

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

This **First Amendment to Redevelopment Agreement** is made this 4 day of October 2016 by and between the

BOROUGH OF EMERSON
146 Linwood Ave., Emerson, NJ 07630
A municipal corporation of the State of New Jersey, located in the County of Bergen, (hereinafter referred to as "Borough")

AND

EMERSON REDEVELOPERS URBAN RENEWAL, LLC
A limited liability corporation of the State of New Jersey, having an office at 80 S. Jefferson Road, Suite 202, Whippany, NJ 07981 (hereinafter referred to as "EMRED" or "Redeveloper")

WHEREAS, the Borough and Redeveloper entered into a Redevelopment Agreement on or about June 14, 2016 (the "Redevelopment Agreement") for the redevelopment of certain areas within the Central Business District Redevelopment Area; and

WHEREAS, the Borough and the Redeveloper are desirous of amending and supplementing the Redevelopment Agreement to reflect their mutual understanding with respect to the implementation of the Redeveloper's proposal submitted to the Borough and the Borough's Redevelopment Plan;

WHEREAS, the Borough and Redeveloper have agreed to amend and supplement the Redevelopment Agreement upon the terms and conditions set forth herein;

NOW, THEREFORE, for and in consideration of the promises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. All terms not defined in this Amendment shall have the same meaning as set forth in the Redevelopment Agreement.

2. The purpose and intent of this Amendment is to amend and supplement the description of the properties to be redeveloped to reflect the Redeveloper's proposal submitted to the Borough and in accordance with the Borough's Redevelopment Plan.

3. The property descriptions listed in Exhibit A of the Redevelopment Agreement, attached hereto as **Exhibit A**, is amended and supplemented to include the following additional information:

<u>Property Owner</u>	<u>Block</u>	<u>Lot</u>	<u>Property Address</u>
182 Emerson, LLC	419	9	176 Kinderkamack

3. The Funding Agreement attached to the Redevelopment Agreement as Exhibit E, shall be amended and supplemented, attached hereto as **Exhibit B**, to include Block 419, Lots 7 and 9 as redevelopment properties and are made part of the first "WHEREAS" clause, which shall now be deemed amended to read as follows:

WHEREAS, ERD seeks to redevelop the following property located in the Borough of Emerson identified on the Tax Maps of the Borough as Block 419, Lots 1, 2, 3, 4, 6.01, 6.02, 7, 8, 9, and 10.

4. In all other respects, the Redevelopment Agreement remains in full force and effect.

5. This First Amendment together with the proposal, the Land Use Board Resolution(s), any Orders or Directives of any authorized Borough Official and the Redevelopment Agreement represents the entire understanding of the Borough and Redeveloper with respect to the subject matter of this First Amendment and the Redevelopment Agreement. No further change or modification shall be effective unless in writing and signed by the Borough and the Redeveloper.

6. All the provisions of this First Amendment to Redevelopment Agreement shall survive and shall remain in full force and effect, despite the expiration or completion of any other provisions of the Redevelopment Agreement or any other extinguishing or superseding event or document.

IN WITNESS WHEREOF, Redeveloper has hereunto caused this First Amendment to Redevelopment Agreement to be signed by its proper authorized parties and has caused its proper seals, if any, to be affixed hereto. The Borough of Emerson has caused this instrument to be signed by its Mayor and attested by its Borough Clerk and does cause its proper corporate seal to be affixed as of the date and year first above written.

Witnessed and Attested to:

BOROUGH OF EMERSON



JANE DIETSCHÉ, Borough Clerk

By: 

LOUIS J. LAMATINA, Mayor

Attested to:

EMERSON REDEVELOPERS URBAN RENEWAL, LLC

By: _____
Managing Member

MUNICIPAL ACKNOWLEDGMENT

STATE OF NEW JERSEY:

: SS

COUNTY OF BERGEN :

I CERTIFY that on Oct. 6, 2016,

JANE DIETSCHÉ personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the Municipal Clerk of the Borough of Emerson, the Municipal Corporation named in this document;

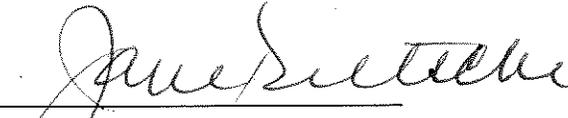
(b) this person is the attesting witness to the signing of this document by the proper Corporate Officer who is Louis J. Lamatina, the Mayor of the Municipal Corporation;

(c) this document was signed and delivered by the Municipal Corporation as its voluntary act duly authorized by a proper Resolution of its Municipal Council;

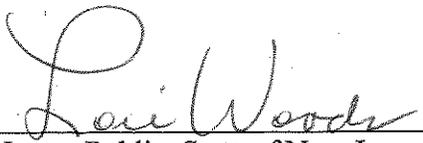
(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

Signed and sworn to before me on
Oct. 6, 2016.



Municipal Clerk



Notary Public, State of New Jersey

LORI A. WOODS
NOTARY PUBLIC, State of New Jersey
No. 2453738
Qualified in Bergen County
Commission Expires Oct. 14, 2020

EXHIBIT A

Property Description

<u>Property Owner</u>	<u>Block</u>	<u>Lot</u>	<u>Property Address</u>
Angelo and Jane Giambona	419	1	19 Lincoln Blvd.
214 Kinderkamack, LLC	419	2	15 Lincoln Blvd.
214 Kinderkamack, LLC	419	3	9 Lincoln Blvd.
214 Kinderkamack, LLC	419	4	214 Kinderkamack
Dolores, Della Volpe Trste	419	6.01	190 Kinderkamack
Yaghoob Pousty	419	6.02	184 Kinderkamack
Borough of Emerson	419	7	
182 Emerson, LLC	419	8	182 Kinderkamack
182 Emerson, LLC	419	9	176 Kinderkamack
182 Emerson, LLC	419	10	78 Linwood

EXHIBIT B

Amended and Supplemented Funding Agreement

FUNDING AGREEMENT

THIS FUNDING AGREEMENT is dated this 4 day of Oct, 2016 among the **BOROUGH OF EMERSON**, a municipal corporation with offices at 146 Linwood Ave., Emerson, NJ 07630 (the "Borough") and **EMERSON REDEVELOPERS, LLC**, with offices located at 80 S. Jefferson Road, Suite 202, Whippany, NJ 07981 (hereinafter referred to as "ERD");

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

WHEREAS, ERD seeks to redevelop the following property located in the Borough of Emerson identified on the Tax Maps of the Borough as Block 419; Lots 1, 2, 3, 4, 6.01, 6.02, 7, 8, 9, and 10 (the "Property"); and

WHEREAS, the Borough wishes to designate a redeveloper for the Redevelopment Area encompassing the Property; and

WHEREAS, ERD proposes to design, develop, finance and construct 134 units and 13,000 square feet of retail space ("the Project") and accordingly has requested the Borough consider appointing ERD as redeveloper for the Property; and

WHEREAS, ERD has agreed to pay the Application Fee as set forth herein and bear the costs for the Borough's professionals to assist the Borough in reviewing, among other things, whether ERD should be designated redeveloper for the Property, and in connection therewith has agreed to establish an escrow fund with the Borough to provide for the payment of professional fees, costs and expenses related thereto incurred by the Borough (the "Interim Costs");

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:

1. Payment of Interim Costs.

Immediately upon the execution of this Funding Agreement, ERD shall pay Ten Thousand Dollars (\$10,000) (the "Escrow") to the Borough and the Borough shall deposit such funds into an escrow account established by it for the payment of the Interim Costs. Prior to the Borough's withdrawal of funds from the Escrow for the payment of the Interim Costs, the Borough shall provide ERD with a copy of each invoice reflecting Interim Costs to be paid. Unless ERD promptly (within fifteen (15) days of its receipt of any such copy) provides a written objection to any invoiced item as not being an Interim Cost, the Borough shall be free to withdraw funds from the Escrow for the payment of such invoiced services. If, when and as often as may occur that the Escrow is drawn down to or below Three Thousand Five Hundred Dollars \$3,500 then ERD, upon the Borough's request, shall immediately provide to the Borough

for deposit an additional amount sufficient to replenish the escrow to Ten Thousand Dollars (\$10,000) for use in accordance with these terms.

Interim Costs, for the purposes of this Funding Agreement, shall include the reasonably incurred out-of-pocket fees, costs and expenses incurred by the Borough (both before and after execution hereof) in reviewing the proposed development of the Property, including, but not limited to, fees for legal, engineering, planning and financial advisory services, including subsequent investigations and studies as may be reasonably determined and agreed to by the parties.

2. **Application Fee** – Prior to the execution of a formal Redeveloper's Agreement the Borough shall impose a non-refundable fee in an amount to be determined based on the final concept plan, with any adjustment to the fee to be paid, if appropriate, when the Redevelopment Agreement is executed.

3. **Notice**. Any notice provided to the Borough hereunder shall be submitted in writing to:

Jane Dietsche, RMC, Borough Clerk
146 Linwood Ave.
Emerson, NJ 07630

with copies to:

Douglas F. Doyle
Decotiis, Fitzpatrick & Cole, LLP
Glenpointe Centre West
500 Frank W. Burr Blvd, Suite 31
Teaneck, NJ 07666

Notices to ERD shall be submitted in writing to:

Emerson ReDevelopers, LLC
Attn: Kevin X. Codey, Vice President of Land Acquisitions
80 South Jefferson Road, Suite 202
Whippany, NJ 07981

with copies to:

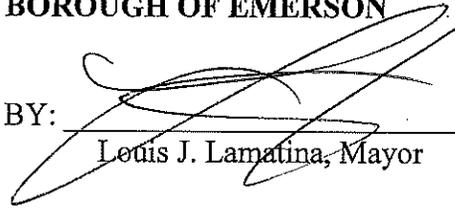
Carleton R. Kempf, Esq.
6 Hampshire Court
Springfield, NJ 07081

4. **General**.- This Funding Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings between the parties. This Funding Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

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

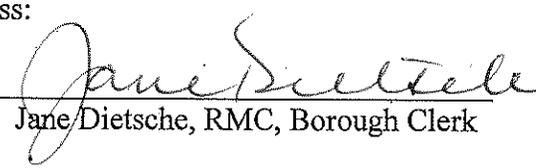
BOROUGH OF EMERSON

BY: _____


Louis J. Lamatina, Mayor

Witness:

By: _____


Jane Dietsche, RMC, Borough Clerk

AND

EMERSON REDEVELOPERS, LLC

BY: _____

Name:

Title: