

REDEVELOPMENT AGREEMENT
BY AND BETWEEN
THE BOROUGH OF BERNARDSVILLE
AS REDEVELOPMENT ENTITY
AND
AR AT QUIMBY, LLC
AS THE REDEVELOPER

Dated: January 12, 2022

REDEVELOPMENT AGREEMENT

THIS REDEVELOPMENT AGREEMENT ("Agreement") is made as of the 12th day of January, 2022, by and between the **BOROUGH OF BERNARDSVILLE**, a public body corporate and politic of New Jersey, acting as redevelopment entity pursuant to *N.J.S.A. 40A:12A-1 et seq.* (the "Redevelopment Law"), having its principal office at Borough Hall located at 166 Mine Brook Road, Bernardsville, New Jersey 07924 (the "Borough"), and AR at Quimby, LLC, a New Jersey limited liability company organized under the laws of the State of New Jersey, having its offices at 1420 U.S. 206, Bedminster, New Jersey 08879 (the "Redeveloper"). The Borough and the Redeveloper are hereinafter individually referred to as a "Party" and collectively referred to as the "Parties".

WITNESSETH:

WHEREAS, the Mayor and Borough Council adopted a Resolution on October 15, 2019 (Resolution #19-203), authorizing the Planning Board of the Borough of Bernardsville (the "Planning Board") to conduct an investigation to determine if certain property identified as Block 70, Lots 1, 2, 3, 4, 5, 6, 6.01, 6.02, 6.03, 6.04, 6.05, 6.06, 6.07, and 6.08; Block 71, Lots 4, 5, 5.01, 6, 7, 8, 9, 10, 11, 12 and 13; Block 98, Lot 1; Block 124, Lot 1; and Block 144, Lot 1, as shown on the official Tax Map of the Borough (the "Study Area" or "Redevelopment Area" or "Property"), constitutes a non-condemnation "area in need of redevelopment," in accordance with the Redevelopment Law; and

WHEREAS, on December 12, 2019, the Planning Board held a public hearing, duly noticed under the Redevelopment Law, and reviewed an investigation/report titled, "Preliminary Investigation – Quimby Lane, Bernardsville, NJ" and dated November 25, 2019, prepared by Topology LLC, (the "Study"); and

WHEREAS, the Planning Board, after conducting the required investigation and holding a public hearing on December 12, 2019, recommended that the Study Area met the statutory criteria; and

WHEREAS, the Borough Council on January 13, 2020 adopted a Resolution accepting the Planning Board's recommendation that the area was found to meet the necessary statutory criteria, and designated the entire Study Area as a *Non-Condensation Area in Need of Redevelopment*; and

WHEREAS, pursuant to the provisions of *N.J.S.A. 40A:12A-7(e)* and (f) and *N.J.S.A. 40A:12A-15* of the Redevelopment Law, the Borough's staff and/or Planning Board professionals, is permitted to prepare a redevelopment plan; and

WHEREAS, a redevelopment plan for the Study Area titled “Quimby Lane Redevelopment Plan” has been prepared by Topology and submitted to the Borough Council for review (the “Redevelopment Plan”); and

WHEREAS, on October 13, 2020, the Borough Council by Ordinance adopted the Redevelopment Plan in order to effectuate a plan that is consistent with the goals and objectives of the Borough for the redevelopment of the Property; and

WHEREAS, it is the intention of this Agreement that the Redeveloper will be the owner or have contractual control of some or all of the Property; and

WHEREAS, by Resolution adopted by the Borough Council on August 9, 2021, the Redeveloper was designated to undertake the necessary development and construction of the Property in accordance with the Redevelopment Plan and any applicable amendments to the Redevelopment Plan; and

WHEREAS, the Redeveloper acknowledges and agrees that the designation by the Borough is conditioned upon the satisfaction of all the conditions and requirements of this agreement and the Redevelopment Plan; and

WHEREAS, the purpose of this Agreement is to effectuate designation of the Redeveloper, during the term of which (1) the Parties will perform their planning obligations under Section 2.06. (2) the Redeveloper will use its efforts in accordance with Section 2.04 and otherwise to acquire or put under contract to acquire the Property, (3) the Redeveloper will provide information regarding its financial capacity to complete the project defined in the Redevelopment Plan and will provide capital and operating budgets and pro formas for the complete development of the Redevelopment Plan (including all public amenities therein) and (4) the parties hereto will negotiate any amendments to this Agreement or the Redevelopment Plan necessary for the Project, including a development and construction agreement (the “Developer’s Agreement”) and a definitive Financial Agreement (as defined in Section 4.04) to cover the parties' relationship for the duration of the Redevelopment; and

WHEREAS, subject to Redeveloper’s satisfaction of the conditions and requirements of this Agreement and the Redevelopment Plan, the Borough intends to enter into with the Redeveloper the Developer’s Agreement, as same may be amended, and the Financial Agreement for the development of the project; and

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

ARTICLE 1

DEFINITIONS AND INTERPRETATIONS

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

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

b. **"Borough"** means the Borough of Bernardsville, New Jersey, a municipal corporation of the State of New Jersey. For the purposes of this Agreement, the Borough Council of the Borough of Bernardsville is the designated Redevelopment Entity for the Redevelopment Area pursuant to *N.J.S.A. 40A:12A-3*.

c. **"Borough Code"** means the Ordinances and Regulations of the Borough as amended from time to time.

d. **"Borough Indemnified Parties"** means the Borough and its officers, agents, and employees.

e. **"Conceptual Development Plan"** means a detail plan that contains the following:

1. A plan reasonably depicting the location of all buildings, including proposed uses, and heights, together with a programmatic tabulation by square footage and use type for residential and retail units including size, number key design features and amenities for the residences.
2. Detail the overall phasing strategy and project timeline.
3. Detail the proposed implementation strategy and location of public improvements outlined in Sections 5.2-5.7 of the Redevelopment Plan, including schematic design.
4. Detail the proposed implementation strategy and location of infrastructure and capital improvements including the design and location of parking facilities, loading facilities, utilities, vehicular circulation and pedestrian circulation.

5. Include a feasibility study for improvements outlined in Section 5.8 of the Redevelopment Plan.
6. Include a financing plan for public improvements including sources and uses of public and private funds.
7. Elevations and sections of all buildings and structures specified above
8. Preliminary design development of all public amenities.

f. “Development Approvals” means site plan approval by the Borough of Bernardsville Planning Board and other approvals required by applicable Legal Requirements

g. “Effective Date” means the date of this Agreement, which shall be entered on the first page hereof.

h. “Governmental Approvals” means all necessary reviews, consents, permits, licenses, leases, easements or grants or other approvals of any kind, including, but not limited to, Development Approvals, agreements for utility relocation and service legally required by or from any Governmental Body, each of which must be final and non-appealable, in order to carry out the Project, including but not limited to those set forth in **Exhibit C** hereto.

i. “Governmental Body” means any federal, state, county or local agency, department, commission, authority, court, or tribunal and any successor thereto, exercising executive, legislative, judicial, or administrative functions of or pertaining to government, and any public utility, including, without limitation, the Borough and the State of New Jersey or any other quasi-governmental agency having jurisdiction of the subject matter.

j. “Legal Requirements” means all laws, statutes, codes, ordinances, orders, regulations and requirements of any Governmental Body, now or hereafter in effect, and, in each case, as amended from time to time, including but not limited to the Borough Code.

l. “Lot” shall mean the lots comprising the real property for the Project not currently owned by the Borough, specifically Block 70, Lots 2, 3, 5, or 6. For clarity, Lot 6 shall mean Lot 6 in its entirety, including any and all condominium units contained therein.

k. “NJEDA” means the New Jersey Economic Development Authority.

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

- m. “NJDOT” means the New Jersey Department of Transportation.
- n. “NJRA” means the New Jersey Redevelopment Authority.
- o. “Person” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company or corporation, trust, unincorporated association, institution, public or Governmental Body, or any other entity.
- p. “Planning Board” shall have the meaning given to it in the recitals.
- q. “Project” is defined in **Section 2.03** hereof.
- r. “Project Improvements” means all buildings, structures, improvements, site preparation work and amenities necessary for the implementation and completion of the Project.
- s. “Property” means the Redevelopment Area or Property.
- t. “Agreement” means this Redevelopment Agreement between Borough and Redeveloper, and any written amendments and supplements hereto.
- u. “Redevelopment Area” shall have the meaning given to it in the recitals.
- v. “Redevelopment Law” or “LRHL” means the Local Redevelopment and Housing Law, *N.J.S.A. 40A:12A-1 et seq.*, as amended and supplemented.
- w. “Redevelopment Plan” shall have the meaning given to it in the recitals.
- x. “Reimbursable Borough Costs” is defined in **Sections 4.01 and 4.02** hereof.
- y. Term. The term of this Agreement (the “Term”) shall, be the period of time from the Effective Date of this Agreement through the execution by the Borough and the Redeveloper of all further amendments, further agreements and all final unappealable Government Approvals necessary for the construction of the Project and following completion of the Project, issuance of the Certificate(s) of Completion by the Borough. This Term is subject to earlier termination only in accordance with the terms of this Agreement, including termination because of the Redeveloper’s material Default.

ARTICLE 2
IMPLEMENTATION OF PROJECT

2.01. Exclusive Redeveloper. The Redeveloper, subject to the provisions hereof, is the designated Redeveloper and shall have the exclusive right to carry out the Project in accordance with the Redevelopment Plan and any modifications thereto, the Redevelopment Law and this Agreement during the Term. For the term of this Agreement, except as provided hereinabove and subject to termination of this Agreement pursuant to its terms, the Borough shall not designate any person or entity other than the Redeveloper to carry out any part of the Project.

2.02. Redeveloper's Interest in the Property. Redeveloper hereby agrees that it is or will undertake to become the owner of, or have contractual rights to, the Property.

2.03. The Project. The Project shall generally consist of the development and construction of mixed-use residential and commercial buildings consistent with the specifications and parameters of the Redevelopment Plan or any applicable amendments thereto and required parking spaces along with various other related improvements and amenities related to the Redevelopment Plan. The Project shall further consist of the acquisition of all or a portion of the Property, the construction and development of all Project Improvements and related on-site and off-site improvements, and utilities and infrastructure improvements, all in accordance with the Redevelopment Plan or any applicable amendments thereto and as set forth in this Agreement.

2.04. Property Acquisition. Redeveloper shall use all commercially reasonable efforts to have acquired or have under its contractual control all of the non-municipal owned parcels within Block 70 of the Redevelopment area within nine (9) months of the Effective Date of this Agreement ("Acquisition Period"). Without limitation of the preceding sentence, if the Redeveloper has acquired or placed under its contractual control within the initial nine (9) month period at least two (2) Lots, the Acquisition Period may upon request by the Redeveloper and consent of the Borough be extended for an additional six (6) months. At any time, if reasonably requested by the Redeveloper, the Borough may in its discretion further extend the Acquisition Period. Provided that Redeveloper is not in breach of this Agreement, upon request of the Redeveloper, the Borough may in its discretion take all reasonable steps to facilitate the acquisition of Property for the Project, including amending the Redevelopment Plan in a manner

consistent with the intents and purposes of the Redevelopment Plan (including the provision of public amenities) or engaging in eminent domain proceedings.

2.05. Financial capabilities. Redeveloper shall within sixty days (60) of the Effective Date of this Agreement present to the Borough evidence of the financial capability of the Redeveloper to finance and complete the Project. Such items may include evidence of bank statements, lines of credit, or letters confirming access to capital or equity needed for the completion of the Project. The Borough shall have the right to review and evaluate the submitted financial records and request additional documents as needed to ensure the viability of the Project.

2.06 Conceptual Development Plan: Within ninety days (90) of the Effective Date of this Agreement, the Redeveloper shall provide a Conceptual Development Plan, as defined herein. The Borough shall either approve or provide comment to the Conceptual Development Plan within 10 business days, after which period the Redeveloper will resubmit the Conceptual Development Plan to address the comments of the Borough and for approval within a reasonable period following receipt of the comments of the Borough, subject to final site plan approval by the Planning Board. The Borough, if needed, shall use best efforts to amend the Redevelopment Plan so that it is consistent with the agreed upon Conceptual Development Plan. Should the Borough and the Redeveloper fail to reach an agreement as to the Conceptual Development Plan or fail to amend the Redevelopment Plan within 90 days of the Parties agreed upon Conceptual Development Plan, notwithstanding the Parties' good faith efforts to do so, either the Borough or Redeveloper shall be entitled to terminate this Agreement.

2.07 Project Financials. Redeveloper shall within ninety days (90) of the Effective Date of this Agreement, with the submittal of the Conceptual Development Plan, provide updated financial records to include estimated project costs inclusive of public improvements, proposed sources of funding including construction financing and equity needs, proposed purchase price for municipal property, 10-year operating pro forma for the Project and any other items requested by the Borough needed to evaluate the financial viability of the Project.

2.08 Relocation of post office. Redeveloper within one hundred twenty days (120) of the Effective Date of this Agreement shall provide a relocation plan for the US Post Office. The Borough agrees not to extend or renegotiate the lease with the US Post Office without notice, consent and approval by the Redeveloper. The Borough agrees to cooperate with the Redeveloper in efforts to seek relocation of the US Post Office within the Redevelopment Area or other suitable location within the Borough.

2.09 Acquisition of Municipal Property. Redeveloper within one hundred eighty days (180) of the Effective Date of this Agreement will, subject to Borough approval, have a contract in place for the acquisition of all of the Municipal parcels necessary for the development of the Conceptual Development Plan. Redeveloper and Borough agree and acknowledge that any requirement for the Borough to sell or transfer property to the Redeveloper will be expressly contingent on the fulfillment and satisfaction by the Redeveloper of all of the conditions of this Agreement, the approved Redevelopment Plan and any amendments thereto, respectively.

2.10 Governmental Approvals.

(a) Attached hereto as **Exhibit B** is a list of all known Governmental Approvals that need to be obtained by the Redeveloper in order to satisfy its obligations under this Agreement with respect to completion of the Project. The Redeveloper shall be responsible, at its sole cost and expense, for obtaining all such Governmental Approvals and for any other Governmental Approval which may be required but which is not identified herein. The Redeveloper shall use diligent and commercially reasonable efforts to secure, or cause to be secured, any and all Governmental Approvals, and shall carry out the Project in conformance therewith and in accordance with the Redevelopment Project Schedule as set forth in **Exhibit A** attached hereto and made a part hereof. Redeveloper shall provide the Borough with copies of all Governmental Approvals for the Project upon request and shall keep the Borough apprised of the status of all Governmental Approvals. The Borough agrees to fully cooperate, to the extent that such cooperation is consistent with the terms and intent of the Redevelopment Plan, with the Redeveloper in obtaining the Governmental Approvals. Upon the written request of the Redeveloper, the Borough shall consider for approval modifications of the dates set forth in the

Redevelopment Project Schedule within a period of thirty (30) calendar days following receipt of a written request by the Redeveloper, such approval shall not be unreasonably withheld.

(b) In addition to the Site Plan Approval, the Redeveloper shall proceed diligently to obtain all other Governmental Approvals required for the Project from any Governmental Agency having jurisdiction over the Project, including but not limited to any County of Somerset Planning Board, NJDEP and NJDOT approvals, if required. It is understood by the parties that the Redeveloper can seek Final Site Plan approval, which would be contingent upon receipt of other Governmental Approvals. By January 31, 2022, the Redeveloper shall contact the NJDEP regarding the development of the Project and related public improvements within any flood plains or zones.

(c) The Property or portion(s) thereof may require environmental remediation, mitigation or clean up, including, but not limited to, the demolition of the existing structures on the Property, the disposal of materials generated thereby and the excavation and removal of contaminated soil, all in accordance with and as required by the NJDEP (collectively, the “Environmental Remediation”). The Parties agree that obligations and timelines under this Agreement will be equitably adjusted to account for Environmental Remediation.

2.11 Governmental Approval Fees. The Redeveloper shall pay all the Borough permit, application, escrow and approval fees (“Borough Fees”) and other non-Borough fees for Governmental Approvals, which include any application fees for Governmental Approvals payable by the Borough to all required Governmental Bodies other than the Borough in connection with the Project or application fees for which the Borough is required to reimburse other Governmental Bodies in connection with Governmental Approvals.

2.12 Amendment of Redevelopment Plan; Modification of Project Improvements.

(a) Upon request by the Redeveloper, the Borough agrees that it will consider for approval request(s) by the Redeveloper to amend the Redevelopment Plan in order to accommodate variations to the Project, provided such variations are generally consistent with the intent and purpose of the Redevelopment Plan (including the provision of the public amenities therein); such approval shall be within the Borough’s sole discretion.

(b) The Parties agree that if the Redevelopment Plan needs to be amended for any reason in the future, that the Party making the request shall do so in writing with supporting documentation reasonably satisfactory to the other Party, and the other Party shall provide a response within fifteen (15) calendar days. The reply will address only the conceptual response and any formal application to change the Redevelopment Plan must follow Legal Requirements.

(c) The Redeveloper acknowledges that portions of the Redevelopment Area are within a flood hazard area. The Redeveloper shall comply with all stormwater regulations promulgated by the State or Borough subject to review and approval by the Borough Engineer. Any and all stormwater improvements necessitated by the construction of buildings and structures shall be the requirement of the Redeveloper.

2.13 Water and Sewer Connection Fees. The Redeveloper shall be responsible for any additional infrastructure improvements required to accommodate full development of the Project, including, but not limited to, streets, sanitary sewers, storm sewers, utility lines and drainage facilities. The Borough shall reasonably utilize any authority which it may have under applicable law to assist the Redeveloper in the approval and construction of infrastructure improvements required for the Project. The Borough shall also cooperate with the Redeveloper as an applicant or in any other Borough to assist the Redeveloper in obtaining approvals for any infrastructure improvements required for the Project. In furtherance of same, the Redeveloper shall pay all water and sewer connection and usage fees due to the Borough or other agency upon issuance of building permits, such period to commence upon the issuance of building permits.

2.14 Cooperation. Both Parties shall fully cooperate with each other as necessary to accomplish the Project, including entering into additional agreements that may be required to accomplish the purposes of this Agreement; provided however, that such actions shall not without amendment hereof result in a material increase in the Parties' respective obligations hereunder or material decrease in the Parties' respective rights hereunder. The Borough further agrees to:

(a) Support the Redeveloper in connection with requests to expedite the review and approval by the Planning Board, of specific site plans for the Project provided that such site plans (i) conform to the guidelines of the Redevelopment Plan and this Agreement and any amendments thereto, respectively and (ii) are first conceptually approved by the Borough.

(b) Jointly with the Redeveloper apply for, develop and negotiate agreements with the NJDEP, the NJDOT, the NJEDA, the NJRA and/or any other agency of federal, state or regional government for grants, loans and/or necessary approvals of projects related to the Project or the Project itself.

ARTICLE 3

PROJECT OVERSIGHT

3.01. Regular Status Updates: The Redeveloper shall meet with the Borough representatives, which may include members of the Downtown Redevelopment Committee, monthly unless such frequency is deemed unnecessary by the Borough Administrator. The Redeveloper should generally be prepared to provide updates on and present plans, space utilization plans and programs, design including elevations, post office relocation issues, affordable housing plans, market changes, building massing, site plans and designs for public amenities, relocation process, land assemblage, engineering, environmental studies, other governmental approvals, finance, capital and operation budgets relevant to the Project, and timelines.

ARTICLE 4

REDEVELOPER AND BOROUGH FINANCIAL OBLIGATIONS

4.01. Reimbursable Borough Costs. The Redeveloper shall provide the Borough with the reimbursement of out-of-pocket costs incurred by the Borough in connection with the Project (“Reimbursable Borough Costs”). Reimbursable Borough Costs shall include reasonable fees and costs of any attorney, engineer, traffic consultant, architect, planner, financial advisor or other consultant(s), retained by the Borough in connection with the preparation and drafting of the Redevelopment Plan and all amendments thereto and this Agreement and professional fees associated with compliance and review of the implementation of this Redevelopment Agreement and any amendments thereto, but shall not include the costs of wages, salaries and benefits paid to employees of the Borough providing services in furtherance of the Project.

4.02. Payment of Reimbursable Borough Costs. Upon the Effective Date of this Agreement, the Redeveloper agrees to establish with the Borough’s chief financial officer an

escrow account (the "Escrow Account") having an initial balance of Fifty Thousand Dollars (\$50,000.00) from which the Reimbursable Borough Costs shall be paid. Prior to the Borough's withdrawal of funds from the Escrow Account for the payment of Reimbursable Borough Costs, the Borough shall provide the Redeveloper with a copy of each and every invoice reflecting the Borough Costs to be paid. Unless the Redeveloper provides a written objection within twenty (20) Days of its receipt of any such copy of an invoice stating that any invoiced item is not a valid Reimbursable Borough Cost pursuant to the terms of this Agreement, the Borough shall be free to withdraw funds from the Escrow Account for the payment of such invoiced services; provided however, that the Redeveloper's failure to object within such twenty (20) calendar days shall not be a waiver of Redeveloper's rights to dispute such payment pursuant to the provisions of *N.J.S.A. 40:55D-53.2 et seq.* If, when and as often as it may occur that the Escrow Account is drawn down to or below fifteen Thousand (\$15,000.00) Dollars, the Borough shall so notify the Redeveloper in writing, and the Redeveloper shall immediately thereafter provide to the Borough an amount sufficient to replenish the Escrow Account to Twenty-Five Thousand (\$25,000.00) Dollars for use in accordance with the terms of this Agreement. The Redeveloper shall also have the right to request a decrease in the balance required on the Escrow Account as the Project progresses, which request shall not be unreasonably denied by the Borough. The Redeveloper agrees that upon execution of this Agreement and deposit of the escrow the Borough shall be reimbursed a maximum of \$25,000.00 for costs related to the Project incurred by the Borough prior to and including the Effective Date.

4.03. Affordable Housing. The Redeveloper and the Project shall subject to provision for affordable housing and shall be subject to the Borough's affordable housing ordinances, court orders and settlements, which are in effect as of the Effective Date of this Agreement and may include, but not be limited to, any obligation to pay a residential development fee or to construct on-site or off-site affordable housing. This provision shall survive the issuance of a Certificate of Completion and Compliance and/or other evidence of completion of the Project and/or the expiration or termination of this Agreement and other agreements referenced herein.

4.04. Financial Agreement. The Redeveloper may create and transfer the Property to a duly qualified urban renewal entity pursuant to Legal Requirements with similar ownership interests to the Redeveloper (a "URE"), which URE may submit an application under the Long-Term Tax Exemption Law ("LTTE") for approval of an agreement for tax exemption and

payments in lieu of taxes (a "Financial Agreement"), provided that the Project qualifies for same under the provisions of the LTTE. The Redeveloper and the Borough recognize that a Financial Agreement may benefit the URE and the Borough. If proposed by a URE, the Borough agrees to consider such request in good faith on terms acceptable to the Borough, and any Financial Agreement shall be subject to the receipt of all Governmental Approvals required by Legal Requirements. The terms and conditions governing the Financial Agreement, which are contingent upon the Borough's approval, shall be negotiated in good faith by the Parties and shall be mutually acceptable to the Parties and the URE.

4.05. Project Costs and Financing. The Redeveloper will, at its sole cost and expense, construct the Project as required by the terms of this Agreement and the Governmental Approvals. Redeveloper agrees that all costs associated with the acquisition, development and financing of the Project are the sole responsibility of Redeveloper. Redeveloper represents that it either has obtained or will obtain financing for the Project. Upon request, the Redeveloper shall submit to the Borough evidence of financing commitments for construction financing.

4.06 Improvements for public amenities. The Redeveloper and the Borough acknowledge that the Project is part of the revitalization of the surrounding area and will have an impact on the area neighborhood. The Parties agree that the Redeveloper will create the conceptual design and preliminary engineering for the public amenities, and, not later than three (3) months prior to final site plan approval, the Redeveloper will in good faith negotiate and jointly work toward the execution of a separate agreement related to the costs of all off-site improvements, including such improvements in Block 71 and any stormwater or other regulatory compliance related thereto. Such agreement shall address the respective obligations of Redeveloper and Borough to acquire or construct all park, open space improvements or street landscaping within the Property as provided in the Redevelopment Plan. The Borough will apply for and utilize available resources to obtain funding, including any state, county, local or other open space funding for development of the off-site improvements.

ARTICLE 5
INDEMNIFICATION

5.01. Redeveloper Indemnification. Redeveloper agrees to indemnify and hold harmless and defend the Borough and hold harmless and defend the Borough Indemnified Parties, and the Redeveloper shall pay any and all liability, loss, cost, damage, claims, judgments or expenses, of any and all kinds or nature and however arising, by third parties, which claims arise from the Project, which the Borough and/or the Borough Indemnified Parties may sustain, be subject to or be caused to incur by reason of any claim, suit or action based upon personal injury, death, or damage to property, whether real, personal or mixed, in connection with the condition, use, possession, conduct, management, planning, design, construction installation, financing, marketing, leasing, or sale of the Project by Redeveloper or based upon or arising out of the actual breach of contract by the Redeveloper of contracts entered into by the Redeveloper, which directly relate to Redeveloper's act or omission relating to the Project, except to the extent any claim, suit or action arises from the gross negligence or intentional and willful acts of the Borough and/or the Borough Indemnified Parties.

ARTICLE 6
**PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER;
PERMITTED TRANSFERS**

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

6.02. Prohibition Against Transfers. The Redeveloper agrees not to assign, delegate, transfer or otherwise convey its rights, duties and obligations under this Agreement, including a change of control by direct transfer, equity transfer or operation of law (each a "Transfer"), except by Permitted Transfer, without the prior written consent of the Borough, which consent may be withheld in the Borough's discretion. Redeveloper has covenanted not to effectuate any Transfer without first having obtained the consent of the Borough to such Transfer.

6.03. Permitted Transfers. The following transfers are deemed to be "Permitted Transfers", and shall serve as exceptions to the general prohibition set forth in the previous paragraph and shall not require prior approval of the Borough: (a) a transfer of this Agreement to

a URE pursuant to Section 4.04 hereof ; (b) utility and other development easements; (c) conveyances, purchase and sale contracts or leases to the ultimate users or tenants of any portion of the Project or the improvements constructed thereupon as a component of the Project; (d) a change in the membership of the Redeveloper or a transfer of interests of Redeveloper to an Affiliate of Redeveloper so long as the interest of the principals of Advance Realty and its principal owners are not diminished and the succeeding Redeveloper is controlled by the same parties that control Redeveloper. Nothing herein shall permit any transfer to a foreign entity, or governmental or quasi-governmental entity, or any entity with criminal ties or which has been convicted of a felony, or to any publicly traded entity.

6.04. Notice of Permitted Transfers. With respect to any of the Permitted Transfers listed in Section 6.03 hereof, the Redeveloper shall provide the City with written notice within thirty (30) days prior to the consummation of such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the Transferee(s) involved, and the beneficial ownership and control thereof.

6.05. Transfers in Violation of this Agreement. Any Transfer not constituting a Permitted Transfer under Section 6.03 hereof in violation of this Agreement shall be deemed to be a Redeveloper Event of Default and shall be null and void *ab initio*, and the occurrence of such Redeveloper Event of Default shall entitle the Borough to seek all available remedies under the terms of this Agreement, including the right to terminate this Agreement and all other remedies available under the applicable law.

ARTICLE 7

EVENTS OF DEFAULT AND REMEDIES

7.01. Redeveloper's Default. The Borough shall have the right to declare the Redeveloper in default of this Agreement in the event of the occurrence of any of the following (each, an "Event of Default"):

(a) The Redeveloper's failure to substantially perform any of its obligations under the terms of this Agreement;

(b) A final and unappealable determination by a court of competent jurisdiction that the Redeveloper is insolvent;

(c) (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 has made a general assignment for the benefit of creditors, 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 sixty (60) 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 unstayed and in effect for any period of sixty (60) consecutive days; or (ix) the Redeveloper shall have suspended the transaction of its usual business.

(d) Failure by the Redeveloper to make any payments owed to the Borough when due of Reimbursable Borough Costs or other required payments to the Borough pursuant to this Agreement.

7.02. **Borough Default.** The Redeveloper shall have the right to declare the Borough in default of this Agreement in the event of the failure by the Borough to substantially perform any covenant or condition under this Agreement.

7.03. **Right to Cure Default.** Upon written notice of any Event of Default pursuant to **Section 7.01** or **Section 7.02**, either party shall have sixty (60) calendar days to cure such Default, provided that if such Event of Default cannot reasonably be cured within sixty (60) calendar days, then, providing that the Party is diligently proceeding to cure such default, the Party will have such time as is reasonably required to cure the Default.

7.04. **Force Majeure.** Failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute an Event of Default or breach

of this Agreement: labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, energy shortages, boycott efforts, fires, floods, freezes, extreme weather conditions, accidents, accidents, war (whether or not declared), terrorism, riots, act of God, acts (including, but not limited to, a delay in acting or a failure to act of government (including without limitation any agency, subdivision or department of the United States of America or the State of New Jersey), denial of any Governmental Approval, or other causes which are beyond the reasonable control of the Party asserting an excusable delay (the “Force Majeure”).

7.05. Default Rights and Remedies. Except as may otherwise be provided in this Agreement, upon the occurrence of an Event of Default not cured pursuant to **Section 7.03** hereof, the non-defaulting party may terminate this Agreement by Court Order and seek damages and institute such proceedings as may be necessary or desirable in its opinion to exercise self-help and cure and remedy such default or breach. In the event that this Agreement is terminated by court order, the Redeveloper’s designation as the redeveloper of the Redevelopment Area shall immediately terminate, together with the Redeveloper’s rights as the Redeveloper, and the Borough shall have all rights under applicable law including, without limitation, the right to appoint a new redeveloper, as set forth in the Redevelopment Law. In no event shall either party have any liability for consequential or punitive damages.

ARTICLE 8

REPRESENTATIONS AND WARRANTIES

8.01. Borough Representations. The Borough represents and warrants to Redeveloper as of the date of this Agreement and throughout the Term, as follows:

(a) The Borough (i) is a public body corporate and politic of the State of New Jersey and is duly organized, validly existing and in good standing under the laws of the State of New Jersey; and (ii) has all requisite corporate power to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement and the transactions contemplated hereby (i) have been duly authorized by all necessary corporate proceedings by the Borough; (ii) do not conflict with or result in any breach or contravention of any provision of

law, statute, rule or regulation to which the Borough is subject or any judgment, order, writ, injunction, license or permit applicable to the Borough or its properties; and (iii) do not conflict with any provision of its charter documents, bylaws, or any material agreement or other material instrument binding upon the Borough. The Borough is not in violation of any provision of its charter documents, bylaws, or any agreement or instrument to which it is subject or by which it or any of its properties are bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could reasonably be expected to materially adversely affect the ability of the Borough to perform its obligations under this Agreement.

(c) The execution and delivery of this Agreement will result in valid and legally binding obligations of the Borough enforceable against it in accordance with the respective terms and provisions hereof, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance or injunctive relief is subject to the discretion of the court before which any proceeding therefore may be brought.

(d) There are no pending, or to the knowledge of the Borough, threatened actions or proceedings by or before any court or administrative agency or arbitrator against or affecting the Borough that involve the Borough's execution or performance of this Agreement or the transactions contemplated hereby that, if adversely determined, are reasonably likely, either individually or in the aggregate, to materially adversely affect the ability of the Borough to perform its obligations under this Agreement.

(e) The Borough represents and agrees to the following: it has properly designated the Redevelopment Area as an area in need of redevelopment pursuant to the LRHL; has properly adopted the Redevelopment Plan pursuant to the LRHL; the Redevelopment Area shall remain subject to the Redevelopment Plan; the Borough shall not amend or modify the Redevelopment Plan without the consent of the Redeveloper; and, the Borough has properly designated the Redeveloper as the redeveloper of the Project in accordance with the LHRL.

(f) If there is any actual or alleged defect, deficiency, error, mistake or improper exercise of authority with regard to the approval and/or content of the matters that are the subject

of the representations set forth in this Section, the Borough shall take all necessary actions to rectify same and to ensure that this Agreement between the Borough and the Redeveloper is effective and shall remain in place, including adoption of any ordinance, resolution or any other rule, regulation or official action; execution of any documents necessary to ensure that same complies with the LRHL, as amended; and any other action necessary to cure any alleged defect so that the terms of the Agreement remain in place as agreed upon between the Borough and the Redeveloper.

8.02. Redeveloper Representations. Redeveloper represents and warrants to the Borough as of the date of this Agreement and throughout the Term, as follows:

(a) Redeveloper (i) is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of New Jersey; (ii) has all requisite power to execute, deliver and perform its obligations under this Agreement, and the equity ownership and control of the Redeveloper is held by AR at Quimby, LLC.

(b) The execution, delivery and performance of this Agreement and the transactions contemplated hereby; (i) have been duly authorized by Redeveloper; (ii) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which Redeveloper is subject or any judgment, order, writ, injunction, license or permit applicable to Redeveloper or its properties; and (iii) do not conflict with any provision of its governing documents, or any material agreement or other material instrument binding upon Redeveloper. Redeveloper is not in violation of any provision of its charter documents, or any agreement or instrument to which it is subject or by which it or any of its properties are bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could reasonably be expected to materially adversely affect the ability of Redeveloper to perform its obligations under this Agreement.

(c) The execution and delivery of this t Agreement will result in valid and legally binding obligations of Redeveloper enforceable against it in accordance with the respective terms and provisions hereof, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or other laws relating to or affecting generally the enforcement of creditors' rights and except to the extent that availability of the remedy of specific performance

or injunctive relief is subject to the discretion of the court before which any proceeding therefore may be brought.

(d) There are no pending or, to the knowledge of Redeveloper, threatened actions or proceedings by or before any court or administrative agency or arbitrator against or affecting Redeveloper or any of its affiliates or that involve Redeveloper's execution or performance of this Agreement or the transactions contemplated hereby that, if adversely determined, are reasonably likely, either individually or in the aggregate, to materially adversely affect the ability of Redeveloper to perform its obligations under this Agreement.

(e) Redeveloper shall not use the Property or permit the Property to be used in any manner that materially violates any Legal Requirements.

(f) Redeveloper acknowledges and agrees that (i) Redeveloper shall construct only the uses established in the Redevelopment Plan, including as it may be amended; (ii) Redeveloper shall develop the Project in accordance with the terms of this Agreement, including as it may be amended; (iii) Redeveloper shall comply with the Redevelopment Law and all associated Legal Requirements ; and (iv) until such time that a Certificate of Completion and Compliance has been issued and the Project is otherwise completed, Redeveloper shall be without power to sell the Property or any portion thereof or interests therein, except as may be sold to a permitted Transferee pursuant to Section 6.03. .

ARTICLE 9

MISCELLANEOUS

9.01. **Notices.** Formal notices, demands and communications between the Borough and the Redeveloper and from the Redeveloper to the Borough (as required herein) shall be deemed sufficiently given if dispatched to the address set forth below by registered or certified mail, postage prepaid, return receipt requested, and shall be deemed delivered upon receipt. Notices may also be sent by a commercial overnight delivery service with packaging tracking capability and for which proof of delivery is available. Notice may also be sent by facsimile as long as such notice s followed by sending a copy by regular mail. 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 designated by written notice.

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

To the Borough:
Borough of Bernardsville
Attn: Mayor and Borough Clerk
Borough Hall, 166 Mine Brook Road
Bernardsville, New Jersey 07924

With a copy to:
Joseph DeMarco, Esq.
Cleary Giacobbe Alfieri Jacobs LLC
16 Ramapo Valley Road
Oakland, New Jersey 07436

To the Redeveloper:
AR at Quimby, LLC
ATTN: General Counsel
1420 U.S. Highway 206, Suite 200
Bedminster, New Jersey 07921

With a copy to:
Philip W. Lamparello, Esq.
Chasan, Lamparello Mallon & Cappuzzo, PC
300 Lighting Way, Suite 200
Secaucus, New Jersey 07090

9.02. Non-Liability of Officials and Employees of Borough. No member, official, agent 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, on any obligation under the terms of this Agreement.

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

9.04. Estoppel Certificate. Within thirty (30) calendar days following written request therefore by a party hereto, the other party shall issue a signed estoppel certificate either stating that this Agreement is in full force and effect and that there is no default or breach under this Agreement (nor any event which, with the passage of time and the giving of notice would result in a default or breach under this Agreement), or stating the nature of the default or breach or event, if any. In the event the estoppel certificate discloses such a default, breach or event, it shall also state the manner in which such default, breach and/or event may be cured. No more than a reasonable number of estoppel certificates may be requested per year.

9.05. 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 Agreement as broker, agent, or otherwise acting on behalf of either the Borough or the Redeveloper, and the Borough and the Redeveloper shall indemnify each other with respect to any claims made by any person, firm or organization claiming to have been so employed by the indemnifying party.

9.06. No Consideration for this 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 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 Agreement.

9.07. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the permitted successors, assigns and affiliates of the parties hereto, and their heirs, executors, and administrators. This Agreement shall not be assigned except as otherwise provided herein.

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

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

9.10. Severability of Provisions. If any term or provision of this Agreement or the application thereof shall to any extent be held to be invalid or unenforceable, the remainder of this 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 Agreement shall be valid and shall be enforced to the extent permitted by law.

9.11. Modification of this Agreement. No modification, waiver, amendment, discharge, or change of this 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.

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

9.13. Drafting Ambiguities; Interpretation. In interpreting any provision of this 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 Agreement, each party acknowledging that it and its counsel have had an opportunity to review this Agreement and have contributed to the final form of same.

9.14. Waivers and Amendments in Writing. All waivers of the provisions of this 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. The waiver by either party of a default or of a breach of any provision of this Agreement by the other party shall not operate or be construed to operate as a waiver of any subsequent default or breach.

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

9.16. Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New Jersey.

9.17. Return of Escrows. Upon any termination of this Agreement for any reason whatsoever, all escrows and other amounts deposited with the Borough under this Agreement shall be promptly returned to Redeveloper, after payment of any costs and/or permitted damages for which Redeveloper is then liable under the terms of this Agreement.

[The Remainder of this Page Intentionally Left Blank. Signatures Follow on Next Page]

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

**Borough of Bernardsville, a Municipality of the
State of New Jersey**

By: Mary Jane Canose
Mayor Mary Jane Canose

Date: January 20, 2022

**AR at Quimby, LLC
A New Jersey Limited Liability Company,
Redeveloper**

By: Peter J. Cocozziello

**Name: Peter J. Cocozziello
Title: Managing Member**

Date: January 12, 2022

EXHIBIT A

Redevelopment Project Schedule

1. Redeveloper to use commercially reasonable efforts to acquire or have under contractual control all property necessary for the Project in accordance with the Agreement, Section 2.04:
By Nine (9) months from the Effective Date.
2. Redeveloper to provide financial records in accordance to the Agreement, Section 2.05
By sixty (60) days from the Effective Date
3. Redeveloper to provide a Conceptual Development Plan for the project in accordance to the Agreement, Section 2.06
By ninety (90) days from the Effective Date
4. The Borough to either approve or provide comment to the Conceptual Development Plan in accordance to the Agreement, Section 2.06.
By 10 business days from the Borough's receipt of the Conceptual Development Plan provided under Section 2.06. Redeveloper to resubmit the corrected Conceptual Development Plan within a reasonable period after comment by the Borough.
5. Redeveloper to provide updated financial records in accordance to the Agreement, Section 2.07
By ninety (90) days from the Effective Date
6. Redeveloper to provide a relocation plan for the US Post Office in accordance to the Agreement, Section 2.08
By one hundred twenty (120) days from the Effective Date
7. Redeveloper to have a contract in place for the purchase of all municipal property in accordance to the Agreement, Section 2.09
By one hundred eighty (180) days from the Effective Date.
8. Redeveloper to have applied and received final site plan approval for the project.
By July 31, 2023
9. Parties to negotiate and work towards the execution of a separate agreement related to improvements in accordance with the Agreement, Section 4.06.
By three (3) months prior to final site plan approval.
10. Redeveloper to conduct initial and subsequent meetings with NJDEP and NJDOT
Per the schedule set forth by those regulatory authorities.
11. Redeveloper to commence construction of the Project Improvements of for the Project as approved:
By Within six (6) months of receipt of all Governmental Approvals.

All dates contained in the Redevelopment Project Schedule may be reasonably extended if the Redeveloper is proceeding in good faith and using commercially reasonable efforts to meet the dates specified.

EXHIBIT B

To the Redevelopment Agreement

Government Approvals

1. Preliminary and Final Site Plan Approval from the Borough of Bernardsville Planning Board
2. Site Plan Approval from the Somerset County Planning Board, if applicable
3. Soil Erosion and Sediment Control Plan Certification from the Somerset County Soil Conservation District
4. NJDEP, including for improvements within the Flood Hazard Area
5. NJDOT, if applicable

And any other reviews, consents, permits, licenses, easements, agreements or other approvals of any kind which may be required by any governmental or quasi-governmental agency with jurisdiction over the Property.