloper by the Borough with the limitation that said land or buildings thereon shall be used for the following public purposes of the Borough including: redevelopment and rehabilitation of the Williams Theater Property, constructing the Theater Component and operating the rehabilitated Williams Center Theater, including a black box theater, a cinema complex, and Williams Center Main Theatre, a venue that is open for use, patronage, and enjoyment by the public, all in accordance with the Redevelopment Agreement, the Redevelopment Law, and the

Redevelopment Plan (the “**Public Purpose**”) and that if said land or buildings that comprise the Williams Theater Property are not used in accordance with said limitation, title thereto shall revert back to the Borough without entry or reentry made thereon by the Borough (the “**Reverter**”), on notice from the Borough to the Redeveloper with an opportunity for Redeveloper to cure said failure in accordance with Article 13 of the Redevelopment Agreement.

(B) **Theater Liquidated Damages Amount.** Redeveloper understands, acknowledges and agrees that Redeveloper’s proposed, and anticipated, rehabilitation and operation of the Williams Center Theater through the Theater Component of the Project was a material inducement for the Borough to enter into the Purchase Agreement, to convey the Williams Theater Property to Redeveloper, and to enter into the Redevelopment Agreement, and said inducement was reflected in the purchase price of One Dollar (\$1.00) for the Williams Theater Property. Further, Redeveloper understands, acknowledges and agrees that if Redeveloper: (a) fails to complete the Theater Component within five (5) years from the Purchase and Sale Agreement Effective Date, or (b) if, for a period greater than six (6) continuous months (the only exception being the construction of, or pre-development in connection with, the construction of the Theater Component pursuant to the Redevelopment Agreement), due solely to the actions or omissions of Redeveloper (and not to the failure of the Borough or any tenant or occupant to operate same as required) the Williams Center Theater ever ceases to (i) function as a black box theater, a cinema complex, and the Williams Center Theater for a period greater than six (6) continuous months, absent force majeure or such other factors outside the reasonable control of Redeveloper, including, without limitation, casualties and a pandemic (collectively “**Theater Force Majeure Events**”), (ii) be open for use and enjoyment by the public for a period greater than six (6) continuous months absent Theater Force Majeure Events; then the Borough will have suffered immeasurable loss, by and through the loss to the community, and in such an event, Redeveloper, its successors, heirs and assigns agree to pay the Borough the sum of One Million and 00/100 Dollars (\$1,000,000.00) (the “**Theater Liquidated Damages Amount**”) as liquidated damages and not as penalty. The Borough and Redeveloper agree that Borough’s damages resulting from Redeveloper’s failure to construct the Theater Component and operate a black box theater, a cinema complex, and the Williams Center Main Theatre on the Williams Theater Property are difficult, if not impossible, to determine and the Theater Liquidated Damages Amount is a fair estimate of those damages which has been agreed to by the Redeveloper and Borough in an effort to cause the amount of such damages to be certain. The Borough shall be entitled to Attorney fees and costs from Redeveloper, if any, that the Borough incurs in connection with any effort to recover the Theater Liquidated Damages Amount. Nothing herein shall limit the Redeveloper or any tenant of the Williams Theater Property from charging reasonable and customary fees to use the Williams Center Theater. Notwithstanding anything to the contrary in the Purchase and Sale Agreement, the Parties understand, acknowledge, and hereby agree that the Theater Liquidated Damages amount shall not be adjusted by inflation. **The Theater Liquidated Damages Amount is in addition to and not in limitation of any re-sale amount due to the Borough upon future sale of the Williams Theater Property as set forth in Section 3.1 (I) (ii) herein.**

(C) The restrictive use covenant set forth in this Section 3.1 (l) is set out in the Deed, a copy of which is attached to the Redevelopment Agreement as **Exhibit 4** and incorporated herein by reference, and runs with the land and shall be binding upon and (except as expressly provided otherwise herein) shall inure to the benefit of the Borough and the Redeveloper, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable. The intention of the Parties is that the covenants and restrictions are intended to last in perpetuity, except as expressly provided otherwise in the Purchase and Sale Agreement, Section 3.1 (l)(iv) or the Redevelopment Agreement.

(ii) **Re-Sale of the Williams Theater Property.** The Williams Theater Property was transferred to the Redeveloper for the sum of One Dollar (\$1.00) subject to the restrictive covenant set forth above. However, in the event that the Williams Theater Property, at any time prior to the completion of construction of the Project in accordance with the terms of the Redevelopment Agreement is sold by the Redeveloper to another Party for an amount greater than One Thousand and 00/100 Dollars (\$1,000.00) the Redeveloper shall be obligated to pay the Borough in accordance with the following:

Sale price	Amount Due the Borough Upon Sale
\$1,001.00 to \$999,999.99	Fifty (50%) Percent of the Sale Price
\$1,000,000.00 to \$1,999,999.99	\$500,000.00
\$2,000,000.00 to 3,999,999.99	\$750,000.00
\$4,000,000.00 or more	\$1,000,000.00

This within restrictive re-sale covenant is set out in the Deed, a copy of which is attached to the Redevelopment Agreement as **Exhibit 4** and incorporated herein by reference, and shall be binding upon and (except as expressly provided otherwise herein) shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable, only but shall not apply to any third party successor of interest who acquires such interest after completion of construction of the Project. **The amounts set forth in this section are in addition to, and not in limitation of, the Redeveloper's obligation to pay the Theater Liquidated Damages Amount as set forth in Section 3.1 (l)(i).**

(iii) **Recording revised Deed.** Redeveloper agrees to record the Deed, attached to the Redevelopment Agreement as **Exhibit 4**.

(iv) **Deed Restriction Contingency.** The Redeveloper acknowledges, understands and agrees that the Reverter set forth in this Section 3.1 (l)(i)(A) was included in the County Deed and, as such, was included in the Redevelopment Agreement, the Original Deed and the Deed attached to the Redevelopment Agreement as **Exhibit 4**. In event the County consents, by County Ordinance, to release the reverter provision set forth in Section 4 of the County Deed, and records a document with the County Clerk's Office in the County Deed Indices, or produces a document in recordable form to the Borough to be recorded in County Clerk's Office in the County Deed Indices, removing the reverter provision set forth in Section 4 of the County Deed (the "**Amended County Deed**"), then upon recording of the Amended County Deed with the County Clerk's office in the County

Deed Indices, the Borough agrees, at the Redeveloper's sole cost and expense, to: (1) relinquish the Borough's Reverter right set forth in this Section 3.1 (l)(i)(A), the Redevelopment Agreement, the Original Deed, and the Deed attached to the Redevelopment Agreement as **Exhibit 4**, and record, at the Redeveloper's cost, a document or amended deed in recordable form with the County Clerk's office releasing said Reverter, and (2) execute an amendment to the Redevelopment Agreement, if necessary to effectuate said release. Notwithstanding the foregoing, all other restrictive covenants and Liquidated Damages set forth in this Project Covenant, the Redevelopment Agreement and Deed shall remain in full force and effect unless otherwise agreed to in writing by the Parties.

(m) Redeveloper hereby affirms, represents, covenants and agrees that the Limitations set forth in Section 3.1 (l) herein and Section 8.03 (l) of the Redevelopment Agreement shall run with the land and survive termination of the Redevelopment Agreement and Completion of the Project.

3.2. **Effect and Duration of the Redeveloper Covenants.** The covenants set forth in Section 3.1 hereof shall be covenants running with the Project Area until the Project is Completed, all in accordance with the Redevelopment Agreement, and they shall, and except only as otherwise specifically provided in the Redevelopment Agreement, be binding to the fullest extent permitted by Applicable Law and equity, for the benefit and in favor of, and enforceable by, the Borough, its successors and assigns, and any successor in interest to the Project, or any part thereof, against the Redeveloper, its successors and assigns and every successor in interest therein; provided, however, that such covenants shall not be binding on any Mortgagee except in accordance with the terms of Article XII of the Redevelopment Agreement. Such agreements and covenants, however, shall be binding on the Redeveloper itself, and each successor in interest to the Redeveloper, respectively, only for such period as the Redeveloper or such successor shall be in possession or occupancy of the Project Area, the buildings and structures thereon, or any part thereof.

3.3. **Enforcement of the Covenants.** The Borough and its successors and assigns shall be deemed beneficiaries of the agreements and covenants contained in this Project Covenant, both for and in their own right, and 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 have been provided. Such agreements and covenants shall run in favor of the Borough for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Borough has at any time been, remains, or is an owner of any land or interest therein, or in favor of which such agreements and covenants relate. The Borough shall have the right, in the event of any breach of any such agreement or covenant, to terminate the Redevelopment Agreement in accordance with Section 13.03 thereof.

3.4. **Completion of Project.** Upon redevelopment of the Project Area and completion of the Project, the conditions that were found and determined to exist at the time the Project Area was determined to be in need of redevelopment shall be deemed to no longer exist, the land and improvements thereon shall no longer be subject to eminent domain as a result and the conditions and requirements of *N.J.S.A. 40A:12A-9* shall be deemed to have been satisfied with respect to the Project or any applicable portion thereof. The covenants contained herein shall

terminate and this Project Covenant will be discharged of record upon Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 9.02 thereof for the Project; provided, however, that the Redeveloper's indemnity, defense and hold harmless obligations provided under Section 11.01 of the Redevelopment Agreement shall survive the termination of the Redevelopment Agreement.

[Signature page follows.]

Exhibit A
LEGAL DESCRIPTION

EXHIBIT 3

FORM OF CERTIFICATE OF COMPLETION

Record and Return to:

CERTIFICATE OF COMPLETION

(respecting Block 147, Lot 1 (formerly Lots 1, 1.01, 2 & 3) and Block 145, Lot 10.01
on the tax maps of the Borough of Rutherford)

Pursuant to Section 9.02 of the Redevelopment Agreement by and between the Borough of Rutherford (the “**Borough**”) and Native Development Urban Renewal, LLC (the “**Redeveloper**”), dated as of ____, 202__ (the “**Effective Date**”), (the “**Redevelopment Agreement**”), the undersigned, as of the Effective Date, certifies that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of [____], in accordance with the Redevelopment Agreement and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for the Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) such Completion has been further evidenced by a written certificate of the Redeveloper and a certificate of the Redeveloper’s engineer evidencing Completion of the Project, which certificates are attached hereto as **Schedule 1**:

(iv) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Law; and

(v) a copy of any Certificate of Occupancy issued with respect to any portion or portions of the Project for which a Certificate of Occupancy is required is attached hereto as **Schedule 2**.

The conditions determined to exist at the time the Project Area was determined to be an “area in need of redevelopment” under the Redevelopment Law no longer exist with respect to the Project Area. The Project Area shall no longer be subject to (i) any covenant running with

the land covered by this Certificate of Completion for the benefit of the Borough, and (ii) eminent domain for purposes of redevelopment as a result of those determinations.

The covenants and restrictions set forth in the Declaration recorded in the office of the Bergen County clerk on [] in Deed Book [], at Page [] (the "Declaration"), except those covenants and restrictions listed in Section [] of the Declaration, are hereby discharged of record and is void and of no further force and effect.

This certificate is given without prejudice to any rights against third parties which exist on the Effective Date or which may subsequently come into being.

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion as to the Project to be executed as of the [] day of [].

WITNESS: **BOROUGH OF RUTHERFORD**

By: _____ By: _____

Acknowledgment

STATE OF NEW JERSEY :
:SS
COUNTY OF BERGEN :

On this [] day of [] before me, personally appeared _____, the _____ of the Borough of Rutherford, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and s/he acknowledged that s/he executed the foregoing instrument as the act of the entity and that s/he was authorized to execute the foregoing instrument on behalf of the entity.

Notary Public of the State of New Jersey

Schedule 1

REDEVELOPER'S CERTIFICATE

Pursuant to the Redevelopment Agreement by and between the Borough of Rutherford (the "**Borough**") and Native Development Urban Renewal, LLC (the "**Redeveloper**"), dated as of _____, 202____, (the "**Redevelopment Agreement**"), the Redeveloper certifies as follows to the best of its knowledge information and belief (capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of [_____], in accordance with the Borough building and construction code, the Redevelopment Agreement, the Redevelopment Plan and in compliance with Applicable Laws so that the Project in its entirety may, in all material respects, be used and operated under the applicable provisions of the Redevelopment Agreement;

(ii) all permits, licenses and approvals that are required in order for Redeveloper to Complete the Project or such other work or action to which such term is applied are, to the extent so required, in full force and effect;

(iii) Redeveloper has performed or has caused to be performed all of its duties and obligations under the Redevelopment Agreement with respect to the Project;

(iv) attached hereto is a certificate of [_____], Redeveloper's engineer, evidencing completion and certification of the Project; and

(v) the Project is being operated in accordance with the terms and provisions of the Redevelopment Agreement, the Redevelopment Plan and Applicable Law.

**NATIVE DEVELOPMENT URBAN
RENEWAL, LLC**

By: _____
Name: Charles Olivo
Title: Managing Member

Schedule 2

CERTIFICATE OF OCCUPANCY

EXHIBIT 4

DEED

RECORD AND RETURN TO:
Jason Tuvel, Esq.
Prime & Tuvel
1 University Plaza Dr, Suite 500
Hackensack, New Jersey 07601

Prepared by:
Kevin P. McManimon, Esq.

CORRECTIVE DEED

(To correct error in Deed from Grantor to Grantee, Dated October 1, 2021 and Recorded in the Bergen County Clerk's Office on ____, 2021 in Deed Book ____, Page ____).

This Deed is dated as of _____, 2023,

BETWEEN

Borough of Rutherford, a public body corporate and politic of the State of New Jersey having its address at 176 Park Avenue, Rutherford, NJ 07070, referred to as the "**Grantor**",

and,

Native Center Development, LLC a limited liability company organized under the laws of the State of New Jersey, having its address at 92 Park Avenue, Rutherford, New Jersey, 07070, referred to as the "**Grantee**".

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

1. Purpose of Corrective Deed. The purpose of this Corrective Deed is to correct a typographical error in Paragraph 4.B. of the Deed between the Grantor and Grantee, dated October 1, 2021, recorded in the Bergen County Clerk's Office on _____, 2021 in Deed Book ____, Page _____. That paragraph in said Deed incorrectly identified the Grantor (referenced therein as the "**Borough**") as the future operator of the Williams Center Theater. This Corrective Deed correctly identifies the Grantee as the operator of the Williams Center Theater.

2. Transfer of Ownership. The Grantor grants and conveys all of its rights, interest and ownership in the property (the "**Property**") described below to the Grantee. This transfer is made for the sum of **ONE and 00/100 DOLLARS (\$1.00) (the "Purchase Price")**. The Grantor acknowledges receipt of this money.

3. Tax Map Reference. (N.J. S.A. 46:15-1.1) Municipality of the Borough of Rutherford, County of Bergen, New Jersey, Block 147, Lots 1.

4. Property. The Property consists of the land and all the buildings and structures on the land in the **Borough of Rutherford, County of Bergen, and State of New Jersey**. The legal description of the Property is:

annexed hereto as *Schedule A* and made a part hereof.

BEING the same premises conveyed to the Borough of Rutherford under Deed from the County of Bergen, a body politic and corporate, dated August 10, 2021 and recorded in the Bergen County Clerk's Office on August 28, 2021 in Deed Book V4340, Page 1198.

FURTHER BEING the same premises conveyed to County of Bergen, a body politic and corporate of the State of New Jersey under Deed from William Carlos Williams Center for the Performing Arts, Inc., dated September 17, 1987, recorded in the Bergen County Clerk's Office on October 19, 1987 in Deed Book 7153, Page 535.

The within sale and purchase is subject to all current and future zoning requirements as imposed by the Borough of Rutherford as well as all easements, setbacks, encroachments, restrictions of record and such state of facts as an accurate survey may disclose as well as all municipal, County, State and Federal regulations governing the use of the Property. Grantor makes no representation as to the current or future state of any of the above items or as to what type of development is or will be permitted relative to the Property.

The address of the Property is: 15 Sylvan Street, Rutherford, New Jersey 07070

5. Local Redevelopment and Housing Law. This conveyance is made in accordance with the provisions of the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.

6. Deed Restrictions.

- A. Reverter.** The subject Property is being transferred to the Grantee with the limitation that said land or buildings shall be used only for Public Purposes (as defined below) of the Municipality, which may include but not be limited to, affordable housing units, along with other residential and/or commercial units and for cultural uses and that if said land or buildings are not used in accordance with said limitation, title thereto shall revert back to the Grantor without any entry or reentry made thereon on behalf of the Grantor, on notice from the Grantor to the Grantee with an opportunity for the Grantee to cure.

- B. Failure to rehabilitate or operate the Williams Center Theater.** The Property is located in an area within the Borough of Rutherford identified and designated as "area in need of redevelopment" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "**Redevelopment Law**"). The Williams Center Theater (the "**Williams Center Theater**"), which currently consists of a black box theater, a cinema complex, and the Williams Center Theatre, is situated upon the Property. The Grantee has long desired to rehabilitate the Williams Center Theater as a catalyst for the economic and artistic renaissance of the Borough of Rutherford. The within conveyance is being made with the understanding that Grantee will redevelop the Property pursuant to the Redevelopment Law and in accordance with the "Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Ettrick Terrace Parking Area Borough of Rutherford", dated December 2020 (as subsequently amended, the "**Redevelopment Plan**"), by constructing thereon a redevelopment project in a 7-story building consisting of (1) residential units, and retail space (the "**Residential/Retail Component**"), and (2) partial or total rehabilitation and preservation of the Williams Center Theater to make the theater an unparalleled arts and film destination in the region, which will include major upgrades and comprehensive renovations to the building, as well as improvements to landscaping surrounding the site and after rehabilitation, the Grantee will fully operate and maintain the Williams Center Theater as a black box theater, a cinema complex, and the Williams Center Theatre, which shall be open to the public (the "**Theater**

Component” and together with the Residential/Retail Component, collectively, the **“Project”** or the **“Public Purposes”**). Grantee’s proposed, and anticipated, rehabilitation and operation of the Williams Center Theater through the Theater Component of the Project was a material inducement for the Grantor to convey the Property to Grantee, and said inducement is reflected in the Purchase Price of the Property. If Grantee, its successors, heirs, assigns or transferees: (a) fail to complete the Theater Component within five (5) years from the effective date of this Deed, or (b) if, for a period greater than six (6) continuous months (the only exception being the construction of, or pre-development in connection with the construction of the Theater Component pursuant to a validly executed Redevelopment Agreement by and between the Grantor and the Grantee), due solely to the actions or omissions of Grantee (and not to the failure of the Grantee or any tenant or occupant to operate same as required) the Williams Center Theater ever ceases to (i) function as a black box theater, a cinema complex, and the Williams Center Theatre for a period greater than six (6) continuous months, absent force majeure or such other factors outside the reasonable control of Grantee, including, without limitation, casualties and a pandemic (collectively **“Force Majeure Events”**), or (ii) be open for use and enjoyment by the public for a period greater than six (6) continuous months, absent Force Majeure Events; then the Grantor will have suffered immeasurable loss, by and through the loss of said use and enjoyment to the community, and in such an event, Grantee, its successors, heirs, assigns, and transferees agree to pay the Grantor the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (the **“Theater Liquidated Damages Amount”**) as liquidated damages and not as penalty. The Grantor and Grantee agreed that Grantor’s damages resulting from Grantee’s, its successors’, heirs’, assigns’, or transferees’ failure to construct the Theater Component and operate the Williams Center are difficult, if not impossible, to determine and the Theater Liquidated Damages Amount is a fair and reasonable estimate of those damages which has been agreed to by the Grantor and Grantee in an effort to cause the amount of such damages to be certain. The Grantor shall be entitled to Attorney fees and costs from Grantee, its successors, heirs, assigns or transferees, if any, that the Grantor incurs in connection with any effort to recover the Theater Liquidated Damages Amount. **The Theater Liquidated Damages Amount is in addition to and not in limitation of any re-sale amount due to the Grantor upon future sale of the Property as set forth in herein.**

- C. The within restrictive use covenants shall run with the land and shall be binding upon and shall inure to the benefit of the Grantor and Grantee, and their respective subsidiaries, affiliates, legal representatives, heirs, successors and assigns, as applicable.
- D. The intention of the Grantor is that the covenants and restrictions herein are intended to last in perpetuity.

7. Restrictive Covenant. In the event that the Property, at any time prior to the completion of construction of the Project, is sold by the Grantee to another Party for an amount greater than \$1,000.00 the Grantee shall be obligated to pay Seller in accordance with the following schedule:

Sale price	Amount Due Seller Upon Sale
\$1,001.00 to \$999,999.99	Fifty (50%) Percent of the Sale Price
\$1,000,000.00 to \$1,999,999.99	\$500,000.00
\$2,000,000.00 to 3,999,999.99	\$750,000.00
\$4,000,000.00 or more	\$1,000,000.00

This within restrictive re-sale covenant shall be binding upon and shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable, only but shall not apply to any third-party successor of interest who acquires such interest after completion of the Project. **The amounts set forth in this section are in addition to, and not in limitation of, any Theater Liquidated Damages Amount due to the Grantor as set forth herein.**

8. Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

9. Signatures. The Grantor and Grantee sign this Deed as of the date at the top of the first page.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

WITNESS OR ATTEST: By: _____ Name: Margaret Scanlon Title: Borough Clerk	BOROUGH OF RUTHERFORD By: _____ Frank Nunziato, Mayor
	NATIVE CENTER DEVELOPMENT, LLC By: _____ Charles Olivo, Managing Member

STATE OF NEW JERSEY

: ss

COUNTY OF BERGEN

I CERTIFY that on this ___ day of _____, 2023, came before me, Margaret Scanlon, and acknowledged under oath, to my satisfaction, that:

- a) She is the Municipal Clerk of the Borough of Rutherford (the “**Borough**”), the Municipal Corporation named in the attached Deed;
- b) She is the attesting witness to the signing of this Deed by the proper Municipal Officer, who is Frank Nunziato, the Mayor of the Borough;
- c) This Deed was signed and delivered by the Borough as its voluntary act;
- d) She knows the proper seal of the Borough which is affixed to this Deed;
- e) The Borough made this Deed for ONE DOLLAR (\$1.00) as the full and actual consideration paid or to be paid for the transfer of title (Such consideration is defined in N.J.S.A. 46:15-5); and,
- f) She signed this proof to attest to the truth of these facts.

Notary Public of the State of New Jersey

STATE OF NEW JERSEY

: ss

COUNTY OF BERGEN

I CERTIFY that on this ___ day of _____, 2023, came before me, Charles Olivo, and acknowledged under oath, to my satisfaction, that:

- a) He is the Managing Member of Native Center Development, LLC, the Grantee named in the attached Deed; and
- b) This Deed was signed and delivered by Native Center Development, LLC as its voluntary act.

Notary Public of the State of New Jersey

SCHEDULE A

SCHEDULE A
DESCRIPTION OF THE PROPERTY

**DEED DESCRIPTION
BLOCK 147 LOT 1
BOROUGH OF RUTHERFORD
BERGEN COUNTY, NEW JERSEY**

BEGINNING at a point being the intersection of the northeasterly line of Spring Dell (60' wide as per Filed Map No. 188) and the southeasterly line of Sylvan Street (60' wide as per Filed Map No. 188) as marked by a Mag Nail with washer and running, thence:

- 1) Along said southeasterly line of Sylvan Street, North 29°24'20" East, a distance of 100.56 feet to a point marked by a cross-cut; thence
- 2) Along the rear line of lots fronting on Glen Road (60' wide as per tax map), South 66°38'40" East, a distance of 246.70 feet to a point marked by a Mag Nail with washer; thence
- 3) South 23°21'20" West, a distance of 100.00 feet to a point marked by a cross-cut on the aforementioned northeasterly line of Spring Dell; thence
- 4) Along said northeasterly line, North 66°38'40" West, a distance of 257.30 feet to the point of BEGINNING.

Parcel contains 25,200 S.F. or 0.5785 acres, more or less.

EXHIBIT 5

REDEVELOPER OWNERSHIP STRUCTURE

NATIVE DEVELOPMENT URBAN RENEWAL, LLC, a New Jersey limited liability company, is owned by:

Charles D. Olivo – 100%
204 Jackson Avenue
Rutherford, New Jersey 07070

EXHIBIT 6
CONCEPT PLAN

EXHIBIT 7

**REDEVELOPER CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED
ACTIVITIES IN RUSSIA OR BELARUS**



**CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES
IN RUSSIA OR BELARUS PURSUANT TO P.L.2022, c.3**

CONTRACT / BID SOLICITATION TITLE _____

CONTRACT / BID SOLICITATION No. _____

CHECK THE APPROPRIATE BOX

I, the undersigned, am authorized by the person or entity seeking to enter into or renew the contract identified above, to certify that the Vendor/Bidder is not engaged in prohibited activities in Russia or Belarus as such term is defined in [P.L.2022, c.3](#),¹ section 1.e, except as permitted by federal law.

I understand that if this statement is willfully false, I may be subject to penalty, as set forth in P.L.2022, c.3, section 1.d.

OR

I, the undersigned am unable to certify above because the person or entity seeking to enter into or renew the contract identified above, or one of its parents, subsidiaries, or affiliates may have engaged in prohibited activities in Russia or Belarus. A detailed, accurate and precise description of the activities is provided below.

Failure to provide such description will result in the Quote being rendered as non-responsive, and the Department/Division will not be permitted to contract with such person or entity, and if a Quote is accepted or contract is entered into without delivery of the certification, appropriate penalties, fines and/or sanctions will be assessed as provided by law.

Description of Prohibited Activity

Attach Additional Sheets If Necessary.

If you certify that the bidder is engaged in activities prohibited by P.L. 2022, c. 3, the bidder shall have 90 days to cease engaging in any prohibited activities and on or before the 90th day after this certification, shall provide an updated certification. If the bidder does not provide the updated certification or at that time cannot certify on behalf of the entity that it is not engaged in prohibited activities, the State shall not award the business entity any contracts, renew any contracts, and shall be required to terminate any contract(s) the business entity holds with the State that were issued on or after the effective date of P.L. 2022, c. 3.

CDU

9-8-23

Signature of Authorized Representative

Date

Charles D Olivo Managing Member

Print Name and Title of Authorized Representative

Native Development Urban Renewal, LLC

Vendor Name

¹ Engaged in prohibited activities in Russia or Belarus" means (1) companies in which the Government of Russia or Belarus has any direct equity share; (2) having any business operations commencing after the effective date of this act that involve contracts with or the provision of goods or services to the Government of Russia or Belarus; (3) being headquartered in Russia or having its principal place of business in Russia or Belarus, or (4) supporting, assisting or facilitating the Government of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit.

EXHIBIT 8

PURCHASE AND SALE AGREEMENT DATED AUGUST 10, 2021

AGREEMENT OF PURCHASE AND SALE

PROPERTY:

**15 Sylvan Street Rutherford, New Jersey
Block 147 Lot 1**

By and Between:

Borough of Rutherford

And

Native Center Development, LLC

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made and entered into as of this 10th day of August, 2021 ("**the date hereof**"), by and between the **BOROUGH OF RUTHERFORD**, a body corporate and politic of the State of New Jersey, in the County of Bergen, having its address at 176 Park Avenue, Rutherford, New Jersey 07070 (hereinafter referred to as "**Borough**"), and **Native Center Development, LLC**, having its address at 92 Park Avenue, Rutherford, New Jersey 07070, (hereinafter referred to as "**Purchaser**"). the Borough and Purchaser may be referred to individually as a "**Party**" or collectively as the "**Parties.**"

RECITALS

WHEREAS, the Borough is the contract purchaser of certain real property located in the Borough of Rutherford, County of Bergen, New Jersey, consisting of approximately 0.5785 acres commonly known as 15 Sylvan Street, Rutherford, New Jersey, and designated as Block 147, Lot 1, on the official Tax Map of the Borough of Rutherford; being more particularly described in *Exhibit A* attached hereto (hereinafter collectively referred to as the "**Property**"); and

WHEREAS, the Williams Center Theater (the "**Williams Center Theater**"), which currently consists of a black box theater, a cinema complex, and the Williams Center Theatre, is situated upon the Property; and

WHEREAS, the Borough has long desired to rehabilitate the Williams Center Theater as a catalyst for the economic and artistic renaissance of the Borough of Rutherford; and

WHEREAS, pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the "**Redevelopment Law**"), on August 22, 2016, the Borough adopted Resolution #182-2016 designating certain properties within the Borough of Rutherford, including the Property, (collectively, the "**Theater District Redevelopment Area**") as a "non-condemnation area in need of redevelopment/rehabilitation" with a condition that any rehabilitation of the Williams Center Site (Block 147) is to include a theatre aspect; and

WHEREAS, on June 28, 2021, the Borough adopted an ordinance approving and adopting a redevelopment plan for the Redevelopment Area, entitled "Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Ettrick Terrace Parking Area Borough of Rutherford", date December 2020 (the "**Redevelopment Plan**"); and

WHEREAS, the County of Bergen, a body corporate and politic of the State of New Jersey, having its address at One Bergen County Plaza, 5th Floor, Hackensack, New Jersey 07601 (the "**County**") owns the Property; and

WHEREAS, the County determined that the Property is no longer needed for public use and determined to offer the Property for sale at public auction; and

WHEREAS, the County subsequently determined to convey the Property directly to the Borough in order to facilitate the redevelopment thereof; and

WHEREAS, the Borough and the County negotiated a purchase and sale agreement (the “**County PSA**”) pursuant to which the County will sell, and the Borough will purchase the Property for a nominal amount subject to, among other conditions, the covenant that such property be used for a public purpose, including the preservation of a theatre-related use thereon; and

WHEREAS, Buyer proposes to redevelop the Property with a project in a 7-story building consisting of (1) residential units and retail space (the “**Residential/Retail Component**”), and (2) partial or total rehabilitation and preservation of the Williams Center Theater to make the theater an unparalleled arts and film destination in the region, which will include major upgrades and comprehensive renovations to the building, as well as improvements to landscaping surrounding the site and after rehabilitation, the Buyer will fully operate and maintain the Williams Center Theater, which shall be open to the public (the “**Theater Component**” and together with the Residential/Retail Component, collectively, the “**Project**”) in accordance with the Redevelopment Plan; and

WHEREAS, the Purchaser’s proposed Project including, specifically, the Theater Component constitutes a public purpose under the County PSA; and

WHEREAS, the Borough and Purchaser negotiated this Agreement for the purchase of the Property, pursuant to which the Borough will sell, and the Purchaser will purchase the Property for a nominal amount subject to, among other conditions, the covenant that such property be used for a public purpose, including the preservation of a theatre-related use thereon, in particular, the Theater Component of the Project; and

WHEREAS, the Borough has determined that in order to coordinate the redevelopment of the Property in the most timely and efficient manner, and in the manner most preferred by the Borough, it is in the best interests of the Borough to designate the Purchaser as the conditional redeveloper of the Williams Center Property, pending the negotiation and execution of a redevelopment agreement (the “**Redevelopment Agreement**”); and

WHEREAS, on August 9, 2021, the Borough adopted Resolution Nos. 147 and 148 authorizing execution of the County PSA, this Agreement, a related funding agreement and designating Purchaser as conditional redeveloper of the Property for a period of one hundred eighty (180) days pending execution of a Redevelopment Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual terms, provisions, covenants and agreements set forth herein, as well as the sums to be paid by Purchaser to the Borough, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Purchaser and the Borough agrees as follows:

1. **PURCHASE AGREEMENT.** The Borough agrees to sell and the Purchaser agrees to buy the Property described in this contract.
2. **PROPERTY.** The Property to be sold consists of: (a) the land and all the buildings, other improvements and fixtures on the land; (b) all of the Borough’s rights

relating to the land; and (c) all personal property specifically included in this contract. The real property to be sold is commonly known as 15 Sylvan Street, Rutherford, New Jersey also designated on the official tax map of the Borough of Rutherford as Block 147 Lot 1; being more particularly described in *Exhibit A* attached hereto (hereinafter collectively referred to as the "**Property**").

The Property is sold and is to be conveyed on the Closing Date, subject to the following (the "**Permitted Encumbrances**"):

(i) all easements, covenants and restrictions of record provided same do not render title to the Property uninsurable or unmarketable and do not interfere with its present use.

(ii) zoning and building regulations, laws, ordinances and requirements adopted by any governmental or municipal authority having jurisdiction thereof, and amendments and additions thereto which relate to the property;

3. **PURCHASE PRICE.** The purchase price is ONE AND 00/100 DOLLARS (\$1.00) (the "**Purchase Price**").

4. **PAYMENT OF PURCHASE PRICE.** The Purchaser will pay the Purchase Price as follows:

Upon signing of this Contract	\$0
Amount of Mortgage	\$0
Balance due at Closing	\$1.00

5. **Restrictive Covenants.**

(A) Use of the Property for Public Purposes, Liquidated Damages, and Adjustment for Inflation.

i. Public Purpose. The subject Property is being transferred to the Purchaser with the limitation that said land or buildings shall be used for the following public purposes of the Municipality including: redevelopment of the Property in accordance consistent with the Project (referenced above) and in accordance with the Redevelopment Law and the Redevelopment Plan, constructing the Theater Component and operating the rehabilitated Williams Center Theater, including a black box theater, a cinema complex, and Williams Center Theater, a venue that is open for use, patronage, and enjoyment by the public (the "**Public Purpose**").

ii. Theater Liquidated Damages Amount. Purchaser understands, acknowledges and agrees that Purchaser's proposed, and anticipated, rehabilitation and operation of the Williams Center Theater through the Theater Component of the Project was a material inducement for the Borough to enter into this Agreement, and said inducement is reflected in the Purchase Price. Further, Purchaser understands, acknowledges and agrees that if

Purchaser: (a) fails to complete the Theater Component within five (5) years from the date hereof, or (b) if, for a period greater than six (6) continuous months (the only exception being the construction of, or pre-development in connection with the construction of the Theater Component pursuant to validly executed Redevelopment Agreement by and between the Borough and the Purchaser), due solely to the actions or omissions of Grantee (and not to the failure of the Borough or any tenant or occupant to operate same as required) the Williams Center Theater ever ceases to (i) function as a black box theater, a cinema complex, and the Williams Center Theater for a period greater than six (6) continuous months, absent force majeure or such other factors outside the reasonable control of Purchaser, including, without limitation, casualties and a pandemic (collectively “Force Majeure Events”), (ii) be open for use and enjoyment by the public for a period greater than six (6) continuous months absent Force Majeure Events; then the Borough will have suffered immeasurable loss, by and through the loss to the community, and in such an event, Purchaser, its successors, heirs and assigns agree to pay the Borough the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (the “**Theater Liquidated Damages Amount**”) as liquidated damages and not as penalty. The Borough and Purchaser agree that Borough’s damages resulting from Purchaser’s failure to construct the Theater Component and operate the Williams Center are difficult, if not impossible, to determine and the Theater Liquidated Damages Amount is a fair estimate of those damages which has been agreed to by the Parties in an effort to cause the amount of such damages to be certain. The Borough shall be entitled to Attorney fees and costs from Purchaser, if any, that the Borough incurs in connection with any effort to recover the Theater Liquidated Damages Amount. **The Theater Liquidated Damages Amount is in addition to and not in limitation of any re-sale amount due to the Borough upon future sale of the Property as set forth in Section 5 (B) herein.**

iii. Adjustment for Inflation. The Theater Liquidated Damages Amount will be adjusted on an annual basis, as of the anniversary of the date hereof, to account for inflation. The adjustment to the Theater Liquidated Damages Amount will be made on the basis of the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for All Urban Consumers (CPI-U), “all items” not seasonally adjusted (the “**Index**”) and in accordance with the Consumer Price Index (CPI) Inflation Calculator, as described in U.S. Bureau of Labor Statistics, https://www.bls.gov/data/inflation_calculator.htm (the “**Calculator**”). In the event that the Bureau of Labor Statistics no longer maintains the Index or Calculator, a comparable index or calculator, as applicable, measuring or calculating inflation, as applicable, published by a responsible financial periodical or recognized authority, as reasonably determined by Seller, shall be used. There will be no decrease to the dollar amounts in the case of deflation.

iv. The restrictive use covenant set forth in this section shall also be set out in the Deed, a copy of which is attached hereto as **Exhibit B** and made a part hereof, and run with the land and shall be binding upon and (except as expressly provided otherwise herein) shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable. The intention of the Parties is that the covenants and restrictions are intended to last in perpetuity, except as expressly provided otherwise herein.

(B) **Re-Sale of the Property.** The Property is being transferred to the Purchaser for the sum of \$1.00 subject to the restrictive covenant set forth above. However, in the event that the Property, at any time prior to the completion of construction of the Project in accordance with the terms of the Redevelopment Agreement is sold by the Purchaser to another Party for an amount greater than \$1,000.00 the Purchaser shall be obligated to pay the Borough in accordance with the following:

Sale price Sale	Amount Due the Borough Upon
\$1,001.00 to \$999,999.99 Price	Fifty (50%) Percent of the Sale
\$1,000,000.00 to \$1,999,999.99	\$500,000.00
\$2,000,000.00 to 3,999,999.99	\$750,000.00
\$4,000,000.00 or more	\$1,000,000.00

This within restrictive re-sale covenant shall also be set out in the Deed, a copy of which is attached hereto and made a part hereof, and shall be binding upon and (except as expressly provided otherwise herein) shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable, only but shall not apply to any third party successor of interest who acquires such interest after completion of construction of the Project. **The amounts set forth in this section are in addition to, and not in limitation of, the Purchaser's obligation to pay the Theater Liquidated Damages Amount as set forth in Section 5(a).**

(C) This Article 5 shall survive Closing.

6. **TIME AND PLACE OF CLOSING.** The Purchaser and the Borough agree that the closing of title to the Property (the "**Closing**") shall take place no later than September 7, 2021, 1:30 pm (the "**Closing Date**") at the office of the Borough or at such other location as agreed to by the Parties. The Closing Date set forth herein shall be **TIME IS OF THE ESSENCE**. Purchaser understands, acknowledges, and agrees that Closing is expressly contingent on the Borough acquiring the Property from the County.

The Borough, at the Closing, shall deliver to the Purchaser in exchange for the Purchase Price, the following:

- the Deed (as defined herein)
- Affidavit of Title
- Borough's Residency Certificate (if required)
- Affidavit of Consideration
- Possession of the Property to Purchaser
- Any additional documents mutually agreed upon by Borough and Purchaser to be necessary to consummate the Sale

7. **TRANSFER OF OWNERSHIP.** At the Closing, the Borough will transfer ownership of the Property to the Purchaser. The Borough will give the Purchaser a

properly executed Deed with covenants against grantor's acts along with an Affidavit of Title.

8. TYPE OF DEED. A Deed is a written document used to transfer ownership of the Property. In this sale, the Borough agrees to provide, and the Purchaser agrees to accept a Deed known as Bargain and Sale with covenants against grantors' acts (the "Deed").

9. PERSONAL PROPERTY AND FIXTURES. Many items of Property become so attached to a building or other real property that they become a part of it. These items are called fixtures. They include such items as fireplaces, patios and built-in-shelving. All fixtures are INCLUDED in this sale unless they are listed below as being EXCLUDED.

(a) The following items are included in this sale:

(b) The following are excluded from this sale.

10 Closing Costs

Cost	Responsible Party
Title Cost	Purchaser
Premium for Title Policy	Purchaser
Costs of survey and/or any revisions, modification or re-certifications thereto	Purchaser
Costs for UCC Searches	Purchaser
Recording Fees	Purchaser
Realty Transfer Fee	NONE
Real Estate Sales Commission to Broker	NONE
Mansion Tax, if applicable	Purchaser

11 Notice Addresses

Borough:	Copy to:
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Borough of Rutherford Municipal Building 176 Park Avenue Rutherford, New Jersey 07070 Attn: Borough Clerk	Kevin P. McManimon, Esq. McManimon, Scotland & Baumann, LLC 75 Livingston Avenue, 2 nd Floor Roseland, New Jersey 07068 Phone: (973) 622-4869 Fax: (973) 712-1440 Email: kmcmanimon@msbnj.com
Purchaser:	Copy to:
Native Center Development LLC Attn: Charles Olivo	Paul Gregory, Esq. Gregory Legal Group 52 Maple Avenue Morristown, New Jersey 07960 Phone: (973) 559-5915 Fax: (888) 567-4984 Email: pgregory@gregorylegalgroup.com

12 Disclaimers by Borough. Except as expressly set forth in this Agreement, it is understood and agreed that the Borough has not at any time made, and is not now making, and it specifically disclaims, any warranties or representations of any kind or character, express or implied, with respect to the Property, including, but not limited to, warranties or representations as to (i) the physical condition of the Property, including without limitation, patent or latent defects; (ii) the applicability to the Property of, or the compliance of the Property with, any particular statutes, laws, codes, ordinances, regulations or rules, including, without limitation, zoning building and health codes, regulations and ordinances including Environmental Laws; (iii) the presence in, at, under or about the Property of any “hazardous substances” or “hazardous wastes” as such terms are defined in any federal, state or local status, law, rule, ordinance or regulation relating to the protection of the environment, including, but not limited to the Resource Conservation & Recovery Act, 42 U.S.C. §9601 *et seq.*, as amended, the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §9601, as amended; the Industrial Site Recovery Act, N.J.S.A 13:1k-6, *et seq.*, as amended; the New Jersey Spill Compensation and Control Act, N.J.S.A 58:10-23.11, *et seq.*, as amended; or the New Jersey Underground Storage of Hazardous Substances Act N.J.S.A 58:10A-21, *et seq.*, as amended; (“**Environmental Laws**”); and (iv) compliance of the Property or any current or prior use thereon with any Environmental Laws, environmental matters relating to the Property or any portion thereof, including, without limitation, the presence of Hazardous Substances in, on, under or in the vicinity of the Property, (v) geological conditions, including, without limitation, subsidence, subsurface conditions, water table, underground water reservoirs, limitations regarding the withdrawal of and geologic faults and the resulting damage of past and/or future faulting, (vi) whether, and to the extent to which the Property or any portion thereof is affected by any stream (surface or underground), body of water, wetlands, flood prone area, flood plain, floodway or special flood hazard, (vii) drainage, (viii) soil conditions, including the existence of instability, past soil repairs, soil additions or conditions of soil fill, or susceptibility to landslides, or

the sufficiency of any undershoring, (ix) the presence of endangered species or any environmentally sensitive or protected areas, (x) zoning or building entitlements to which the Property or any portion thereof may be subject to, in the past, present or in the future, (xi) the availability of any utilities to the Property or any portion thereof including, without limitation, water, sewage, gas and electric, (xii) usages of adjoining property, (xiii) access to the Property or any portion thereof, (xiv) the value, compliance with any plans and specifications, size, location, age, use, design, quality, description, suitability, structural integrity, operation, title or physical or financial condition of the Property or any portion thereof, or any income, expenses, charges, liens, encumbrances, rights or claims on or affecting or pertaining to the Property or any part thereof, (xv) the condition or use of the Property or compliance of the Property with any or all past, present or future federal, state or local ordinances, rule regulations or laws, building, fire or zoning ordinances, codes or other similar laws, (xvi) the existence or non-existence of underground storage tanks, surface impoundments, or landfills, (xvii) the merchantability of the Property or fitness of the Property for any particular purpose, (xviii) tax consequences, or (xix) any other matter or thing with respect to the Property.

13. PHYSICAL CONDITIONS OF THE PROPERTY. Purchaser acknowledges and agrees

that upon Closing, the Borough shall sell and convey to Purchaser and Purchaser shall accept the Property "**AS IS, WHERE IS, WITH ALL FAULTS**", except to the extent expressly provided otherwise in this Agreement or any document executed by the Borough and delivered to Purchaser at Closing. Except as expressly set forth in this Agreement, Purchaser has not relied and will not rely on, and the Borough has not made and is not liable for or bound by, any express or implied warranties, guarantees, statements, representations or information pertaining to the Property or relating thereto made or furnished by the Borough, or any agent or third party representing or purporting to represent the Borough, to whomever made or given, directly or indirectly, or in writing, except for knowledge obtained by the Borough about the condition of the Property and not otherwise conveyed to the Purchaser. Purchaser is relying solely on its own expertise and that of Purchaser's consultants in purchasing the Property and shall make an independent verification of the accuracy of any documents and information provided by The Borough. Purchaser has conducted such inspections and investigations of the Property as Purchaser deems necessary, including, but not limited to, the physical and environmental conditions thereof, and shall rely upon same, or it hereby waives the right to conduct such inspections and investigations. Purchaser acknowledges and agrees that any and all on-site or off-site improvements which may be a condition of any permit and/or approval for Purchaser's intended use or redevelopment of the Property shall be the Purchaser's sole responsibility, including but not limited to, costs or obligations associated with COAH, as may be amended. The Borough makes no representation or covenant as to the ability of Purchaser to obtain approvals for redevelopment of the Property from any governmental entity, including the Borough, nor as to the conditions which may be imposed by any governmental entity with jurisdiction, including the Borough, as part of such approvals. Notwithstanding the foregoing, the Borough confirms that the Project is consistent with the Redevelopment Plan. The Borough does not represent that the Property is developable or fit for any particular purpose, and the Borough makes no representations as to the condition of the Property and does not warrant the accuracy or completeness of any information provided to Purchaser in conjunction with the auction and sale of the Property. The Purchaser has

had the opportunity to inspect the Property and Borough shall not be required to correct any violations of law or provide a Certificate of Occupancy or similar document at time of Closing, provided however as of Closing the Property will be free from any violations imposed by any governmental agency. Purchaser acknowledges that Borough has afforded Purchaser a full opportunity to conduct such investigations of the Property as Purchaser deemed necessary to satisfy itself as to the condition of the Property and the existence or non-existence or curative action to be taken with respect to any Hazardous Substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by or on behalf of the Borough or its agents or employees with respect thereto, other than such representations, warranties and covenants of the Borough as are expressly set forth in this Agreement.

In the event of a conflict between the terms of this Paragraph and the balance of this Agreement, the terms of this Paragraph shall govern.

The terms and conditions of this Paragraph shall expressly survive the Closing and not merge with the provisions of any closing documents.

14. PURCHASER'S ENVIRONMENTAL REMEDIATION AND RELEASE OF LIABILITY AND INDEMNIFICATION: Purchaser, on behalf of itself and its successors and assigns, waives its right to recover from, and forever releases and discharges the Borough, its agents, representatives, employees, officers, officials (including elected officials) and their respective heirs, successors, personal representatives and assigns and the County, its agents, representatives, employees, officers, officials (including elected officials) and their respective heirs, successors, personal representatives and assigns (collectively the "**Borough Related Parties**"), and Purchaser shall indemnify, defend and hold the Borough Related Parties from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments costs or expenses whatsoever (including, without limitation, court costs and attorneys' fees and disbursements), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with (i) the physical condition of the Property including, without limitation, the environmental condition of the Property and the presence of Hazardous Substances on, under or about the Property, and (ii) the breach by Purchaser of its obligations under this Agreement Notwithstanding the foregoing, the Purchaser shall not indemnify the Borough Related Parties for any slip and fall related claims or such other breach of contract claims as it relates to the Property for any act or omission, or occurrence prior to the date of this Agreement.

Purchaser acknowledges that there may be asbestos containing materials in buildings at the Property and that Purchaser, at its sole cost and expense, shall remove all asbestos and other Hazardous Substances from the existing buildings to the extent required by existing law, and shall be solely responsible for the demolition of all buildings and materials contained therein on the Property after the Closing, to the extent necessary for purposes of the Project.

Definitions

The following definitions shall apply as used in this Agreement

a. "**Affiliate(s)**" means, with respect to Purchaser, any Person directly or indirectly controlling, controlled by, or under common control with, Purchaser, including any other

person, directly or indirectly, controlling, controlled by, or under common control with such person. For purposes of this definition, the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities or by contract or otherwise.

b. "Claims" (or individually a "Claim") means any pending or threatened suit, claim, loss, cost, obligation, damage, liability, payment, fine, penalty, cause of action, litigation, judgment (including, but not limited to, expert fees and attorneys' fees awarded as part of a judgment), lien or expense (including, but not limited to, reasonable attorneys' fees and other litigation expenses), whether known or unknown, that may be alleged or brought by any person, Governmental Authority or governmental entity, or any administrative, arbitration, or governmental proceeding, investigation or inquiry affecting or arising out of any asset, obligation or right that is a subject of this Deed.

c. "Contamination" means the presence, whether known or unknown, at, on, under, originating or migrating from the Property of any chemical, compound, material, substance or other matter that: (a) is a flammable, corrosive, explosive, hazardous, toxic or regulated material, substance or waste, or other injurious or potentially injurious material, whether injurious or potentially injurious by itself or in combination with other materials; or (b) is controlled, designated in, regulated or governed by any Environmental Law. "Contamination" also shall include any increase in Contamination.

d. "Governmental Authority" or "Governmental Authorities" means any governmental (federal, state, local or other), regulatory, executive, legislative, judicial, or other competent authority, including without limitation, an authority responsible for the administration or collection of any tax; a body or self-regulating entity responsible for the administration of Environmental Laws, including, with respect to remediation, Remedial Action; those qualified environmental contractors and consultants given specific authority to administer or implement Environmental Laws; with respect to compliance with the Site Remediation Reform Act and achieving RAO status, a Licensed Site Remediation Professional; and a body or self-regulating entity responsible for administration of laws or regulations affecting any or all parts of the energy sector. "Governmental Authority" includes any person appointed by any of the foregoing to carry out an investigation or an inquiry.

e. "Hazardous Substances" shall mean all substances, in whatever form or concentration, which are classified as hazardous, toxic or dangerous or as pollutants or contaminants under any Environmental Laws.

f. "Purchaser-Related Parties" means Purchaser, its parent, subsidiaries, and Affiliates, and their respective owners, officers, directors, employees, agents, divisions, contractors, invitees, servants, representatives, successors and assigns, (and, if Purchaser is a natural person, its heirs and legal representatives) and any lessee, licensee, occupier, user or subsequent owner of the Property.

g. "Remedial Action" means any site investigation, study, assessment, testing, monitoring, containment, removal, transport, storage, disposal, closure, corrective action, remediation (whether active or passive), natural attenuation, bioremediation,

response, treatment, cleanup or abatement work, and operations and maintenance, whether on-site or off-site, of Contamination required to achieve the RAO.

h. "Response Action Outcome" or "RAO" means the written determination of a Licensed Site Remediation Professional (or LSRP) in the form prescribed by N.J.S.A. 58:10C-2 and any applicable rules, regulations or guidance and also shall include the written determination of any other Government Authority with jurisdiction over the Hazardous Substances at, on, under, emanating from or affecting the Property that no further environmental investigation or remediation is required.

i. "Borough" means the Borough, its officers, directors, employees, agents, divisions, contractors, invitees, servants, representatives, successors and assigns.

In the event of a conflict between the terms of this Paragraph and the balance of this Agreement, the term of this Paragraph shall govern.

The terms and conditions of this Paragraph shall expressly survive the Closing and not merge with the provisions of any closing documents.

15. DUE DILIGENCE. The Purchaser acknowledges that prior to entering into this Agreement, Purchaser had a full and fair opportunity to conduct its due diligence investigations, reviews and analysis of the Property and any and all documents relevant to the Property and available to Purchaser and that it has, in fact, performed such investigations, reviews and analysis as it determined to be necessary and reasonable. As a result of Purchaser's above referred to investigations, reviews and analysis Purchaser has determined, in its sole discretion, that it does wish to acquire the Property, without further investigation or inspection in a strictly "**AS IS, WHERE IS, WITH ALL FAULTS**" basis.

16. QUALITY OF TITLE. Purchaser shall accept such title to the Property as the Borough may be able to convey, without any reduction in or abatement of the Purchase Price and without any liability on the part of the Borough. The Purchaser accepts title to the Property strictly "**AS IS, WHERE IS, WITH ALL FAULTS**".

17. ADJUSTMENTS AT CLOSING. Taxes, rents and rent securities, interest on mortgages and municipal assessments being assumed, sewer service charges, municipal utilities, fuel oil, bottled fuel, and the like, if any, shall be apportioned and adjusted as of the date of the Closing Date.

18. Borough's Representations and Warranties. the Borough represents and warrants to Purchaser that the Borough has the full right and authority to convey the Property and, except for Resolution No. 666-21 of the County of Bergen and Resolution Nos. 147 and 148 of the Borough, no other consent is required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby.

All representations of the Borough, including the above representation, contained in the within Agreement or in any other document provided by the Borough or relative to the within contemplated sale are being relied on by Purchaser for purposes of entering into this Agreement and such representations and warranties shall survive Closing. Purchaser shall rely solely upon Purchaser's right to cause inspections and investigations pursuant to the

terms of this Agreement and the inspection and investigation of such documentation that is made available to the Purchaser. The Purchaser's acceptance of the delivery of the Deed and closing documents at the Closing shall constitute the Borough's full performance of any obligation under this Agreement (whether express or implied).

19. Purchaser's Representations and Warranties. Purchaser represents and warrants to the Borough that:

a. Organization and Authority. If Purchaser is a corporation or LLC or partnership, it hereby represents and warrants that it is duly organized and validly existing and in good standing in the State of New Jersey and is qualified to do business in New Jersey. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

b. Conflicts and Pending Action. There is no agreement to which Purchaser is a party, or to Purchaser's knowledge binding on Purchaser, which is in conflict with this Agreement. There is no action or proceeding pending or, to Purchaser's knowledge, threatened against Purchaser, which challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

c. Purchaser has sufficient financial resources to perform all of the obligations set forth in this Agreement and has the experience and financial wherewithal to construct, finance, and undertake the Project contemplated herein.

d. Purchaser acknowledges and represents to the Borough that it has reviewed, inspected, investigated and/or had analyzed and is fully familiar the Property and with all documents, reports or records, including Environmental Reports, if any, produced by the Borough. The Purchaser hereby represents that it is purchasing the Property in a strictly "**AS IS, WHERE IS, WITH ALL FAULTS**" and acknowledges that it had been given sufficient opportunity to conduct any and all due diligence it required in order to purchase the Property. The provisions of this paragraph shall survive Closing.

20. Defaults and Remedies.

a. Borough's Remedies

If Purchaser fails to perform its obligations pursuant to this Agreement at or prior to Closing for any reason except failure by Seller to perform hereunder, or if prior to Closing any one or more of Purchaser's representations or warranties are breached in any material respect, Seller shall be entitled, as its sole remedy, to upon written notice to Purchaser, either (i) terminate this Agreement, at which time this Agreement shall become void, and Purchaser shall be responsible for all Seller's costs, including reasonable attorneys' fees and all professional fees, incurred in connection with the transaction contemplated in the County PSA, this Agreement, and recovery of said costs

or fees; or (ii) seek and obtain specific performance of this Agreement, in which case Purchaser shall be responsible for all of the Borough's actual damages and all Borough's costs, including without limitation attorneys' fees and all professional fees incurred in connection with seeking specific performance of this Agreement, as well as carrying costs of the Property.

b. Purchaser's Remedies

If the Borough defaults in its obligations under this Agreement to convey the Property to the Borough except by reason of the failure of Purchaser to perform hereunder, Purchaser shall elect, as its remedy, upon written notice to the Seller, either to (i) terminate this Agreement, at which time this Agreement shall become void, and there shall be no further obligation or liability on either of the Parties hereto, provided however, that the Borough shall be responsible for all Purchaser costs, including without limitation, reasonable attorneys' fees and all professional fees or (ii) seek and obtain specific performance of this Agreement and sale of the Property. Under no circumstances shall the Borough be responsible for consequential or any other damages.

21. Miscellaneous.

a. Assignment. Purchaser may not assign any of Purchaser's rights or duties hereunder without the prior written consent of the Borough, which consent shall be unreasonably withheld, conditioned or delayed.

b. Headings. The article, section, subsection, paragraph and/or other headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

c. Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so as is reasonable and possible the remainder of this Agreement shall be deemed valid and operative, and, to the greatest extent legally possible, effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either Party to enforce against the other any term or provision of this Agreement shall not be deemed to be a waiver of such Party's right to enforce against the other Party the same or any other such term or provision in the future.

d. Governing Law and Venue. This Agreement shall, in all respects, be governed, construed, applied and enforced in accordance with the law of the State of New Jersey and in the courts of such state. If in the event a dispute between the Parties results in litigation, the Parties agree that the venue and jurisdiction shall rely with the Superior Court of New Jersey, Bergen County.

e. Survival. The provisions of this Agreement that contemplate performance after the Closing and the obligations of the Parties not fully performed at the Closing shall survive the Closing and shall not be deemed to be merged into or waived by the instruments of Closing.

f. Entirety and Amendments. This Agreement embodies the entire agreement between the Parties and supersedes all prior agreements and understandings relating to the

Property. This Agreement may be amended or supplemented only by an instrument in writing, executed by the Party against whom enforcement is sought.

g. Notices. All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the addresses set forth in Section 11. Any such notices shall, unless otherwise provided herein, be given or served (i) by depositing the same in the United States mail, postage paid, certified and addressed to the Party to be notified, with return receipt requested, by overnight delivery using a nationally recognized overnight courier, (iii) by personal delivery, or (iv) by facsimile, evidenced by confirmed receipt. Notice deposited in the mail in the manner hereinabove described shall be effective on the third (3rd) business day after such deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified between the hours of 8:00 a.m. and 5:00 p.m. of any business day, with delivery made after such hours to be deemed received the following business day. A Party's address may be changed by written notice to the other Party, provided, however, that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice, provided that actual notice has been given. Notices given by the Borough's counsel to the Purchaser shall be deemed as given by the Borough, and notices given by Purchaser's counsel to the Borough shall be deemed given by the Purchaser.

h. Construction. The Parties acknowledge that they and their counsel have reviewed this Agreement and agree that the normal rule of construction, to the effect any ambiguities are to be resolved against the drafting Party, shall not be employed in interpretation of this Agreement or any exhibits or amendments hereto.

i. Calculation of Time Periods. Unless otherwise specified, in computing any period of time described the day of the act or event after which the designated period of time begins to run is not to be included, and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period shall run until the end of the next day, which is neither a Saturday, Sunday, or legal holiday. The last day of any period of time described herein shall be deemed to end at 5:00 p.m.

j. Execution in Counterparts. This Agreement may be executed in any number of counterparts, each which shall be deemed to be an original, and all of such counterparts shall constitute one Agreement. To facilitate execution of this Agreement, the Parties may execute and exchange by facsimile, counterparts of the signature pages, provided that executed originals thereof are forwarded to the other Party on the same day by any of the delivery methods set forth in Section 12.9 other than facsimile.

k. Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either Party at Closing, each Party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

l. Discharge of Obligations. The acceptance of the Deed by Purchaser shall be deemed to be a performance and discharge of every representation and warranty made by the Borough herein and every agreement and obligation on the part of the Borough to be performed pursuant to the provisions of this Agreement, except those which are herein specifically stated to survive Closing.

m. No Third Party Beneficiary. The provisions of this Agreement and of the documents to be executed delivered at Closing are and will be for the benefit of the Borough, and Purchaser only and are not for the benefit of any third party, and accordingly, no third party, except the County as provided herein, shall have the right to enforce the provisions of this Agreement or of the documents to be executed and delivered at Closing.

n. Parties Bound. This Agreement and the terms, covenants, and conditions herein contained, shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of each of the Parties hereto.

o. Brokerage Commission and Finder's Fees. Each Party hereto represents to the other that no finders, agents or brokers ("**Broker**") have been involved with the introduction of the Purchaser and the Borough and/or the purchase and sale of the Property. If either Party has employed any Broker, such Party agrees to indemnify, defend and hold harmless the other Party for any costs, fees and/or liens that may arise. This representation shall survive Closing.

p. Tenancies. The within sale of the Property is subject to one tenancy between Williams Carlos Williams Center For the Performing Arts, Inc and the Borough of Rutherford for the month to month rental of the premises/ movie theatre on the Property, at the rental sum of \$1.00 per year. Such tenancy shall be assigned to Purchaser at Closing.

[signatures appear on the following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year below.

ATTEST:

By: Margaret J. Smith

SELLER:
BOROUGH OF RUTHERFORD

By: Mark Goldsack

Name: Mark Goldsack
Title: Acting Mayor

ATTEST:

PURCHASER:
Native Center Development, LLC

By: _____
Name:
Title:

By: _____
Name: Charles Olivo
Title:

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on
the day and year below.

ATTEST:

By: _____

SELLER:
BOROUGH OF RUTHERFORD

By: _____
Name: Mark Goldsack
Title: Acting Mayor

ATTEST:

By: _____
Name:
Title:

PURCHASER:
Native Center Development, LLC


By: 
Name: Charles Olivo
Title: *Managing Member*

EXHIBIT A

Description of the Property

EXHIBIT A
DESCRIPTION OF THE PROPERTY

**DEED DESCRIPTION
BLOCK 147 LOT 1
BOROUGH OF RUTHERFORD
BERGEN COUNTY, NEW JERSEY**

BEGINNING at a point being the intersection of the northeasterly line of Spring Dell (60' wide as per Filed Map No. 188) and the southeasterly line of Sylvan Street (60' wide as per Filed Map No. 188) as marked by a Mag Nail with washer and running, thence:

- 1) Along said southeasterly line of Sylvan Street, North 29°24'20" East, a distance of 100.56 feet to a point marked by a cross-cut; thence
- 2) Along the rear line of lots fronting on Glen Road (60' wide as per tax map), South 66°38'40" East, a distance of 246.70 feet to a point marked by a Mag Nail with washer; thence
- 3) South 23°21'20" West, a distance of 100.00 feet to a point marked by a cross-cut on the aforementioned northeasterly line of Spring Dell; thence
- 4) Along said northeasterly line, North 66°38'40" West, a distance of 257.30 feet to the point of BEGINNING.

Parcel contains 25,200 S.F. or 0.5785 acres, more or less.

EXHIBIT B

Form of Deed

RECORD AND RETURN TO:

Paul Gregory, Esq.
Gregory Legal Group
52 Maple Avenue
Morristown, New Jersey 07960

Prepared by:

DEED

This Deed is dated as of _____, 2021,

BETWEEN

Borough of Rutherford, a public body corporate and politic of the State of New Jersey having its address at 176 Park Avenue, Rutherford, NJ 07070, referred to as the “**Grantor**”,

and,

Native Center Development, LLC a limited liability company organized under the laws of the State of New Jersey, having its address at 92 Park Avenue, Rutherford, New Jersey, 07070, referred to as the “**Grantee**”.

The words "Grantor" and "Grantee" shall mean all Grantors and all Grantees listed above.

1. Transfer of Ownership. The Grantor grants and conveys all of its rights, interest and ownership in the property (the “**Property**”) described below to the Grantee. This transfer is made for the sum of **ONE and 00/100 DOLLARS (\$1.00) (the “Purchase Price”)**. The Grantor acknowledges receipt of this money.

2. Tax Map Reference. (N.J. S.A. 46:15-1.1) Municipality of the Borough of Rutherford, New Jersey, Block 147, Lots 1.

3. Property. The Property consists of the land and all the buildings and structures on the land in the **Borough of Rutherford, County of Bergen, and State of New Jersey.** The legal description is:

annexed hereto as *Schedule A* and made a part hereof.

BEING the same premises conveyed to the Borough of Rutherford by Deed from the County of Bergen, dated August 10, 2021 and to be recorded in the Bergen County Clerk/Register’s Office.

FURTHER BEING the same premises conveyed to William Carlos Williams Center for the Performing Arts, Inc as follows:

A. By Deed from Shirley Preiskel, unmarried and Bernice Kopf and Samuel W. Kopf , dated January 31, 1979 and recorded February 9, 1979 in Book 6485 page 446 in the Bergen County Clerk/Register’s Office.

B. By Deed from Jean Hagar and Paul Hagar, her Husband, Gloria F. Caglianone and Louis B. Caglianone, her Husband, Anna Linzalone, unmarried, Joseph F. Linzalone, individually and as Executor of the Estate of Francis P. Linzalone and Patricia A. Linzalone, his Wife and Maria P. Beaver,

unmarried, dated June 11, 1979 and recorded June 22, 1979 in Book 6508 page 432 in the Bergen County Clerk/Register's Office.

C. By Deed from Bergen Music Mart, Inc., a corporation of New Jersey, dated November 13, 1979 and recorded November 19, 1979 in Book 66540 page 521 in the Bergen County Clerk/Register's Office.

D. By Deed from William Carlos Williams Center for the Performing Arts, Inc, dated September 17, 1987 and recorded October 19, 1987 in Book 7153 page 535 in the Bergen County Clerk/Register's Office.

The within sale and purchase is subject to all current and future zoning requirements as imposed by the Borough of Rutherford as well as all easements, setbacks, encroachments, restrictions of record and such state of facts as an accurate survey may disclose as well as all municipal, County, State and Federal regulations governing the use of the Property. Grantor makes no representation as to the current or future state of any of the above items or as to what type of development is or will be permitted relative to the Property.

The address of this property is: 15 Sylvan Street, Rutherford, New Jersey 07070

4. Deed Restrictions.

- A. **Reverter.** The subject Property is being transferred to the Grantee with the limitation that said land or buildings shall be used only for Public Purposes (as defined below) of the Municipality, which may include but not be limited to, affordable housing units, along with other residential and/or commercial units and for cultural uses and that if said land or buildings are not used in accordance with said limitation, title thereto shall revert back to the Grantor without any entry or reentry made thereon on behalf of the Grantor, on notice from the Grantor to the Grantee with an opportunity for the Grantee to cure.
- B. **Failure to rehabilitate or operate the Williams Center Theater.** The Property is located in an area within the Borough of Rutherford identified and designated as "area in need of redevelopment" pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the "**Redevelopment Law**"). The Williams Center Theater (the "**Williams Center Theater**"), which currently consists of a black box theater, a cinema complex, and the Williams Center Theatre, is situated upon the Property. The Grantee has long desired to rehabilitate the Williams Center Theater as a catalyst for the economic and artistic renaissance of the Borough of Rutherford. The within conveyance is being made with the understanding that Grantee will redevelop the Property pursuant to the Redevelopment Law and in accordance with the "Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Ettrick Terrace Parking Area Borough of Rutherford", dated December 2020 (the "**Redevelopment Plan**"), by constructing thereon a redevelopment project in a 7-story building consisting of (1) residential units, and retail space (the "**Residential/Retail Component**"), and (2) partial or total rehabilitation and preservation of the Williams Center Theater to make the theater an unparalleled arts and film destination in the region, which will include major upgrades and comprehensive renovations to the building, as well as improvements to landscaping surrounding the site and after rehabilitation, the Borough will fully operate and maintain the Williams Center Theater as a black box theater, a cinema complex, and the Williams Center Theatre, which shall be open to the public (the "**Theater Component**" and together with the Residential/Retail Component, collectively, the "**Project**" or the "Public Purposes"). Grantee's proposed, and anticipated, rehabilitation and operation of the Williams Center Theater through the Theater Component of the Project was a material inducement for the Grantor to convey the Property to Grantee, and said inducement is reflected in the Purchase Price of the Property. If Grantee, its successors, heirs, assigns or transferees: (a) fail to complete the Theater Component within five (5) years from the effective date of this Deed, or (b) if, for a period greater than six (6) continuous months (the only exception being the construction of, or pre-development in connection with the construction of the Theater Component pursuant to a validly executed Redevelopment Agreement by and between the Grantor and the Grantee, due solely to the actions or omissions of Grantee (and not to the failure of the Borough or any tenant or occupant to operate same as required) the Williams Center Theater ever

ceases to (i) function as a black box theater, a cinema complex, and the Williams Center Theatre for a period greater than six (6) continuous months, or (ii) be open for use and enjoyment by the public for a period greater than six (6) continuous months; [NEED FORCE MAJEURE LANGUAGE AS PROVIDED IN THE PURCHASE AGREEMENT] then the Grantor will have suffered immeasurable loss, by and through the loss of said use and enjoyment to the community, and in such an event, Grantee, its successors, heirs, assigns, and transferees agree to pay the Grantor the sum of ONE MILLION AND 00/100 DOLLARS (\$1,000,000.00) (the “**Theater Liquidated Damages Amount**”) as liquidated damages and not as penalty. The Grantor and Grantee agreed that Grantor’s damages resulting from Grantee’s, its successors’, heirs’, assigns’, or transferees’ failure to construct the Theater Component and operate the Williams Center are difficult, if not impossible, to determine and the Theater Liquidated Damages Amount is a fair and reasonable estimate of those damages which has been agreed to by the Grantor and Grantee in an effort to cause the amount of such damages to be certain. The Grantor shall be entitled to Attorney fees and costs from Grantee, its successors, heirs, assigns or transferees, if any, that the Grantor incurs in connection with any effort to recover the Theater Liquidated Damages Amount. The Theater Liquidated Damages Amount will be adjusted on an annual basis, as of the anniversary of the date hereof, to account for inflation. The adjustment to the Theater Liquidated Damages Amount will be made on the basis of the United States Department of Labor, Bureau of Labor Statistics “Consumer Price Index” for All Urban Consumers (CPI-U), “all items” not seasonally adjusted (the “**Index**”) and in accordance with the Consumer Price Index (CPI) Inflation Calculator, as described in U.S. Bureau of Labor Statistics, https://www.bls.gov/data/inflation_calculator.htm (the “**Calculator**”). In the event that the Bureau of Labor Statistics no longer maintains the Index or Calculator, a comparable index or calculator, as applicable, measuring or calculating inflation, as applicable, published by a responsible financial periodical or recognized authority, as reasonably determined by Grantor, shall be used. There will be no decrease to the dollar amounts in the case of deflation. **The Theater Liquidated Damages Amount is in addition to and not in limitation of any re-sale amount due to the Grantor upon future sale of the Property as set forth herein.**

- C. The within restrictive use covenants shall run with the land and shall be binding upon and shall inure to the benefit of the Grantor and Grantee, and their respective subsidiaries, affiliates, legal representatives, heirs, successors and assigns, as applicable.
- D. The intention of the Grantor is that the covenants and restrictions herein are intended to last in perpetuity.

5. Restrictive Covenant. In the event that the Property, at any time prior to the completion of construction of the Project, is sold by the Grantee to another Party for an amount greater than \$1,000.00 the Grantee shall be obligated to pay Seller in accordance with the following schedule:

Sale price	Amount Due Seller Upon Sale
\$1,001.00 to \$999,999.99	Fifty (50%) Percent of the Sale Price
\$1,000,000.00 to \$1,999,999.99	\$500,000.00
\$2,000,000.00 to 3,999,999.99	\$750,000.00
\$4,000,000.00 or more	\$1,000,000.00

This within restrictive re-sale covenant shall be binding upon and shall inure to the benefit of the Parties, their subsidiaries, Affiliates, legal representatives, heirs, successors and assigns, as applicable, only but shall not apply to any third party successor of interest who acquires such interest after completion of the Project. **The amounts set forth in this section are in addition to, and not in limitation of, any Theater Liquidated Damages Amount due to the Grantor as set forth herein.**

6. Promises by Grantor. The Grantor promises that the Grantor has done no act to encumber the Property. This promise is called a "covenant as to grantor's acts" (N.J.S.A. 46:4-6). This promise means that the Grantor has not allowed anyone else to obtain any legal rights which affect the Property (such as by making a mortgage or allowing a judgment to be entered against the Grantor).

7. Signatures. The Grantor signs this Deed as of the date at the top of the first page.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

WITNESS OR ATTEST:

BOROUGH OF RUTHERFORD

By: _____

Name: Margaret Scanlon

Title: Borough Clerk

By: _____

Mark Goldsack, Acting Mayor

STATE OF NEW JERSEY

: ss

COUNTY OF BERGEN

I CERTIFY that on this ___ day of _____, 2021, came before me, Margaret Scanlon, and acknowledged under oath, to my satisfaction, that:

- a) She is the Municipal Clerk of the Borough of Rutherford (the “**Borough**”), the Municipal Corporation named in the attached Deed;
- b) She is the attesting witness to the signing of this Deed by the proper Municipal Officer, who is Mark Goldsack, the Acting Mayor of the Borough;
- c) This Deed was signed and delivered by the Borough as its voluntary act;
- d) She knows the proper seal of the Borough which is affixed to this Deed;
- e) The Borough made this Deed for ONE DOLLAR (\$1.00) as the full and actual consideration paid or to be paid for the transfer of title (Such consideration is defined in N.J.S.A. 46:15-5); and,
- f) She signed this proof to attest to the truth of these facts.

Notary Public of the State of New Jersey

SCHEDULE A

EXHIBIT A
DESCRIPTION OF THE PROPERTY

**DEED DESCRIPTION
BLOCK 147 LOT 1
BOROUGH OF RUTHERFORD
BERGEN COUNTY, NEW JERSEY**

BEGINNING at a point being the intersection of the northeasterly line of Spring Dell (60' wide as per Filed Map No. 188) and the southeasterly line of Sylvan Street (60' wide as per Filed Map No. 188) as marked by a Mag Nail with washer and running, thence:

- 1) Along said southeasterly line of Sylvan Street, North 29°24'20" East, a distance of 100.56 feet to a point marked by a cross-cut; thence
- 2) Along the rear line of lots fronting on Glen Road (60' wide as per tax map), South 66°38'40" East, a distance of 246.70 feet to a point marked by a Mag Nail with washer; thence
- 3) South 23°21'20" West, a distance of 100.00 feet to a point marked by a cross-cut on the aforementioned northeasterly line of Spring Dell; thence
- 4) Along said northeasterly line, North 66°38'40" West, a distance of 257.30 feet to the point of BEGINNING.

Parcel contains 25,200 S.F. or 0.5785 acres, more or less.

EXHIBIT 9
PARKING MANAGEMENT PLAN

BENECKE ECONOMICS
8410 Sanctuary Boulevard
Riverdale, NJ
07457

June 8, 2023

Mayor Frank Nunziato
Borough of Rutherford
Municipal Building
176 Park Avenue
Rutherford,
New Jersey
07070

Re: Native Development Urban Renewal, LLC. The Williams Center Redevelopment-Updated/Final Parking Management Plan.

Dear Mayor Nunziato:

I am writing to follow up on the October 3, 2022 application for a long-term tax exemption covering the Williams Center. Native Development has improved the Parking Management Plan regarding the Ettrick Terrace parking lot. The parking lot, as part of the original redevelopment application, included a proposal for the Borough of Rutherford to provide the financing structure to build a 195-space parking garage. However, the new parking plan provides for:

- 1-44 traditional parking spaces for current (“non-redevelopment”) permit holders.
 - 2-40 additional surface parking spaces.
 - 3-an additional 40 elevated parking lot, in a stacked (mechanical or automated lift) system. These will be added to the Ettrick parking lot based on tenant requirements.
- This configuration will allow for up to 124 total parking spaces.

Native Development Urban Renewal, LLC and/or a related entity or entities (“Native” or “URE”) has submitted a PILOT application proposing the rehabilitation of the Ettrick Terrace parking lot, in a 124 space configuration. The URE and the Borough have agreed to lease terms of the Ettrick Terrace lot, a draft of which is attached. Further:

- o The 80 residential units required by the redevelopment plan will be provided parking in an improved Ettrick Terrace parking lot which would provide 88 parking stalls.
- o The developer may contract with a 24-7 valet operator to manage the utilization of the Ettrick Terrace parking lot.
- o Visitors to residences would be expected to utilize available on-street parking and available parking in the public facilities.

- Ground floor retail:
 - Employees and staff would be expected to utilize available on-street parking and the Ettrick Terrace parking facility.
 - Patrons of the ground floor retail would be expected to utilize available on-street parking and hourly Kip garage parking.
- Rooftop restaurant:
 - Employees and staff would be expected to utilize any available on-street parking and Ettrick Terrace parking facility.
 - Patrons of the rooftop restaurant would be expected to utilize available on-street parking and hourly Kip garage parking.
 - The developer intends to contract with a valet operator to provide valet service for restaurant customers during times of peak utilization.
- Cinema patrons, artist workshop users, public rooftop visitors:
 - Patrons of the ground floor retail would be expected to utilize available on-street parking and hourly Kip garage parking.
- Theaters spaces – Black Box and Performing Arts:
 - Employees and staff would be expected to utilize the Ettrick Terrace parking facility.
 - Visitors would be expected to utilize available on-street parking and hourly Kip garage parking.
 - The developer intends to contract with a valet operator to provide valet and shuttle service for larger events. Vehicles would be parked within specifically coordinated areas in public parking facilities – Kip garage, Erie Park and Ride, and others - during times of peak utilization. The developer would coordinate with the Borough to utilize public parking facilities on an as needed basis.
 - A traffic management plan will be provided on an event-by-event basis to indicate pick-up/drop-off, queuing, and staging areas as needed.
 - The developer shall coordinate with Police and Fire to ensure proper standards are met.
- Existing Ettrick Terrace Permit Holders
 - All existing public parking permits would first maintain in place.

BENECKE ECONOMICS

EXHIBIT 10

Ettrick Lot Lease

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Lease**”), dated as of the _____ day of _____, 2023 (the “**Effective Date**”) between the **BOROUGH OF RUTHERFORD** (hereinafter referred to as the “**Landlord**”), with offices at 176 Park Avenue, Rutherford, New Jersey 07070 and **NATIVE DEVELOPMENT URBAN RENEWAL LLC**, a New Jersey limited liability company with offices located at 92 Park Avenue, Rutherford, New Jersey 07070 (hereinafter referred to as “**Tenant**” and, together with the Landlord, the “**Parties**”).

PRELIMINARY STATEMENT

WHEREAS, pursuant to the New Jersey Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.* (the “**Redevelopment Law**”), on August 22, 2016, the Mayor and Borough Council (the “**Mayor and Council**”) adopted Resolution No. 182-2016 designating the properties identified as Block 128, Lots 1, 2.01, 2.02, 2.03, and 5, Block 145, Lots 10 and 10.01, Block 146, Lots 1, 1.02, 2, 3, 4, and 5, and Block 147, Lots 1, 4, 9, 10, 14, 15, 16, 17.02, 19.01, 20 and 21, on the tax maps of the Borough (collectively, the “**Redevelopment Area**”) as a “non-condemnation area in need of redevelopment/rehabilitation” with a condition that any rehabilitation of the Williams Center Site (Block 147) is to include a theatre aspect; and

WHEREAS, on June 28, 2021, the Mayor and Council adopted an ordinance, as amended by ordinance adopted on June 27, 2022, approving and adopting a redevelopment plan for the Redevelopment Area, entitled “Theater District Redevelopment Plan Area A Sylvan-Walkway/Spring Dell/Glen Road/Orient Way & Etrick Terrace Parking Area” (as amended, the “**Redevelopment Plan**”); and

WHEREAS, the Tenant acquired title to the portion of the Redevelopment Area consisting of Block 147, Lot 1 (the “**Williams Theater Property**” or the “**Project Premises**”) from the Borough on October 1, 2021, subject to certain rights of the Borough as set forth in the deed from the Borough to the Redeveloper (the “**Original Deed**”); and

WHEREAS, the Landlord and Tenant entered into that redevelopment agreement, dated the date hereof (the “**Redevelopment Agreement**”), pursuant to which the Tenant, as “**Redeveloper**”, will redevelop the Williams Theater Property with a 7-story mixed-use building consisting of the construction of 80 residential units, including 68 market rate units (the “**Market Rate Component**”) and 12 Affordable Units (the “**Affordable Component**” and, together with the Market Rate Component, the “**Residential Component**”) and 5,839 square feet of retail space (the “**Retail Component**”); rehabilitation, and operation of a black box theatre, a cinema (movie) theater (together the “**Williams Center Theater Component**” and, together with the Residential Component and the Retail Component, the “**Project**”), including significant upgrades and renovations to the existing building, as well as improvements to landscaping surrounding the site in accordance with the Redevelopment Plan, and

WHEREAS, Landlord is the owner of the portion of the Redevelopment Area consisting of Block 145, Lot 10.01 on the tax maps of the Borough of Rutherford, otherwise known as the 5 Etrick Terrace (the “**Parking Lot**”), which the Landlord operates a municipal, surface parking lot; and

WHEREAS, the Tenant desires to lease from Landlord, and Landlord desires to lease to Tenant, the portion of the Parking Lot on which it will construct 80 stacker parking spaces (the “**Stacker Parking Spaces**”, consisting of 40 stalls (each a “**Parking Stall**”) in a stacked (mechanical or automated lift) system that each accommodate 2 vehicles (the “**Stacker System**”)), as depicted in **Exhibit A** (the “**Leased Premises**”), subject to and upon the terms, covenants and conditions hereinafter set forth, with the balance of the Parking Lot, consisting of 44 perimeter, surface parking spaces (the “**Perimeter Parking Spaces**”) available for Borough residents, other than residents of the Residential Component, who hold Borough-issued permits therefor.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE 1

DEFINITIONS

1.1 Definitions. As used in this Lease, capitalized terms shall have the following respective meanings:

“**Applicable Laws**” means all applicable laws, ordinances, orders, directives, rules and regulations of any governmental authority having jurisdiction, whether now or hereafter in effect.

“**Casualty**” means a fire or natural disaster causing damage to the Parking Lot.

“**Environmental Laws**” means any and all federal, State, county or local statutes, ordinances, rules, regulations, guidance documents, enforcement guidance memorandums, directives, and administrative orders, and the common law concerning the protection of the environment, human health or safety, presently in effect, including, without limitation, the Site Remediation Reform Act, *N.J.S.A.* 58:10C-1 et seq. (“**SRRA**”), the New Jersey Spill Compensation and Control Act, *N.J.S.A.* 58:10-23.11 et seq. (the “**Spill Act**”); the Industrial Site Recovery Act, *N.J.S.A.* 13:1K-6 et seq. (“**ISRA**”); the New Jersey Freshwater Wetlands Protection Act, *N.J.S.A.* 13:9B-1 et seq.; the New Jersey Hazardous Substances Discharge Reports and Notices Act, *N.J.S.A.* 13:1K-15 et seq.; the New Jersey Underground Storage of Hazardous Substances Act, *N.J.S.A.* 58:10A-21 et seq.; the New Jersey Water Pollution Control Act, *N.J.S.A.* 58:10A-1 et seq.; the New Jersey Solid Waste Management Act, *N.J.S.A.* 13:1E et seq.; the Brownfield and Contaminated Site Remediation Act, *N.J.S.A.* 58:10B-1 et seq.; the New Jersey Sanitary Landfill Facility Closure and Contingency Fund Act, *N.J.S.A.* 13:1E-100 et seq.; the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq. (“**CERCLA**”); the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Solid Waste Disposal Act, 42 U.S.C. §6901 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §1100 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300 et seq.; the Pollution Prevention Act of 1990, 42 U.S.C. §13101 et seq.; the Clean Water Act, 33 U.S.C. §1251 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; and the Hazardous Materials Transportation Uniform Safety Act of 1990 49, U.S.C. §5101, the Technical Requirements for the Remediation of Contaminated Sites, *N.J.A.C.* 7:26E et seq.; the Administrative Requirements for the Remediation of Contaminated

Sites (the “ARRCS Rule”); the Remediation Standards, *N.J.A.C. 7:26D*, the Groundwater Quality Standards, *N.J.A.C. 7:9C*, the Surface Water Quality Standards, *N.J.A.C. 7:9B*, and the NJDEP Vapor Intrusion Guidance Document, together with, in each case, all other accompanying regulations, guidance documents, and enforcement directives as they may be modified from time to time.

“**Events of Default**” has the meaning provided in Article 10.

“**Hazardous Substances**” means mean (a) those substances included within the definition of any one or more of the terms “hazardous materials,” “hazardous wastes,” “hazardous substances,” “industrial wastes” and “toxic pollutants,” as such terms are defined under the Environmental Laws or any definitions in any comparable state laws, (b) any “hazardous substance” as now or hereafter defined in §101(14) of CERCLA, or any regulations promulgated under CERCLA; (c) any “hazardous waste” as now or hereafter defined in RCRA, or regulations promulgated under RCRA; (iii) any substance regulated by ISRA, the Spill Act, the SWMA, or any regulations promulgated thereunder; (d) any substance regulated by the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; (e) petroleum and petroleum products, including, without limitation, crude oil and any factions thereof, (f) natural gas, synthetic gas and any mixtures thereof, (g) asbestos and/or any material which contains any hydrated mineral silicate, including, without limitation, chrysotile, amosite, crocidolite, tremolite, anthophyllite and/or actinolite, whether friable or non-friable, (h) polychlorinated biphenyl (“PCBs”) or PBC-containing materials or fluids, (i) radon, (j) any other hazardous or radioactive substance, material, pollutant, contaminant or waste, and (k) any additional substances or materials which are now or hereafter determined, classified or considered to be hazardous, toxic or subject to regulation and that may need to be investigated, monitored, or remediated if present on, under or migrating from the Land pursuant to Environmental Laws.

“**Insurance Requirements**” means all insurance required to be maintained by Tenant pursuant to Article 8.

“**Lease Payments**” means payments of Rent payable by Tenant hereunder.

“**Lien**” means any mortgage, pledge, lien, charge, encumbrance or security interest of any kind, including any inchoate mechanic’s or materialman’s lien.

“**Mortgage**” means any deed of trust or mortgage that may now or hereafter encumbering Landlord’s interest in the Parking Lot and all renewals, modifications, consolidations, replacements and extensions thereof.

“**Mortgagee**” means the holder of any Mortgage.

“**Rent**” has the meaning provided in Section 3.1.

“**Rent Commencement Date**” means the Effective Date.

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

“**Tenant’s Notice**” has the meaning provided in Section 13.2.

“**Term**” has the meaning provided in Section 2.2.

ARTICLE 2

DEMISE; TERM; CONDITION

2.1 Demise. Landlord, for and in consideration of the covenants hereinafter contained and made on the part of the Tenant, as of the Effective Date, hereby demises and leases to Tenant, and, as of the Effective Date, Tenant hereby leases from Landlord, the Leased Premises, subject to the terms and conditions of this Lease.

2.2 Term.

(a) The term of this Lease (the “**Term**”) shall be from the Effective Date and shall expire without necessity of any notice from either party, as of _____, 2043 (the “**Expiration Date**”).

(b) Upon the mutual agreement of Landlord and Tenant, the Term shall be extended an additional ten (10) years, to _____, 2053, upon notice delivered by either party in accordance with Section 13.2 herein.

2.3 Condition. Tenant agrees to accept possession of the Leased Premises in its “as-is” condition on the Effective Date. Tenant agrees further that neither Landlord nor any agent or representative of Landlord has made any representations or warranties with respect to the physical condition of the Parking Lot, and Tenant acknowledges that it is not relying upon any such representation or warranty in entering into this Lease.

2.4 Use of Parking Lot. The Stacker Parking Spaces within the Parking Lot shall be used by Tenant in connection with the Residential Component and the Perimeter Parking Spaces shall be available for Borough residents who currently park therein and/or for Borough residents (other than residents of the Residential Component) who apply for and are granted permits to park therein. In accordance with the governmental approvals associated with the Project, Tenant will confer with the existing users of the Parking Lot and ensure that same have the opportunity to continue to park in the Perimeter Parking Spaces within the Parking Lot, in their discretion.

2.5 Access. Subject to the terms and conditions of this Lease, Tenant shall have full and unimpaired 24 hour, seven (7) days a week access to the Parking Lot.

2.6. Tenant Permits. The Tenant, and any principals thereof, agree to terminate, or otherwise not renew, Borough-issued parking permits for the Parking Lot, they currently hold.

ARTICLE 3

RENT; NO OFFSET; SECURITY DEPOSIT

3.1 Rent. Commencing on the Rent Commencement Date, Tenant shall pay Rent to Landlord (“**Rent**”) as follows:

(a) For each month during each year for years 1 through 10 of the Term, an amount equal to twenty-five dollars (\$25.00) per Parking Stall (i.e., 40 stalls) utilized by Tenant for residents of the Project;

(b) For each month during each year for years 11 through 20 of the Term, an amount equal to thirty-five dollars (\$35.00) per Parking Stall (i.e., 40 stalls) utilized by Tenant for residents of the Project; and

(c) Amounts due under subsections (a) and (b) above shall be due and payable by Tenant to Landlord before the 1st day of each month during the Term.

3.2 No Offset. Except as otherwise expressly provided herein, or expressly agreed upon by Landlord and Tenant, Tenant hereby covenants and agrees to pay to Landlord, in all events and without notice or demand, during the Term, at Landlord’s address for notices hereunder, or such other place as Landlord may from time to time designate, without any offset, set-off, counterclaim, deduction, defense, abatement, suspension, deferment or diminution of any kind the Rent.

ARTICLE 4

PARKING LOT; SERVICES

4.1 Status of Parking Lot. As of the Effective Date, Tenant accepts possession of the Parking Lot in “as-is, where-is” condition.

4.2 Services. During the Term, Tenant shall be responsible for all routine maintenance, including snow removal, from the Parking Lot as may be necessary. Tenant shall be further obligated to pay any and all costs associated with the maintenance of utilities at the Parking Lot.

4.3 Security. Tenant agrees to secure the access point to the Parking Lot shortly after the conclusion of each day’s use and unlock and open the access point prior to the beginning of the next day. ***WILL THIS BE SECURED WITH LOCKED FENCE? HOW WILL PERMIT HOLDERS ACCESS THE LOT?***

ARTICLE 5

MAINTENANCE; ALTERATIONS; ADDITIONS; REMOVAL OF TRADE FIXTURES

5.1 Tenant’s Construction and Maintenance Obligations. (a) Tenant shall, at its sole cost and expense, expand, repave and restripe the Parking Lot, which will include one hundred-twenty-

four (124) parking spaces (including eighty (80) stacker parking spaces and forty-four (44) surface parking spaces) and, thereafter, shall keep and maintain the Parking Lot in the same condition as on the Effective Date, ordinary wear and tear and unrepaired damage from a Casualty not caused by Tenant excepted.

(b) Tenant shall keep the Parking Lot in a neat and clean condition. Tenant's use and occupancy of the Parking Lot shall at all times comply with all applicable governmental laws, rules and regulations.

5.2 Alterations. (a) Except for nonstructural alterations that do not adversely affect the appearance or structural integrity of the Parking Lot, Tenant shall not make any alterations, improvements or additions alterations (collectively, the "**Alterations**") to the Parking Lot without the prior written consent of Landlord, except for those authorized by the Borough's Planning Board or any other governmental agency with authority over the Parking Lot. Notwithstanding the foregoing, the Tenant may install the Stacker System on the Parking Lot.

(b) Landlord may, at Landlord's sole option and at Tenant's sole expense, elect to perform any Alterations which Tenant has requested and to which Landlord has consented. Landlord shall not begin such Alterations until providing Tenant with an estimated cost of the requested Alterations, and upon receipt of Tenant's approval of the estimated cost. Landlord shall submit to Tenant an invoice setting forth the cost of all work performed by Landlord pursuant to this Article 5.2 (collectively, the "**Reimbursable Costs**") together with supporting documentation. The term "Reimbursable Costs" means all hard construction costs, soft costs such as engineering, architectural, and project management fees, all financing costs including lender fees, attorney's fees, and any other fees payable in connection with such work or the financing thereof. Tenant shall remit to Landlord payment of all such invoices within thirty (30) days after receipt thereof.

(c) Unless otherwise agreed to by Landlord and Tenant, all Alterations to the Parking Lot shall, upon installation, become the property of Landlord and shall be deemed part of, and shall be surrendered with, the Parking Lot. Tenant shall remove any Alterations made by Tenant to the Parking Lot and promptly repair and restore any damage to the Parking Lot caused by such removal to their condition existing prior to the installation thereof, reasonable wear and tear and unrepaired damage from a Casualty not caused by Tenant excepted, provided that Landlord advises Tenant in writing, at or prior to the time that Tenant requests the right to make such Alteration, that Tenant will be required to remove the same at the expiration or earlier termination of this Lease.

(d) Tenant may install or place or reinstall or replace and remove from the Parking Lot any trade equipment, machinery and personal property belonging to Tenant, including the Stacker System, provided, that Tenant shall repair all damage to the Parking Lot caused by such removal. Such trade equipment, machinery and personal property shall not become the property of Landlord and shall remain the property of Tenant.

ARTICLE 6

USE OF PARKING LOT

6.1 Permitted Uses. Tenant shall not, except with the prior consent of Landlord, use or

suffer or permit the use of the Parking Lot for any purpose other than as a parking lot or structure as set forth in the Redevelopment Plan. Tenant's use and occupancy of the Parking Lot shall not violate any Applicable Laws.

ARTICLE 7

COMPLIANCE WITH REQUIREMENTS

7.1 Compliance. Tenant, upon taking possession of the Leased Premises and at all times thereafter during the Term, and at its sole cost and expense, shall (a) comply with all Applicable Laws and Insurance Requirements applicable to the Parking Lot and (b) maintain and comply with all permits, licenses and other authorizations and approvals required by any governmental authority for its use of the Parking Lot and for the proper operation, maintenance and repair of the same. Landlord will join in the application for any permit or authorization required under Applicable Laws if such joinder is necessary and will cooperate with Tenant in connection therewith.

7.2 No Hazardous Substances. Tenant shall not cause or permit any Hazardous Substance to be brought, kept or stored on or about the Parking Lot in violation of Environmental Laws.

ARTICLE 8

INSURANCE

8.1 Tenant's Insurance.

(a) Tenant, at Tenant's sole expense, shall obtain and maintain in full force and effect during the Term, comprehensive general liability insurance on an occurrence basis with minimum limits of liability in an amount of not less than \$1,000,000.00 for bodily, personal injury or death to any person or persons and with respect to damage to property and shall cover liability arising from premises, operations, independent contractors and liability assumed under an insured contract. If such insurance contains a general aggregate limit, it shall apply separately to this location. Such insurance shall name the Landlord as an Additional Insured, and same shall apply as primary insurance with respect to any such insurance or self-insurance programs afforded to Landlord.

(b) All insurance policies to be obtained hereunder shall contain endorsements providing as follows: (a) that any such insurance shall not be subject to cancellation, termination or change except after thirty (30) days prior written notice by registered or certified mail to Landlord or Tenant by the insurance company; and (b) that Landlord or Tenant, as the case may be, shall not be liable for any damage by fire or other casualty covered, by such insurance, no matter how caused, it being understood that Landlord or Tenant, as the case may be, shall look solely to its insurer or insurers for reimbursement.

8.2 Duly executed certificates for each insurance policy required by this Lease shall be deposited with the Landlord upon the execution of this Lease and, upon renewals of such policies, not less than thirty (30) days prior to the expiration of the term of any such coverage.

ARTICLE 9

ASSIGNMENT AND SUBLETTING

9.1 Consent Required. Tenant shall not sell, assign, transfer, hypothecate, mortgage or encumber this Lease, by operation of law or otherwise, without the written consent of Landlord, which consent may not be unreasonably withheld.

ARTICLE 10

EVENTS OF DEFAULT

10.1 Events of Default. Any of the following occurrences, conditions or acts shall constitute an “**Event of Default**” under this Lease:

(a) if Tenant shall fail to make any payment when due of any Rent or other amount payable by Tenant hereunder within sixty (60) days of the date such payment is due; or

(b) if the estate or interest of Tenant in the Leased Premises shall be levied upon or attached in any proceeding and such process shall not be vacated or discharged within sixty (60) days after such levy or attachment; or

(c) if Tenant fails to maintain the insurance required pursuant to Article 8, or Tenant fails to deliver to Landlord the insurance certificates required by Article 8 within the time periods set forth in Section 8.2; or

(d) if Tenant shall default in the observance or performance of any other provision of this Lease and such default shall continue for ninety (90) days after Landlord shall have given notice to Tenant specifying such default and demanding that the same be cured (unless such default cannot be cured by the payment of money and cannot with due diligence be wholly cured within such period of ninety (90) days, in which case Tenant shall have such longer period, not to exceed one-hundred and twenty (120) days, as shall be necessary to cure the default, so long as Tenant promptly commences to cure the same within such ninety (90) day period, prosecutes the cure to completion with due diligence and promptly advises Landlord from time to time, on Landlord’s request, of the actions which Tenant is taking and the progress being made).

ARTICLE 11

EFFECT OF TRANSFERS; ATTORNMENT

If all or any portion of Landlord’s interest in the Parking Lot shall be sold or conveyed to an unrelated person, firm or corporation (each a “**Transferee**”), at the Transferee’s option, Tenant shall be given at least thirty (30) days’ advanced written notice of the effective date of the Transferee’s interest, and be bound to the Transferee under all the terms, covenants and conditions of this Lease, for the balance of the term thereof remaining, with the same force and effect as if the Transferee were Landlord. Upon request of the Transferee, Tenant hereby agrees in such event to (i) recognize the Transferee and its successors and assigns as Landlord under this Lease and

shall attorn to and accept the Transferee as its landlord under this Lease, (ii) affirm its obligations under this Lease, and (iii) make payments of all sums thereafter becoming due under this Lease to the Transferee. Said attornment, affirmation and agreement is to be effective and self-operative without the execution of any further instruments upon the Transferee succeeding to the interests of Landlord under this Lease.

ARTICLE 12

REMOVAL OF PERSONAL PROPERTY

12.1 Removal. Within thirty (30) days after the expiration or earlier termination of this Lease, Tenant shall surrender the Parking Lot to Landlord in the same condition as is required to be maintained under Article 5 of this Lease in broom clean condition. No property of Tenant shall be deemed to have been abandoned unless Tenant expressly designates the specific property as abandoned, provided, however, that, notwithstanding the foregoing, Tenant will, upon request of Landlord made not later than thirty (30) days after the expiration or earlier termination of this Lease, promptly remove from the Parking Lot any such personal property, at Tenant's expense.

12.2 Holding Over. If Tenant holds over possession of the Leased Premises beyond the expiration or earlier termination of this Lease, such holding over shall not be deemed to extend the Term or renew this Lease, but such holding over shall be deemed a month-to-month tenancy and shall continue upon the terms, covenants and conditions of this Lease except as to the duration of the Term. Nothing contained in this Lease shall be construed as a consent by Landlord to the occupancy or possession by Tenant of the Leased Premises beyond the termination date, and Landlord, upon said termination date, shall be entitled to the benefit of all legal remedies that now may be in force or may be hereafter enacted relating to the immediate repossession of the Leased Premises. The provisions of this Article 12 shall survive the expiration or sooner termination of this Lease.

ARTICLE 13

MISCELLANEOUS

13.1 Brokers. Each party represents to the other that it has not dealt with any real estate broker or sales representative in connection with this transaction.

13.2 Notices. Any report, demand, notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered personally, by recognized overnight national courier (such as Federal Express) for next business day delivery, or shall be sent by certified or registered mail, return receipt requested, first-class postage prepaid to the parties at the addresses set forth below (or to such other addresses as the parties may specify by due notice to the other):

To Landlord:

Borough of Rutherford
176 Park Avenue

Rutherford, New Jersey
07070 Attention:
Borough Clerk

With a copy to:

McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, 2nd Floor
Roseland, New Jersey 07068
Attn: Kevin P. McManimon, Esq.

To Tenant:

Native Development Urban Renewal, LLC
92 Park Avenue
Rutherford, New Jersey 07070
Attn: Chuck Olivo

With a copy to:

Prime & Tuvel, PC
1 University Plaza Drive, Suite 500
Hackensack, New Jersey 07601
Attn: Jason Tuvel, Esq.

Any notice delivered to a party's designated address by (a) personal delivery, (b) recognized overnight national courier service, or (c) registered or certified mail, return receipt requested, shall be deemed to have been received by such party at the time the notice is delivered to such party's designated address. Confirmation by the courier delivering any notice given pursuant to this Section 13.2 shall be conclusive evidence of receipt of such notice. Each party hereby agrees that it will not refuse or reject delivery of any notice given hereunder, that it will acknowledge, in writing, receipt of the same upon request by any other party and that any notice rejected or refused by it shall be deemed for all purposes of this Lease to have been received by the rejecting party on the date so refused or rejected, as conclusively established by the records of the U.S. Postal Service or the courier service. Any notice given by an attorney or a party shall be effective for all purposes.

13.3 Right of Entry. Tenant shall permit Landlord, its agents, servants, employees and contractors, any prospective purchaser and their representatives, upon forty-eight (48) hours advance notice, to enter the Leased Premises from time to time.

13.4 Accord and Satisfaction. The receipt by Landlord of any installment of Rent with knowledge of a default by Tenant under the terms and conditions of this Lease shall not be deemed a waiver of such default. No payment by Tenant or receipt by Landlord of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or

payment of rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

13.5 Modifications; Amendments; Waivers. This Lease may not be amended, modified or terminated, nor may any obligation hereunder be waived orally, and no such amendment, modification, termination or waiver shall be effective unless in writing and signed by the party against whom enforcement thereof is sought. No waiver by either party of any obligations hereunder shall be deemed to constitute a waiver of the future performance of such obligation.

13.6 Severability. If any provision of this Lease or any application thereof shall be invalid or unenforceable, the remainder of this Lease and any other application of such provision shall not be affected thereby.

13.7 Successors and Assigns. Subject to the terms set forth herein, this Lease shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

13.8 Quiet Enjoyment. Upon due performance of the covenants and agreements to be performed by Tenant under this Lease, Landlord covenants that Tenant shall and may at all times peaceably and quietly have, hold and enjoy the Leased Premises during the Term without molestation or hindrance by Landlord or any party claiming through Landlord.

13.9 Counterparts. This Lease may be simultaneously executed in several counterparts, each of which when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

13.10 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of New Jersey.

13.11 No Advertisements. Tenant shall not place, or cause or allow to be placed, any sign, placard, picture, advertisement, notice or lettering whatsoever, in, about or on the exterior of the Leased Premises, except in and at such places as may be designated by Landlord and consented to by Landlord in writing, which consent may be withheld by Landlord in its sole and absolute discretion. Any such sign, placard, advertisement, picture, notice or lettering so placed without such consent may be removed by Landlord without notice to and at the expense of Tenant.

[Remainder of page intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

Landlord:

BOROUGH OF RUTHERFORD

By: _____
Name: Frank Nunziato
Title: Mayor

Tenant:

**NATIVE DEVELOPMENT URBAN
RENEWAL, LLC**

By: _____
Name: Chuck Olivo
Title: Managing Member

EXHIBIT A
DESCRIPTION OF PARKING LOT

