This Amended and Restated Settlement Agreement ("Agreement") is dated as of the _______ day of February, 2021, and is by and among APPLIED MONROE LENDER, LLC, a limited liability company with offices at 50 Washington Street, Hoboken, New Jersey 07030 (“Applied”), SHIPYARD ASSOCIATES, L.P., a limited partnership with offices at 50 Washington Street, Hoboken, New Jersey 07030 ("Shipyard") (Applied and Shipyard collectively referred to herein as the “Applied Parties”), and the CITY OF HOBOKEN, a municipal corporation of the State of New Jersey, with offices at 94 Washington Street, Hoboken, New Jersey, 07030 (“Hoboken”) (the Applied Parties and Hoboken collectively referred to herein as the “Parties”). As used herein, the “Applied Parties” includes such other entity or entities created by the Applied Parties or their affiliates to carry out their obligations or to exercise their rights under this Agreement.

RECITALS:

WHEREAS, Shipyard and Hoboken are parties to a prior settlement agreement that was executed on August 9, 2019 and the Parties have agreed to amend, restate and supersed the August 9, 2019 settlement agreement with this Agreement; and

WHEREAS, the Applied Parties and Hoboken have been parties to numerous civil actions, including the civil actions captioned Shipyard Associates, L.P. v. City of Hoboken, Law Division Docket No. HUD L-1308-16, Appellate Division Docket No. A-001085-17T3 and Supreme Court Docket No. 082446 and Applied Monroe Lender, LLC v. City of Hoboken Planning Board and City of Hoboken, Appellate Division Docket No. A-003048-15T3 (these civil actions collectively referred to herein as the “Litigation”); and

WHEREAS, the Litigation concerns the development of properties located in the City of Hoboken that the Applied Parties own that are defined herein as the Shipyard Properties and 800-822 Monroe Street; and

WHEREAS, Shipyard is the owner of the properties designated on the Tax Assessment Map of the City of Hoboken as Block 264.2, Lot 1 and that portion of Block 264.1, Lot 1 shown on the drawing attached hereto as Exhibit A (collectively, the “Shipyard Properties”) and the Applied Parties have obtained various governmental approvals to construct a high-rise residential development known as the “Monarch at Shipyard” on a portion of the Shipyard Properties (hereinafter the “Monarch at Shipyard”); and

WHEREAS, Hoboken and Shipyard have been involved in other protracted litigation concerning the Monarch at Shipyard; and

WHEREAS, Applied is the owner of property identified as 800-822 Monroe Street in the City of Hoboken and designated on the Tax Assessment Map of the City of Hoboken as Block 87, Lot 1.01 and shown on the drawing attached hereto as Exhibit B (“800-822 Monroe Street”) and Applied is currently
seeking from Hoboken redeveloper designation to construct a mixed use high rise residential and retail development at 800-822 Monroe Street; and

WHEREAS, the development of 800-822 Monroe Street is subject to the Northwest Industrial Redevelopment Plan adopted on May 20, 1998, with most recent amendment on or about August 7, 2019, and the Hoboken City Council (the “City Council”) has duly designated Applied as the conditional redeveloper of 800-822 Monroe Street under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (“LRHL”) pursuant to a January 29, 2020 Interim Cost and Conditional Designation Agreement entered into between Applied and Hoboken (the “Monroe Interim Cost Agreement”); and

WHEREAS, on December 9, 2019 Hoboken and Shipyard entered into an Interim Cost and Conditional Designation Agreement (“Municipal Garage Interim Cost and Conditional Designation Agreement”) that conditionally designates Shipyard as the redeveloper of certain real property owned by Hoboken which is designated as Block 1, Lot 1 on the Hoboken Tax Assessment Map and commonly known as 256 Observer Highway (“Municipal Garage Site”) on which Hoboken’s municipal garage and public works facility (“Existing Municipal Garage”) currently operates, and which is subject to the Redevelopment Plan for the Public Works Garage Site, adopted April 19, 2006, with most recent amendment dated June 18, 2008 (“Public Works Garage Redevelopment Plan”); and

WHEREAS, on December 9, 2019 Hoboken and Shipyard entered into an Interim Cost and Conditional Designation Agreement (“Municipal Garage Interim Cost and Conditional Designation Agreement”) that conditionally designates Shipyard as the redeveloper of certain real property owned by Hoboken which is designated as Block 1, Lot 1 on the Hoboken Tax Assessment Map and commonly known as 256 Observer Highway (“Municipal Garage Site”) on which Hoboken’s municipal garage and public works facility (“Existing Municipal Garage”) currently operates, and which is subject to the Redevelopment Plan for the Public Works Garage Site, adopted April 19, 2006, with most recent amendment dated June 18, 2008 (“Public Works Garage Redevelopment Plan”); and

WHEREAS, the Parties wish to amend, restate and supersede the Municipal Garage Interim Cost and Conditional Designation Agreement (“Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement”) in order to effectuate the terms of this Agreement and to extend the conditional designation of the Applied Parties, or one of their affiliates, as the case may be, as the redeveloper of the Municipal Garage Site; and

WHEREAS, the Applied Parties or one of their affiliates is interested in becoming the exclusively designated redeveloper and owner of the Municipal Garage Site, as set forth herein, and Hoboken wishes to sell the Municipal Garage Site to the Applied Parties and thereafter, construct a new municipal garage on other property located in the City of Hoboken; and

WHEREAS, this Agreement shall be Exhibit A to the Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement; and

WHEREAS, Hoboken wishes to acquire title to or interest, as the case may be, in the Shipyard Properties and 800-822 Monroe Street as set forth herein; and

WHEREAS, the LRHL, at N.J.S.A. 40A:12A-8, authorizes Hoboken to contract with redevelopers for the undertaking of any project or redevelopment work, and to lease or convey property or improvements, without public bidding, in conjunction with a redevelopment plan; and

WHEREAS, the Parties have conferred and desire to fully and finally resolve the potential claims between and among them, including all claims and counterclaims which have been, or which could have been brought in the Litigation, on the terms and subject to the conditions set forth herein.
NOW, THEREFORE, in consideration of their mutual promises and covenants set forth herein, and for additional valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the undersigned Parties represent, warrant, covenant and agree as follows:

1. **Recitals.** The above recitals clauses are incorporated herein by reference.

2. **Amended and Restated Settlement Agreement.** This Amended and Restated Settlement Agreement shall supersede in all respects the prior settlement agreement executed on August 9, 2019 that was entered into between Shipyard and Hoboken. However, the Parties agree and acknowledge that the work product generated by the Parties pursuant to the prior settlement agreement executed on August 9, 2019 may be used by the Parties to carry out the terms of this Amended and Restated Settlement Agreement. The Parties acknowledge and agree that such prior and any future work product and communications concerning the negotiation of this Agreement shall remain privileged and confidential, as permitted by law.

3. **No Admission.** By entering into this Agreement, none of the Parties intends to acknowledge, or shall be deemed to have acknowledged, any fault, liability or responsibility for any wrongful acts, injury or damages or the amount thereof. Rather, the Parties merely wish to compromise and settle all claims by and among them. The Parties acknowledge that this Agreement may become a public record in connection with the presentation of the Agreement to the City Council. Notwithstanding same, upon the full execution of this Agreement, the Parties shall not unnecessarily discuss this Agreement with third parties and shall instruct their consultants to keep the terms of this Agreement confidential and only discuss such terms with the Parties to this Agreement in order to carry out its purpose. The Parties agree that any communications concerning the negotiation of this Agreement shall remain privileged, as permitted by law. It is expressly agreed and understood by the Parties that this Agreement shall not be construed as an admission of liability, or an admission as to any of the factual allegations made in the Litigation, by the Parties to this Agreement, or by anyone else, and each of the Parties expressly denies that it bears any liability or has engaged in any illegal or improper act or omission or wrongdoing of any type or nature. The Parties agree that this Agreement shall not be admissible in any proceeding except to enforce the terms of this Agreement consistent with paragraph 16 hereof, which provides that Hoboken’s sole remedy for breach of this Agreement is termination of this Agreement.

4. **Representations, Warranties and Covenants of the Applied Parties.** The Applied Parties represent, warrant and covenant that:

   a. They possess the legal capacity, power and authority to enter into this Agreement and to perform the transactions contemplated hereby.
b. The execution, delivery and performance of this Agreement will not violate any agreement or contract to which they are a party, or to which they are subject, nor to the best of their knowledge any provision of law to which they are subject.

c. They have knowingly and freely entered into this Agreement and have been advised by legal counsel of their choosing in so doing.

d. All claims asserted by the Applied Parties in the Litigation are owned and held legally and beneficially by them and there is no person or entity other than the Applied Parties who has any interest in such claims.

e. The Applied Parties’ decision to sign this Agreement is their own free and voluntary act without compulsion of any kind.

f. Shipyard is the owner of the Shipyard Properties and Applied is the owner of 800-822 Monroe Street.

g. The Applied Parties and their principals, affiliates or any associated entities have no actual knowledge of any pending legal action or proceeding by any Federal, State or local governmental entity, or by any other person or entity, to:

   (1) Require any of the Applied Parties, or any other person or entity, to perform any maintenance, repair, alteration or removal of any improvement, material or structure, including without limitation, any pier, platform, bulkhead or pile, or any part thereof, which is located at, on or under the Shipyard Properties or 800-822 Monroe Street, other than remediation required by the New Jersey Department of Environmental Protection (“NJDEP”) pursuant to the NJDEP Site Remediation Program and/or Underground Storage Tank remediation case(s) identified with NJDEP Project Identification (“PI”) No. 670384 related to the presence of contamination at 800-822 Monroe Street; or

   (2) Require any of the Applied Parties, or any other person or entity, to reimburse, pay any fine or assessment, or otherwise contribute any monetary sums to any person or entity for any maintenance, repair, alteration or removal of any improvement, material or structure, including without limitation any pier, platform, bulkhead or pile or any part thereof, which is located at, on or under the Shipyard Properties or 800-822 Monroe Street.

   (3) In the event that any such pending legal action or proceeding becomes known to the Applied Parties or any of their principals, affiliates or
associated entities prior to the Closings (as defined herein), the Applied Parties shall immediately notify Hoboken in writing. The Applied Parties shall be permitted forty-five (45) days to cure and seek dismissal of said pending or anticipated legal action or proceeding ("Applied Parties Cure Period"). If the Applied Parties have not obtained dismissal, with prejudice, of such action or proceeding within the Applied Parties Cure Period, Hoboken may terminate this Agreement.

h. Except as expressly set forth in this Agreement, no promise, representation, agreement or inducement has been made to the Applied Parties by Hoboken in order to cause the Applied Parties to enter into and perform this Agreement.

i. The Applied Parties have adequate information to determine whether or not to enter into and perform this Agreement.

5. **Representations, Warranties and Covenants of Hoboken.** Hoboken represents, warrants and covenants that:

a. Hoboken possesses the legal capacity, power and authority to enter into this Agreement and to perform the transactions contemplated hereby.

b. The execution, delivery and performance of this Agreement will not violate any Agreement to which Hoboken is a party, or to which Hoboken is subject, nor to the best of its knowledge any provision of law to which Hoboken is subject.

c. Hoboken has knowingly and freely entered into this Agreement and has been advised by legal counsel of its choosing in so doing.

d. Hoboken’s decision to sign this Agreement is its own free and voluntary act without compulsion of any kind.

e. Except as expressly set forth in this Agreement, no promise, representation, agreement or inducement has been made to Hoboken by the Applied Parties in order to cause Hoboken to enter into and perform this Agreement.

f. Hoboken has adequate information to determine whether or not to enter into and perform this Agreement.

g. Hoboken is the sole owner and occupant of the Municipal Garage Site and no tenants or occupants have or will have any rights to occupy or lease any part of the Municipal Garage Site.
To the best of Hoboken’s knowledge after due inquiry, there are no pending or threatened legal actions, proceedings, violations, fines or assessments by any Federal, State or local governmental entity, or by any other person or entity related to the Municipal Garage Site. In the event that any such pending legal action or proceeding becomes known to Hoboken prior to the Closing, Hoboken shall immediately notify the Applied Parties in writing. Hoboken shall be permitted forty-five (45) days to cure and seek dismissal of said pending or anticipated legal action or proceeding (“Hoboken Cure Period”). If Hoboken has not obtained dismissal, with prejudice, of such action or proceeding within the Hoboken Cure Period, the Applied Parties may terminate this Agreement.

6. Effective Date. The Effective Date of this Agreement shall be the date on which the last of the following actions or events has occurred (it being understood by the Parties that in addition to the specific termination rights set forth in subparagraphs 6(c) through (l) as well as the earlier termination rights set forth in this Agreement, if one or more of the following events have not occurred by the Outside Date (as defined below), then the Applied Parties may terminate this Agreement in their sole discretion, pursuant to subparagraph 8(a) below and subject to the terms herein. As used herein, the term “approval(s)” means such final and nonappealable approval(s):

a. **Execution of this Agreement.** This Agreement has been duly executed by all of the Parties;

b. **Adoption of Resolution Authorizing this Agreement.** The City Council has duly adopted a resolution satisfactory to the Applied Parties in their sole discretion authorizing Hoboken to execute, deliver and perform this Agreement on or before February 3, 2021 and this Agreement is fully executed in accordance with said resolution on or before February 17, 2021;

c. **Adoption of Resolution Authorizing Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement.** The City Council has duly adopted on or before February 3, 2021 a resolution authorizing Hoboken to execute, deliver and perform a Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement, satisfactory to the Applied Parties in their sole discretion, with the Applied Parties or one of their affiliates, regarding the proposed redevelopment of the Municipal Garage Site, which (i) provides for the negotiation of a redevelopment agreement to set forth all the details, terms and conditions for the redevelopment of the Municipal Garage Site and the sources of funding for any payment obligations described in paragraph 13 hereof, in accordance with this Agreement and consistent with the project description attached hereto as **Exhibit B**, and which (ii) conditionally designates the Applied Parties or one of their affiliates as the redeveloper of the Municipal Garage Site.
under the LRHL and such Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement is fully executed by February 17, 2021. If the Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement with the Applied Parties or one of their affiliates does not meet the requirements of this paragraph 6(c) or is inconsistent with Exhibit B attached hereto or is not executed by February 17, 2021, the Applied Parties may in their sole discretion terminate this Agreement;

d. **Adoption of Resolution Authorizing Municipal Garage Redevelopment Agreement.** By no later than March 17, 2021, Hoboken and the Applied Parties have negotiated and the City Council has duly adopted a resolution authorizing Hoboken to execute a redevelopment agreement pursuant to the LRHL satisfactory to the Applied Parties in their sole discretion, which provides for the designation of the Applied Parties or one of their affiliates as the redeveloper of the Municipal Garage Site and sets forth the Parties’ respective rights, obligations and terms and provisions for the redevelopment of the Municipal Garage Site, consistent with Exhibit B hereof (the “Municipal Garage Redevelopment Agreement”). The Municipal Garage Redevelopment Agreement shall include (i) a determination of the Monarch Appraised Value, the Municipal Garage Development Appraised Value, and the 800-822 Monroe Street Appraised Value, as those terms are defined herein, (ii) identification of the Parties’ respective payment obligations pursuant to paragraph 13(g) hereof, (iii) identification of funding sources to be utilized by the City or by the Applied Parties, as may be applicable, to satisfy any such payment obligation pursuant to paragraph 13(g) hereof, and (iv) particular conditions precedent, milestones and an anticipated schedule for Hoboken to fully vacate the Municipal Garage Site. If the City Council has not adopted a resolution authorizing Hoboken to execute the Municipal Garage Redevelopment Agreement in a form that is satisfactory to the Applied Parties in their sole discretion by March 17, 2021, the Applied Parties may in their sole discretion terminate this Agreement;

e. **Execution of Municipal Garage Redevelopment Agreement.** By no later than April 1, 2021, Hoboken and the Applied Parties or one of their affiliates have duly executed the Municipal Garage Redevelopment Agreement. If Hoboken and the Applied Parties or one of their affiliates have not executed the Municipal Garage Redevelopment Agreement by April 1, 2021, then either Party may terminate this Agreement;

f. **Amendment of Public Works Garage Redevelopment Plan.** By no later than May 5, 2021, the City Council has duly enacted an ordinance, satisfactory to the Applied Parties in their sole discretion (the “Ordinance”) amending the Public Works Garage Redevelopment Plan to allow the construction on the Municipal Garage Site of a redevelopment project consistent with the description attached hereto as Exhibit B
and with such further redevelopment requirements and specifications that are developed in the Municipal Garage Redevelopment Agreement. If the Ordinance has not been enacted by May 5, 2021, the Applied Parties may in their sole discretion terminate this Agreement;

g. **Appeal(s) or Challenge(s) of City Council Legislation.** The time periods to appeal from or otherwise challenge the enactment of the resolutions and any such Ordinance referenced in this paragraph 6 have each expired without any such appeal or challenge of the resolutions or the Ordinance having occurred. However, if an appeal or other challenge of any of the resolutions or the Ordinance is filed, the Applied Parties may, in their sole discretion, either terminate this Agreement or toll all of the time periods in this Agreement until any such appeal or challenge is fully and finally decided and/or resolved to uphold the resolutions and the Ordinance, but in any event, the Parties agree to cooperate in good faith and confer with each other if such an appeal or other challenge is filed;

h. **Planning Board Approval.** The Hoboken Planning Board has declared complete pursuant to N.J.S.A. 40:55d-13 and granted or denied final site plan approval pursuant to N.J.S.A. 40:55d-61 for the proposed redevelopment of the Municipal Garage Site in form and substance satisfactory to the Applied Parties in their sole discretion and consistent with **Exhibit B** hereof no later than sixty (60) days after the Applied Parties have submitted an application for preliminary and final site plan approval of the Municipal Garage Site, and the time to appeal from or otherwise challenge such final site plan approval has expired without any such appeal or other challenge having occurred. Within ten (10) days after the Applied Parties have submitted to the Planning Board an application for final site plan approval for the proposed redevelopment of the Municipal Garage Site consistent with **Exhibit B** hereof, Hoboken shall request that the Hoboken Flood Plain Administrator issue a review letter for the application. If the Hoboken Flood Plain Administrator has not issued said review letter within ten (10) days of application submittal, the Applied Parties may in their sole discretion withdraw the application and terminate this Agreement. If the Hoboken Planning Board has not adopted a resolution to grant final site plan approval to the Applied Parties for the proposed redevelopment of the Municipal Garage Site consistent with **Exhibit B** by July 15, 2021 or if the Hoboken Planning Board adopts a resolution to approve said application by July 15, 2021 in a manner not reasonably satisfactory to the Applied Parties in their sole discretion, the Applied Parties may withdraw their site plan application and terminate this Agreement or reject the site plan approval and terminate this Agreement. However, if an appeal or other challenge of the site plan approval for the Municipal Garage Site is filed, the Applied Parties may, in their sole discretion, either terminate this Agreement or toll all of the time periods in this Agreement until any such appeal or challenge is fully and finally decided and/or resolved to
uphold the site plan approval for the Municipal Garage Site, but in any event, the Parties agree to cooperate in good faith and confer with each other if such an appeal or other challenge is filed;

i. **Sewer and Water Capacity.** The Applied Parties have confirmed sewer and water capacity for the proposed development of the Municipal Garage Site consistent with Exhibit B hereof no later than September 1, 2021. If the Applied Parties have been unable to confirm sewer and water capacity for the proposed development of the Municipal Garage Site consistent with Exhibit B by September 1, 2021, then the Applied Parties may in their sole discretion terminate this Agreement;

j. **Flood Hazard Prevention Governmental Approvals.** The Applied Parties have duly obtained all final approvals, authorizations or permits required under Hoboken’s flood hazard prevention ordinances, as applicable, in form and substance satisfactory to the Applied Parties in their sole discretion for the proposed redevelopment of the Municipal Garage Site consistent with Exhibit B hereof no later than the date that the Planning Board adopts a resolution to approve the Applied Parties’ site plan application for the Municipal Garage Site, and the time to appeal from or otherwise challenge such final approvals, authorizations or permits has expired without any such appeal or other challenge having occurred. Hoboken shall use its best efforts to issue a decision on any application or request by the Applied Parties for such permit or approval simultaneous with the Planning Board’s adoption of a resolution of site plan approval for the Municipal Garage Site. If Hoboken has not issued a decision on any such pending application or request or if Hoboken issues a decision on any such pending application or request by the date the Planning Board adopts a resolution for site plan approval and such decision is unsatisfactory to the Applied Parties in their sole discretion, then the Applied Parties may in their sole discretion withdraw the application and terminate this Agreement or reject the approvals and terminate this Agreement. If an appeal or other challenge of such approvals under Hoboken’s flood hazard prevention ordinances for the Municipal Garage Site is filed, then the Applied Parties may, in their sole discretion, either terminate this Agreement or toll all of the time periods in this Agreement until any such appeal or challenge is fully and finally decided and/or resolved to uphold the approval under Hoboken’s flood hazard prevention ordinances for the Municipal Garage Site but in any event, the Parties agree to cooperate in good faith and confer with each other if such an appeal or other challenge is filed;

k. **Other Governmental Approvals.** No later than the Closings, the Applied Parties shall have diligently pursued and obtained all necessary outside agency permits and approvals in form and substance satisfactory to the Applied Parties in their sole discretion for the proposed development of the Municipal Garage Site, including
specifically any necessary approval by the County of Hudson Planning Board, the NJDEP or any other governmental authority having jurisdiction. Hoboken shall cooperate with the Applied Parties in connection with obtaining necessary outside agency permits and approvals for the development. If the Applied Parties have not obtained all necessary outside agency permits and approvals by Closing, then the Applied Parties may in their sole discretion withdraw all applications or requests for said outside agency permits and approvals and terminate this Agreement;

I. Adoption of Legislation Authorizing City Payment, as applicable. If Hoboken is obligated to make a payment to the Applied Parties pursuant to paragraph 13(g) hereof, then by April 21, 2021 the City Council has adopted an ordinance authorizing the execution of a Financial Agreement for Payment in Lieu of Taxes (“PILOT”), a Redevelopment Area Bond (“RAB”) or other public incentives to the Applied Parties in accordance with applicable law for the development of the Municipal Garage Site consistent with Exhibit B, and by April 21, 2021 the City Council has adopted any other ordinance or resolution necessary for the incentive selected. If Hoboken is obligated to make a payment to the Applied Parties pursuant to paragraph 13(g) hereof, then by May 5, 2021 the City Council has executed such Financial Agreement or other such documents to implement the incentive selected, or the Applied Parties may in their sole discretion terminate this Agreement.


a. Advancement of Permits by the Applied Parties. The Parties acknowledge and agree that, while this Agreement is in effect, the Applied Parties may continue to advance municipal, County, State and Federal permits or approvals for the Monarch at Shipyard and the Applied Parties may also seek building and demolition permits from Hoboken and approval for water and sewer service for the Monarch at Shipyard. Hoboken agrees that while this Agreement is pending Hoboken shall support any request by the Applied Parties to toll any municipal, County, State or Federal permits or approvals for the Monarch at Shipyard, including without limitation, the site plan approval for the Monarch at Shipyard obtained by Order entered on February 4, 2014 by the Honorable Nesle A. Rodriguez, J.S.C. and the Waterfront Development Permit for the Monarch at Shipyard issued by NJDEP. Hoboken further agrees that it shall not appeal any determination by a governmental agency to toll or extend any governmental approvals for the Monarch at Shipyard, nor shall Hoboken support any such appeal by any third party. The Applied Parties agree that they shall not commence any demolition activities or any construction of the pier or platform for the Monarch at Shipyard or the residential building above the pier or platform for the Monarch at Shipyard on the Shipyard Properties while this Agreement remains in effect, without Hoboken’s written consent.
b. **Relocation of Existing Municipal Garage.** Upon execution of the Municipal Garage Redevelopment Agreement, Hoboken shall be responsible to make all arrangements for the relocation of the functions of its Existing Municipal Garage and Hoboken shall not delay demolition or construction on the Municipal Garage Site by the Applied Parties as a result of Hoboken’s failure to timely relocate the functions of its Existing Municipal Garage. It is expressly acknowledged and agreed by Hoboken that the construction of a new facility to house the functions of its Existing Municipal Garage is not a contingency of this Agreement. It is Hoboken’s responsibility to make all arrangements to relocate the functions of its Existing Municipal Garage and the Parties acknowledge that Hoboken intends to construct and implement a temporary municipal garage ("Temporary Garage") upon the City-owned property located at Block 113, Lot 1 on the Tax Assessment Map of the City of Hoboken, known as the “North Lot.” Upon written notice to the Applied Parties at least forty-five (45) days prior to the conveyance of the Municipal Garage Site to the Applied Parties by Hoboken (the “Observer Closing”), Hoboken may request to enter into a separate written agreement with the Applied Parties or one of their affiliates to lease all or portions of the Municipal Garage Site (a “Lease” or “Lease Agreement”) so that Hoboken may continue the functions of its Existing Municipal Garage. However, in no event shall the term of any such Lease exceed one (1) year from the commencement, unless expressly agreed by the Parties in the Lease Agreement or such other written agreement between the Parties. Any such Lease Agreement shall provide that (i) Hoboken may terminate the Lease at any time; (ii) Hoboken shall reimburse or otherwise credit the Applied Parties for property taxes that are assessed against the Municipal Garage Site while Hoboken is the sole occupant of it; (iii) Hoboken shall be responsible for any utility fees incurred while Hoboken is the sole occupant of the Municipal Garage Site; and (iv) the rent for any such Lease shall be $1.00/year. Notwithstanding any of the above, Hoboken shall fully vacate the Municipal Garage Site within one (1) year from the Observer Closing.

c. **Observer Closing.** The Applied Parties acknowledge and agree that Hoboken has made no representations or warranties as to the condition of the Municipal Garage Site and the Applied Parties shall be deemed to have accepted the Municipal Garage Site in its “AS IS, WHERE IS, WITH ALL FAULTS AND CONDITIONS” on the later of the date of the Observer Closing or the date that Hoboken fully vacates the Municipal Garage Site and shall forever have released Hoboken and its officials, employees and agents from any and all loss, cost, damage and expense arising from the condition of the Municipal Garage Site. The Applied Parties further acknowledge and agree that they shall be solely responsible for any State, federal, county or municipal actions, permits or approvals, including with regard to any environmental remediation or approvals required to redevelop the Municipal Garage Site for residential use. In no event shall the release in this paragraph apply to claims, losses, judgments, penalties, costs or other such liabilities arising out of Hoboken’s
presence on the Municipal Garage Site after the Observer Closing. The provisions of
this paragraph shall survive the Observer Closing.

d. **Monroe Closing and Applied’s Remedial Action of 800-822 Monroe Street.**

Contemporaneously with the Observer Closing, Applied shall convey 800-822
Monroe Street to Hoboken (“Monroe Closing”). The Parties acknowledge that
Applied is completing the environmental remediation of soils and groundwater at
800-822 Monroe Street and that same shall be done to a restricted use standard
involving the implementation of engineering and institutional controls and a
groundwater classification exception area (“CEA”), respectively, pursuant to NJDEP
PI No. 670384 (“Applied’s Remedial Action”). Contemporaneously with the Monroe
Closing, Hoboken and Applied shall enter into an access agreement, the form and
substance of which shall be consistent with this Agreement, providing Applied with
post-closing access to 800-822 Monroe Street to complete Applied’s Remedial
Action.

(1) **Applied’s Soils Remediation.** Hoboken acknowledges that at 800-822
Monroe Street, the Applied Parties have (i) completed a remedial action of
soils to a restricted use standard, (ii) implemented engineering controls and
institutional controls, including a deed notice dated September 16, 2020
and recorded on October 13, 2020 at Book 9513, Page 865 (“Deed Notice”),
a full and complete copy of which Hoboken acknowledges it has received,
(iii) posted a guaranty in the amount of $39,000.00 as financial assurance
(“FA”) for remediation with NJDEP, and (iv) applied for a Remedial Action
Permit (“RAP”) for soils for Applied to request from a Licensed Site
Remediation Professional (“LSRP”) a Response Action Outcome to address
the remediation of soils to a restricted use standard (“Soils RAO”). The
Applied Parties shall not terminate or withdraw the FA without Hoboken’s
prior written consent, which shall not be unreasonably withheld. The Soils RAO
shall be diligently pursued and obtained by the Applied Parties and
promptly delivered to Hoboken. Hoboken agrees that the Soils RAO will be
limited and restricted in nature, and shall be obtained by Applied at no cost
to Hoboken. If necessary, and as may be reasonably requested by Hoboken
in order to advance its intended use of the property but subject to the
terms herein, Applied shall, subject to the approval of the LSRP, DEP or any
regulatory agency having jurisdiction, as the case may be, (i) implement, at
Applied’s sole cost and expense, an additional engineering control on the
entirety of 800-822 Monroe Street consisting of pervious asphalt, stone
and/or fill, which such engineering control would be consistent with
Hoboken’s intended use of the property; and (ii) amend the Deed Notice as
necessary (“Additional Engineering Control”). Further, Hoboken may
reasonably request Applied’s consent to modify the Deed Notice or the
Additional Engineering Control in order to advance Hoboken’s intended use
of the property, subject to the terms herein. Prior to any improvement, modification, or disturbance by Hoboken, of the engineering control(s) or the institutional controls at 800-822 Monroe Street, including the Deed Notice or the Additional Engineering Control, (collectively referred to herein as an “Alteration”), Hoboken shall obtain Applied’s prior written consent, which consent shall not be unreasonably withheld if such improvement, modification or disturbance proposed by Hoboken is reasonably necessary to advance Hoboken’s intended use of the property, subject to the terms herein, and Hoboken shall comply with all requirements imposed by the filed Deed Notice in connection with same. Hoboken shall be solely responsible for all costs, expenses and any State, federal, county or municipal actions, permits or approvals required for such Alteration. Notwithstanding any other provision in this Agreement to the contrary, the implementation of any Additional Engineering Control or any Alteration at 800-822 Monroe Street by Hoboken will not be based, in any way, on any plan, proposal, demand or request that Applied, any of its affiliates, or the parents, subsidiaries, directors, officers, employees, agents, successors and assigns of any of them, undertake additional remediation efforts at 800-822 Monroe Street. The Parties acknowledge and agree that Hoboken may ultimately utilize 800-822 Monroe Street for any public purpose other than or in addition to a public park at any time after the Closings, which use shall be in Hoboken’s sole discretion; provided however, that nothing herein shall require Applied to undertake additional remediation activities at 800-822 Monroe Street in order to implement an unrestricted use or “presumptive” remediation standard.

(2) Applied’s Groundwater Remediation. Hoboken acknowledges that at 800-822 Monroe Street Applied (i) has conducted a remedial action of groundwater; (ii) will be proposing a classification exception area (“CEA”) for groundwater in connection with such remedial action; (iii) is maintaining groundwater monitoring wells, both deep and shallow, for purposes of groundwater remediation; and (iv) will complete further groundwater sampling, investigation and/or treatment to request from an LSRP a Response Action Outcome for groundwater with a CEA (“Groundwater RAO”) at 800-822 Monroe Street in connection with NJDEP PI No. 670384. Applied, at its sole cost and expense, shall complete all necessary remaining groundwater testing, investigation, treatment and/or reporting to NJDEP to obtain the Groundwater RAO, and full and complete copies of results, data and/or final reporting arising out of same shall be promptly provided to Hoboken. The Parties acknowledge, however, that the Groundwater RAO will not have been issued by the time of the Monroe Closing. The Groundwater RAO shall be diligently pursued and obtained by Applied and promptly delivered to Hoboken. Hoboken agrees that the Groundwater RAO
may be limited and restricted in nature, but shall not prohibit Hoboken’s use of 800-822 Monroe Street as a public park. If requested, and as may be reasonably necessary for Hoboken to use 800-822 Monroe Street as intended, subject to the terms herein, Applied, at its sole cost and expense shall, subject to the approval of the LSRP and DEP, as the case may be, flush mount, any groundwater monitoring wells that are presently upon the property or which will need to be installed upon the property for the completion of Applied’s Groundwater Remediation.

(3) **Applied’s Remedial Action.** As further set forth above, nothing in this Agreement shall require Applied to remediate soils or groundwater at 800-822 Monroe Street to an unrestricted use standard. Once complete, Applied’s Remedial Action shall not prohibit in any way Hoboken’s use of 800-822 Monroe Street as a public park, expressly subject to the terms herein. Following the Monroe Closing, and after the Applied Parties obtain the Soils RAO and the Groundwater RAO, Hoboken and Applied shall cooperate with each other to transfer any RAP that has been or will be issued in connection with Applied’s Remedial Action to Hoboken. Thereafter, Hoboken shall assume the responsibility for satisfying the conditions of any such RAP(s), provided however, that Applied shall promptly, upon written request of Hoboken, pay the cost to close or abandon any groundwater monitoring wells at 800-822 Monroe Street. Applied shall have no responsibility for the maintenance or repair of the Additional Engineering Control after installation and after the Monroe Closing. If Applied has not obtained the Soils RAO and the Groundwater RAO by the time of the Monroe Closing, then Applied shall pay to Hoboken the amount of property taxes that were assessed in the preceding year, in a pro rata fashion, until such time as the Soils RAO and the Groundwater RAO are obtained by Applied and delivered to Hoboken. Additionally, if Applied has not obtained all necessary permits and approvals for the installation of the Additional Engineering Control by the time of the Monroe Closing, or if the Additional Engineering Control has not been fully installed by the time of the Monroe Closing, then Applied shall, contemporaneously with the Monroe Closing, pay to Hoboken an amount agreed upon by the Parties in good faith to cover the remaining costs for the full installation of the Additional Engineering Control and thereafter, Hoboken shall be responsible for the installation of the Additional Engineering Control. Except as to any Additional Engineering Control that is installed by Hoboken in accordance with the preceding sentence, and except as to any Alteration by Hoboken, Applied shall indemnify, defend and hold Hoboken harmless from and against any and all claims, losses, judgments, penalties, costs or other such liabilities arising out of or related to Applied’s Remedial Action that has been undertaken by, and will continue to be undertaken by Applied upon
800-822 Monroe Street, including with regard but not limited to any reopener, revocation or rescission of the Soils RAO or the Groundwater RAO obtained by Applied. The provisions of this paragraph shall survive the Monroe Closing.

e. **Monroe Closing.** Except for the indemnity as to Applied’s Remedial Action provided in paragraph 7(d) hereof, and subject to the completion of Applied’s Remedial Action, Hoboken acknowledges and agrees that Applied has made no representations or warranties as to the condition of 800-822 Monroe Street and Hoboken shall be deemed to have accepted 800-822 Monroe Street in its “AS IS, WHERE IS, WITH ALL FAULTS AND CONDITIONS” on the date of the Monroe Closing and shall forever have released Applied and its officials, employees and agents from any and all loss, cost, damage and expense arising from the condition of 800-822 Monroe Street. Hoboken acknowledges and agrees that it shall be solely responsible for any State, federal, county or municipal actions, permits or approvals required to redevelop 800-822 Monroe Street into a public park or for any other purpose. The provisions of this paragraph shall survive the Monroe Closing.

f. **Termination of Monroe Interim Cost Agreement.** After the Monroe Closing, the Applied Parties shall abandon any and all rights to the ownership and redevelopment of 800-822 Monroe Street and to that end, the Monroe Interim Cost Agreement shall be automatically terminated without the necessity for any further action of the City Council; provided however, that if any “City Costs” are due and owing thereunder, as that term is defined therein, same shall be paid no later than the Monroe Closing.

g. **Delivery of the Municipal Garage Site.** The Applied Parties covenant and agree that after the Observer Closing, and after Hoboken has fully vacated the Municipal Garage Site, Hoboken shall not be responsible for any costs or expenses associated with the redevelopment, maintenance, repair, environmental investigation or remediation, construction or operation of the Municipal Garage Site. Once Hoboken vacates the Municipal Garage Site, Hoboken shall remove all furniture, equipment, dumpsters, personal items and/or vehicles from the Existing Municipal Garage and deliver the Municipal Garage Site to the Applied Parties broom clean and free of debris. The provisions of this paragraph shall survive the Observer Closing.

h. **Payment of Taxes on the Municipal Garage Site.** After the Observer Closing and subject to any Lease Agreement between the Parties pursuant to paragraph 7(b) hereof, the Applied Parties shall immediately become responsible for payment of all real property taxes owed for the Municipal Garage Site which are incurred after the Municipal Garage Site is conveyed to the Applied Parties pursuant to this Agreement. Once the Municipal Garage Site is conveyed to the Applied Parties, and
subject to the terms herein, Hoboken shall abandon any and all rights to the ownership of the Municipal Garage Site.

i. **Conveyance of the Shipyard Properties.** Contemporaneously with the Observer Closing and the Monroe Closing, the Applied Parties shall have undertaken one of the following actions with respect to the Shipyard Properties as requested by Hoboken in the notice described in paragraph 7(k) hereof:

(1) **Deed Restriction.** Delivered to Hoboken for recording a deed restriction, in a form reasonably acceptable to both the Applied Properties and Hoboken, that limits, in perpetuity, the use of the Shipyard Properties to only:

   (i) environmental assessment and remediation;
   (ii) public open space;
   (iii) public outdoor passive and/or active recreational use, except ball fields;
   (iv) public docking facilities for recreational watercraft only;
   (v) removal of any pier or platform on the Shipyard Properties for public safety reasons; and/or
   (vi) any repair, rehabilitation, alteration, modification, improvement, reconstruction or replacement of any existing pier or platform, and any adjacent upland area that is part of the Shipyard Properties which may be necessary and appropriate for any of the uses set forth in paragraph 7(i)(1)(i) through (v) of this Agreement (the uses set forth in paragraph 7(i)(1)(i) through (vi) of this Agreement collectively referred to as the “Permitted Uses”); or

(2) **Fee Simple Title.** Conveyed to Hoboken fee simple title to the Shipyard Properties together with a deed restriction(s), in a form reasonably acceptable to both the Applied Parties and Hoboken, limiting, in perpetuity, the use of the Shipyard Properties to only the Permitted Uses. Said title shall be free and clear of any liens that secure monetary obligations, and free and clear of any tenancies or rights of occupancy held by other persons, except that said title shall be subject to any utility occupancy or rights of utility easements. It shall be solely the responsibility of Hoboken to record the deed for the Shipyard Properties. Hoboken agrees that it shall be solely responsible for the cost and expense to improve the Shipyard Properties and conduct the Permitted Uses on the Shipyard Properties, including all costs and expenses for
environmental remediation, subdivision, maintenance, repair, and replacement obligations for the Shipyard Properties; or

(3) **Easements.** Conveyed to Hoboken easements, in a form reasonably acceptable to both the Applied Parties and Hoboken, in perpetuity over the Shipyard Properties, in favor of Hoboken, for the limited purpose of Hoboken conducting the Permitted Uses on the Shipyard Properties, at Hoboken's sole cost and expense, including all environmental remediation, maintenance, repair, and replacement obligations (the completion of any one of the above-listed options (1) through (3) shall be referred to herein as the “Shipyard Closing”) (the Observer Closing, Monroe Closing and the Shipyard Closing shall collectively be referred to herein as the “Closings”);

j. **Assignment of Shipyard Properties Governmental Approvals to Hoboken.** Contemporaneously with the Closings, the Applied Parties have assigned, without recourse, to Hoboken any and all governmental approvals or permits which are in effect on the date of this Agreement and which purport to authorize any rehabilitation, repair, removal, replacement, installation, construction, development, improvement or other such work at or on the Shipyard Properties. Upon said assignment, the Applied Parties shall not retain, and shall be deemed to have fully released, any rights or interests under said governmental approvals or permits.

k. **Shipyard Closing.** Hoboken shall provide written notice to the Applied Parties no later than sixty (60) days prior to the Observer Closing and the Monroe Closing as to which of the actions set forth under paragraph 7(i)(1) through (3) hereof shall be taken by the Applied Parties. Hoboken shall have the sole discretion as to which of said actions shall be taken by the Applied Parties, including but not limited to, the sole discretion to determine whether the Applied Parties shall deliver a deed restriction, convey fee simple title or convey an easement with respect to the Shipyard Properties. If Hoboken provides notice that the Applied Parties shall take the action set forth at paragraph 7(i)(3) hereof, then Hoboken shall have the additional option, by written notice given to the Applied Parties at any time over the period beginning on the Effective Date and ending four (4) years thereafter, to acquire fee simple title to the Shipyard Properties in accordance with paragraph 7(i)(2) hereof, for a total sum of one dollar ($1.00). Hoboken acknowledges and agrees that the Applied Parties have made no representations or warranties as to the condition of the Shipyard Properties and regardless of what action Hoboken elects under paragraph 7(i), Hoboken shall be deemed to have accepted the Shipyard Properties in “AS-IS” condition on the date of the Shipyard Closing and shall forever have released the Applied Parties and their partners and their
respective officers, members, employees and agents from any and all loss, cost, damage and expense arising from the condition of the Shipyard Properties. Hoboken further acknowledges and agrees that Hoboken shall be solely responsible for any State, federal, county or municipal actions, permits or approvals, including environmental approvals, required to develop the Shipyard Properties with the Permitted Uses. This paragraph 7(k) shall survive the Shipyard Closing.

l. Payment to Hoboken. Upon the Shipyard Closing, Shipyard shall pay to Hoboken the lump sum of $1,000,000.00. Said payment shall be utilized by Hoboken for: (i) removing materials and debris from the surface of the Shipyard Properties; (ii) constructing any improvements at the Shipyard Properties which may be necessary and appropriate in the sole discretion of Hoboken; (iii) vacating the Municipal Garage Site and/or constructing and implementing the Temporary Garage; and/or (iv) any other public purpose, the costs for which may be incurred by Hoboken for or in connection with the purposes set forth in this Agreement.

m. Responsibility to Maintain the Shipyard Properties. Hoboken covenants and agrees that after the Shipyard Closing, except for the payment set forth in paragraph 7(l) and regardless of which of the actions set forth under paragraph 7(i)(1) through (3) hereof shall be taken by the Applied Parties, the Applied Parties shall not be responsible for any costs or expenses associated with the maintenance (including debris migration from the piers in Block 264.1, Lot 1 into other properties, including the portion of Block 264.1, Lot 1 retained by the Applied Parties as shown on Exhibit A), development, environmental investigation or remediation, construction or operation of the Shipyard Properties. Hoboken acknowledges and agrees that Shipyard has made no representations or warranties as to the condition of the Shipyard Properties and Hoboken shall be deemed to have accepted the Shipyard Properties in its “AS IS, WHERE IS, WITH ALL FAULTS AND CONDITIONS” on the date of the Shipyard Closing and shall forever have released Shipyard and its officials, employees and agents from any and all loss, cost, damage and expense arising from the condition of the Shipyard Properties. Hoboken acknowledges and agrees that it shall be solely responsible for any State, federal, county or municipal actions, permits or approvals, including with regard to any environmental remediation or approvals required to redevelop the Shipyard Properties. The provisions of this paragraph shall survive the Shipyard Closing.

n. Payment of Taxes on the Shipyard Properties. Following the Shipyard Closing, Hoboken shall immediately become responsible for payment of all real property taxes, if any, owed for the Shipyard Properties which are incurred after the Shipyard Closing. Following the Shipyard Closing, the Applied Parties shall automatically be deemed to have abandoned any and all rights to the Shipyard Properties that they hold under the “Developer’s Agreement and General Development Plan”, dated
December 4, 1997, among the City of Hoboken, the Planning Board of the City of Hoboken and Shipyard Associates, L.P. Notwithstanding the foregoing, Hoboken’s exercise of the options under paragraph 7(i)(1) through (3) hereof shall at all times be subject to and shall not affect the Applied Parties’ rights to terminate this Agreement, as set forth in this Agreement. Such termination by the Applied Parties in accordance with the Agreement shall void and nullify any and all rights otherwise accruing to Hoboken pursuant to the terms hereof and any and all rights accruing to the Applied Parties to acquire and redevelop the Municipal Garage Site.

8. Termination and Waiver Provisions.

   a. Outside Date. If any of the events set forth in paragraphs 6 (a) through (l) and paragraph 7(b) has not occurred by the deadlines set forth in the respective paragraphs, or the Closings (as defined herein) have not occurred by September 15, 2021 (the “Outside Date”), and provided that demolition or construction of the proposed redevelopment at the Municipal Garage Site has not commenced, then the Applied Parties in their sole discretion may terminate this Agreement on written notice to Hoboken. If any of the events set forth in paragraphs 7(i) and 7(j) has not occurred by the deadlines set forth in the respective paragraphs, then Hoboken in its sole discretion may terminate this Agreement on written notice to the Applied Parties. If the Closings have not occurred by two (2) years after the Outside Date, Hoboken is not otherwise in breach of this Agreement, and the delay in completing the Closings is not the result of (i) Hoboken’s failure to grant a permit, approval, or other authorization to the Applied Parties as necessary pursuant to this Agreement, or (ii) an appeal or other challenge having been filed from the Applied Parties’ application for municipal approval(s) for the redevelopment of the Municipal Garage Site, then no earlier than two (2) years after the Outside Date Hoboken in its sole discretion may terminate this Agreement on written notice provided by Hoboken to the Applied Parties at least sixty (60) days prior to Hoboken exercising such termination right. The Parties may, by mutual written consent, extend the Outside Date by forty-five (45) days without the necessity for any further action by City Council.

(1) No Settlement in the Event of Termination. In the event of a termination by any of the Parties pursuant to the terms herein, no settlement of the Litigation shall be deemed to have occurred, the Parties shall hold all of the rights, and be subject to all of the liabilities and obligations, that they held or were subject to as of the date immediately preceding the date on the first page of this Agreement. In the event of a termination of this Agreement by any of the Parties, the Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement and any Municipal Garage Redevelopment Agreement shall automatically terminate without the necessity for any further action by City Council.
Council, and any and all rights accruing to the Applied Parties to redevelop the Municipal Garage Site shall be null and void.

(2) Termination Rights. The rights of the Applied Parties to terminate this Agreement as set forth in this Agreement shall not be affected or waived by the occurrence of any events described in this Agreement, except for commencement of demolition or construction of the proposed redevelopment at the Municipal Garage Site as described in Exhibit B. The rights of the Applied Parties to terminate this Agreement shall only be waived if the Applied Parties notify Hoboken in writing after the Effective Date and before commencement of demolition or construction of the proposed redevelopment at the Municipal Garage Site that the Applied Parties waive all rights to termination set forth in this Agreement. The Applied Parties, in their sole discretion, may waive any condition(s) to the Closings upon written notice to Hoboken and proceed with the Closings.

9. Engineering and Environmental Due Diligence by Hoboken. Hoboken shall have a ninety (90) day period (the “Hoboken Due Diligence Period”), commencing on the date of full execution of this Agreement, within which to conduct any due diligence investigations regarding or related to the Shipyard Properties and 800-822 Monroe Street that Hoboken deems necessary, including, a title examination and an engineering and environmental assessment or investigation, all at Hoboken’s sole cost and expense (“Hoboken’s Due Diligence”). Notwithstanding any provision of this Agreement to the contrary, in no event shall Hoboken have less than ninety (90) days for the Hoboken Due Diligence Period. In no event shall Hoboken permit any LSRP to access the Shipyard Properties and 800-822 Monroe Street prior to the Closings or allow any LSRP to perform any assessments, investigations or inspections, nor shall Hoboken or any of Hoboken’s agents invite an LSRP to the Shipyard Properties and 800-822 Monroe Street or disclose any information related to the Shipyard Properties and 800-822 Monroe Street to any LSRP without the Applied Parties’ prior written consent. In no event shall Hoboken perform, during the Hoboken Due Diligence Period, any subsurface investigation, sampling and/or testing of soils and/or groundwater at the Shipyard Properties or 800-822 Monroe Street unless Hoboken obtains the Applied Parties’ prior written consent, which consent shall not be unreasonably withheld. Hoboken’s Due Diligence at 800-822 Monroe Street shall be in accordance with the Deed Notice and the requirements of applicable law. The Parties expressly acknowledge and agree that in the event that the results of Hoboken’s Due Diligence are not satisfactory in Hoboken’s sole discretion, by no later than 90 days from the commencement of Hoboken’s Due Diligence, Hoboken may terminate this Agreement on written notice to the Applied Parties, and thereafter, the Parties shall have no further obligation to each other hereunder except with regard to (i) the payment of City Costs, if any, as that term is defined in the Amended and Restated Municipal Garage Interim Cost and Conditional Designation Agreement and (ii) any obligation to restore the property(ies) upon which Hoboken’s Due
Diligence was taken. In furtherance of the above and in order to effectuate the Hoboken Due Diligence Period without the necessity for any additional agreement(s) or documents, the Applied Parties hereby grant to Hoboken a license, allowing Hoboken access to the Shipyard Properties and 800-822 Monroe Street during the Hoboken Due Diligence Period for the sole purpose of conducting Hoboken’s Due Diligence, subject to the following terms and conditions:

a. **Insurance**: Hoboken shall, at its sole cost and expense, obtain and maintain during the Hoboken Due Diligence Period insurance liability coverage of ten million dollars ($10,000,000.00) per occurrence and in aggregate, and Hoboken shall provide the Applied Parties with a valid Certificate of Insurance, listing the Applied Parties as additional insureds, as proof of same prior to entering the Shipyard Properties and 800-822 Monroe Street.

b. **Restoration of the Shipyard Properties and 800-822 Monroe Street**: Hoboken shall, at its sole cost and expense, remove and properly dispose of all materials resulting from Hoboken’s Due Diligence on the Shipyard Properties and 800-822 Monroe Street during the Hoboken Due Diligence Period and, if directed to do so by the Applied Parties, Hoboken shall, at its sole cost and expense, restore or repair any portion of the Shipyard Properties and 800-822 Monroe Street that was damaged or impacted as a result of Hoboken’s Due Diligence, to its condition immediately prior to Hoboken’s Due Diligence.

c. **Indemnification, Defense and Hold Harmless**: Hoboken agrees to indemnify, defend and hold harmless the Applied Parties and the Applied Parties’ officers, agents, employees, contractors, and consultants and Hoboken shall pay and be responsible for any and all liability, loss, cost, damage, claim or judgment of any kind directly related to or arising out of Hoboken’s Due Diligence, including, but not limited to, entry upon the Shipyard Properties and 800-822 Monroe Street by Hoboken’s officers, agents, employees, contractors and consultants. This Indemnification, Defense and Hold Harmless provision shall survive the Closings or termination of this Agreement.

10. Title Provisions.
   a. **Title Report for 800-822 Monroe Street**: The Applied Parties shall order a title report for 800-822 Monroe Street and provide a true and correct copy of same to Hoboken within thirty (30) days of the full execution of this Agreement.
   b. **Good and Marketable Title for 800-822 Monroe Street**: Title for 800-822 Monroe Street shall be good and marketable and shall be insurable by a title insurance agency or company licensed to insure title in the State of New Jersey at regular rates, subject only to permitted exceptions agreed to by the Parties.
c. **Title Report for Block 264.2, Lot 1 of the Shipyard Properties.** Attached hereto as [Exhibit C](#) is a Title Report and Plan of Exceptions for Block 264.2, Lot 1 of the Shipyard Properties. Hoboken has reviewed the Title Report and Plan of Exceptions for said portion of the Shipyard Properties and finds same to be acceptable, subject to Hoboken’s request for a re-examination of updated title work to be provided by the Applied Parties immediately prior to the Closings.

d. **Title Report for Block 264.1, Lot 1 of the Shipyard Properties.** The Applied Parties shall order a title report for Block 264.1, Lot 1 of the Shipyard Properties and provide a true and correct copy of same to Hoboken within thirty (30) days of the full execution of this Agreement.

e. **Good and Marketable Title for the Shipyard Properties.** Title for Block 264.1, Lot 1 of the Shipyard Properties shall be good and marketable and shall be insurable by a title insurance agency or company licensed to insure title in the State of New Jersey at regular rates, subject only to permitted exceptions agreed to by the Parties.

f. **Title Report and Survey for the Municipal Garage Site.** Attached hereto as [Exhibit D](#) is a Title Report and Survey for the Municipal Garage Site. The Applied Parties have reviewed the Title Report and Survey for the Municipal Garage Site and find same to be acceptable, subject to the Applied Parties’ request for a re-examination of updated title work immediately prior to the Closings.

11. **Engineering and Environmental Due Diligence by the Applied Parties.** The Applied Parties shall have a ninety (90) day period (the “Applied Parties Due Diligence Period”), commencing on the date of full execution of this Agreement, within which to conduct any due diligence investigations regarding or related to the Municipal Garage Site that the Applied Parties deem necessary, including, a title examination and an engineering and environmental assessment or investigation, all at the Applied Parties’ sole cost and expense (“Applied Parties’ Due Diligence”). Notwithstanding any provision of this Agreement to the contrary, in no event shall the Applied Parties have less than ninety (90) days for the Applied Parties Due Diligence Period. In no event shall the Applied Parties permit any LSRP to access the Municipal Garage Site prior to the Closings or allow any LSRP to perform any assessments, investigations or inspections, nor shall the Applied Parties or any of the Applied Parties’ agents invite an LSRP to the Municipal Garage Site or disclose any information related to the Municipal Garage Site to any LSRP without Hoboken’s prior written consent. In no event shall the Applied Parties perform during the Applied Parties Due Diligence Period any subsurface investigation, sampling and/or testing of soils and/or groundwater at the Municipal Garage Site unless the Applied Parties obtain Hoboken’s prior written consent, which consent shall not be unreasonably withheld. The Parties expressly acknowledge and agree that in the event that the results of the Applied Parties’ Due Diligence are not satisfactory in the Applied Parties’ sole discretion, the Applied Parties may terminate this Agreement on written notice to Hoboken, and thereafter, the Parties shall have no further obligation to each other hereunder except with regard to (i) the payment of City Costs, if any, as that term is defined in the Amended and Restated Municipal Garage
Interim Cost and Conditional Designation Agreement and (ii) any obligation to restore the property(ies) upon which the Applied Parties’ Due Diligence was taken. In furtherance of the above and in order to effectuate the Applied Parties Due Diligence Period without the necessity for any additional agreement(s) or documents, Hoboken hereby grants to the Applied Parties a license, allowing the Applied Parties access to the Municipal Garage Site during the Applied Parties Due Diligence Period for the sole purpose of conducting the Applied Parties’ Due Diligence, subject to the following terms and conditions:

a. **Insurance:** The Applied Parties shall, at their sole cost and expense, obtain and maintain during the Applied Parties Due Diligence Period insurance liability coverage of ten million dollars ($10,000,000.00) per occurrence and in aggregate, and the Applied Parties shall provide Hoboken with a valid Certificate of Insurance, listing Hoboken as additional insured, as proof of same prior to entering the Municipal Garage Site.

b. **Restoration of the Municipal Garage Site:** The Applied Parties shall, at their sole cost and expense, remove and properly dispose of all materials resulting from the Applied Parties’ Due Diligence on the Municipal Garage Site during the Hoboken Due Diligence Period and, if directed to do so by Hoboken, the Applied Parties shall, at their sole cost and expense, restore or repair any portion of the Municipal Garage Site that was damaged or impacted as a result of the Applied Parties’ Due Diligence activities, to its condition immediately prior to the Applied Parties’ Due Diligence.

c. **Indemnification, Defense and Hold Harmless:** The Applied Parties agree to indemnify, defend and hold harmless Hoboken and Hoboken’s officers, agents, employees, contractors, and consultants and the Applied Parties shall pay and be responsible for any and all liability, loss, cost, damage, claim or judgment of any kind directly related to or arising out of the Applied Parties’ Due Diligence, including, but not limited to, entry upon the Municipal Garage Site by the Applied Parties’ officers, agents, employees, contractors and consultants. This Indemnification, Defense and Hold Harmless provision shall survive the Closings or termination of this Agreement.

12. **Frustration of Purpose; Acts Inconsistent with Agreement.**

a. It is expressly acknowledged and agreed by Hoboken that the adoption of any ordinance or amendment to the Public Works Garage Redevelopment Plan to require the Applied Parties to provide more than (i) one (1) affordable unit for every eight (8) market rate residential units constructed, i.e., one out of every nine (9) total residential units shall be affordable; and (ii) one (1) affordable housing unit for any and all non-residential construction, including retail space, at, or in connection with, the proposed redevelopment of the Municipal Garage Site would be inconsistent with and would frustrate the purpose of this Agreement. In the event of the adoption by the City Council of such an ordinance or amendment to the
Public Works Garage Redevelopment Plan prior to the Effective Date of this Agreement, then the Applied Parties may in their sole discretion terminate this Agreement or rely on their rights otherwise available at law. It is expressly acknowledged and agreed by Hoboken, and the Municipal Garage Site Redevelopment Agreement shall provide, that the Applied Parties may redevelop the Municipal Garage Site with affordable housing units pursuant to the number of units, bedroom distribution and income designations for affordable housing units as set forth in Exhibit B and the Parties agree that the Applied Parties are not required to comply with the bedroom distribution and income designations for affordable housing units set forth in the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq.

b. It is expressly acknowledged and agreed by Hoboken that the adoption of any ordinance or amendment to the Public Works Garage Redevelopment Plan to require the Applied Parties to pay more than the Applied Parties’ fair, pro-rata share of the cost of providing only those reasonable and necessary street improvements and water, sewerage and drainage facilities, and easements therefor, which are located off-tract but necessitated or required by construction or improvements within the proposed redevelopment of the Municipal Garage Site, would be inconsistent with and would frustrate the purpose of this Agreement. In the event of the adoption by the City Council of such an ordinance or amendment to the Public Works Garage Redevelopment Plan prior to the Effective Date of this Agreement, then the Applied Parties may in their sole discretion terminate this Agreement or rely on their rights otherwise available at law.


a. **Cooperation.** After the execution of this Agreement and while this Agreement remains in effect, Hoboken shall fully cooperate with the Applied Parties with respect to (i) any application submitted by the Applied Parties for utility or governmental approvals or permits for the proposed redevelopment of the Municipal Garage Site consistent with Exhibit B hereof, and (ii) any application(s) submitted by the Applied Parties or documents or plans required for such application(s) to implement the Additional Engineering Control.

b. **Appraisal Assumptions.** The Parties acknowledge that they have previously been involved in agreements which have required them to evaluate the value of the Shipyard Properties and the Municipal Garage Site and the Parties have selected appraisers and have made significant progress in determining the appraised value of the Shipyard Properties and the Municipal Garage Site, including with regard to the preparation of the “Monarch Appraisal Assumptions”, a copy of which is attached hereto as Exhibit E, and the “Observer Appraisal Assumptions”, a copy of which is attached hereto as Exhibit F, which the Parties agree shall be considered in
connection with the final Monarch Appraised Value (as defined below) and the final Municipal Garage Development Appraised Value (as defined below), respectively, to be determined by the Parties after they meet and confer to agree to the respective values pursuant to paragraph 13(f) hereof. The Parties will require additional appraisals to determine the Monroe Appraised Value (as defined below). The Parties shall retain the same appraisers to determine the Monroe Appraised Value that were previously retained by the Parties to determine the Monarch Appraised Value and Municipal Garage Development Appraised Value.

c. **Appraisals.** By no later than February 10, 2021, the Parties shall cause their representative appraiser to identify (i) the appraised value as of August 9, 2019 of the Shipyard Properties as fully developed with the Monarch at Shipyard pursuant to the approved plans submitted to the Hoboken Planning Board on August 25, 2011 and last revised by submittal dated May 23, 2012 and as further described in the Monarch Appraisal Assumptions (the “Monarch Appraised Value”); (ii) the appraised value as of August 9, 2019 of the proposed mixed use residential and retail development on the Municipal Garage Site consistent with Exhibit B and as further described in the Observer Appraisal Assumptions (the “Municipal Garage Development Appraised Value”); and (iii) the appraised value as of August 9, 2019 of the proposed mixed use residential and retail development of 800-822 Monroe Street as further described in the “Monroe Appraisal Assumptions”, a copy of which is attached hereto as Exhibit G (“Monroe Development Appraised Value”).

d. **Budget.** Upon the execution of this Agreement by the Parties, the Parties shall mutually agree to a budget for professional and consulting costs which shall be set forth in the Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement, including costs to determine the 800-822 Monroe Development Appraised Value. The Parties agree that the effectiveness of this Agreement shall be conditioned upon the effectiveness of the Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement.

e. **Appraised Value Determinations.** If the Parties’ respective appraisers do not agree on the Monarch Appraised Value, Monroe Appraised Value and the Municipal Garage Development Appraised Value, then the Parties shall meet and confer to agree to the respective values by no later than February 15, 2021. If the Parties do not mutually agree, subject to the adoption of a resolution authorizing the Municipal Garage Redevelopment Agreement, to the Monarch Appraised Value, Monroe Development Appraised Value and the Municipal Garage Development Appraised Value by February 15, 2021, either of the Parties in their sole discretion may terminate this Agreement.

f. **Municipal Garage Redevelopment Agreement.** The Municipal Garage Redevelopment Agreement shall provide that either Hoboken or the Applied
Parties, depending on the result of the calculation described below, shall be responsible for funding the difference between the final values agreed to by the Parties pursuant to paragraph 13(e) hereof as (x) the sum of (i) the Monarch Appraised Value and (ii) the Monroe Appraised Value and (y) the Municipal Garage Development Appraised Value. If the sum of the Monarch Appraised Value and the Monroe Appraised Value exceeds the Municipal Garage Development Appraised Value, then Hoboken shall be responsible for the amount of such exceedance and the Parties shall have, by May 5, 2021, entered into a Financial Agreement or such other mechanism as permitted by law to account for the exceedance. On the other hand, if the sum of the Monarch Appraised Value and the Monroe Appraised Value is less than the Municipal Garage Development Appraised Value, then the Applied Parties shall pay to Hoboken at the Closings the amount of such deficit, to be utilized for any public purpose, in Hoboken’s discretion, including but not limited to, the construction of public park improvements on 800-822 Monroe Street and/or the construction of a new, permanent municipal garage.

g. By no later than March 3, 2021, the Parties shall identify funding sources to fund any payment due pursuant to paragraph 13(f). Such funding sources may include and be subject to City Council approval of a PILOT, a RAB or other public incentives for the Applied Parties’ redevelopment of the Municipal Garage Site consistent with Exhibit B.

h. **Engineering and Environmental Reports Relating to Shipyard Properties and 800-822 Monroe Street.** Except as may be provided in the Municipal Garage Amended and Restated Interim Cost and Conditional Designation Agreement, within five (5) days after the City Council adopts a resolution authorizing Hoboken to execute this Agreement, the Applied Parties shall provide Hoboken with a copy of any and all engineering or environmental reports or studies, within their possession or control, concerning geophysical, environmental and structural conditions at or on the Shipyard Properties and 800-822 Monroe Street, including, but not limited to, the structural condition of any pier or platform on the Shipyard Properties.

i. **Engineering and Environmental Reports Relating to the Municipal Garage Site.** Except as may be provided in the Amended and Restated Municipal Garage Interim Cost and Conditional Designation Agreement, within five (5) days after the full execution of this Agreement, Hoboken shall provide the Applied Parties with a copy of any and all engineering or environmental reports or studies, within their possession or control, concerning geophysical, environmental and structural conditions at or on the Municipal Garage Site or documents related to the building or operating systems of the Existing Municipal Garage.
14. **Closings.** Within thirty (30) business days after the satisfaction of the conditions in paragraphs 6(a) through 6(l) and 7(b), but not later than the Outside Date, the Closings will occur under this Agreement. At the Closings, the Applied Parties’ conveyance to Hoboken of fee title to 800-822 Monroe Street and fee title, a deed restriction or an easement pursuant to paragraph 7(i) hereof to the Shipyard Properties shall be simultaneous with Hoboken’s conveyance of fee title to the Municipal Garage Site to the Applied Parties or one of their affiliates. It shall be a condition of the Closings that the Municipal Garage Redevelopment Agreement is effective and has not been terminated.

15. **Mutual General Release and Waiver; Covenants Not to Sue; Judgment Reduction.**

   a. **“Released/Waived Claims”** means all claims, rights, damages, causes of action, notes, debts, accounts payable, monies due, rights of reimbursement or contribution, demands, judgments, suits, matters and issues, whether individual, class, derivative, representative, legal, equitable, or any other type, or in any other capacity, of the Releasor related to the Litigation or the development of the Shipyard Properties or 800-822 Monroe Street, whether known or unknown, including but not limited to:

   (1) Any claims arising from the adoption by the City Council, on or about December 18, 2013, of Ordinance No. Z-263, entitled “an Ordinance Amending Chapter §104 (Flood Damage Prevention) to Reflect Updates Recommended by the New Jersey Department of Environmental Protection’s Latest Revised Model Ordinance,” or Ordinance No. Z-264, entitled “an Ordinance Amending Chapter §196 (Zoning) Addressing Community Health, Safety and General Welfare Through Flood Hazard Mitigation Measures and Development Limitations”;

   (2) Any claims for injunctive, declaratory or other equitable relief of any kind;

   (3) Any claims for damages or losses of any kind;

   (4) Any claims for interest, costs or attorneys’ fees;

   (5) Any claims for reimbursement of expenses of any kind;

   (6) Any claims under the United States Constitution, New Jersey Constitution or any statute, law, ordinance or regulation;

   (7) Any other constitutional, statutory, regulatory, common law or other claims of any kind, which are or which could have been asserted in the Litigation.
b. The Released/Waived Claims shall not include any Party’s covenants, obligations, representations, commitments and duties under this Agreement.

c. “Releasor” means any entity granting a release or waiver to any other entity under this Agreement. “Releasee” means any entity receiving a release or waiver hereunder. The terms “Hoboken Releasor” and “Hoboken Releasee” shall include Hoboken and any elected or appointed official, employee or representative, of Hoboken. The terms “Applied Parties Releasor” and “Applied Parties Releasee” shall include the Applied Parties and their past and present members, employees, shareholders, officers, directors, affiliates and assigns.

d. Assignment.
   (1) Assignment of Ownership. The Applied Parties may assign their ownership in the Shipyard Properties and 800-822 Monroe Street and their obligations and rights under this Agreement to an LLC formed by the Applied Parties prior to the actions set forth under paragraphs 7(i)(1), (2) or (3) hereof. The Applied Parties shall immediately provide Hoboken with (i) written notice of any such assignment, which notice shall identify the name, address and members of such LLC, and (ii) a copy of any and all documents or instruments effecting such assignment. In the event of such an assignment, such LLC shall be bound by this Agreement without the need for any further act by any Party and all of the Applied Parties’ obligations under this Agreement shall be enforceable against such LLC.

   (2) Assignment of Obligations and Rights. The Applied Parties may assign their obligations and rights under this Agreement to an LLC formed by the Applied Parties. The Applied Parties shall immediately provide Hoboken with (i) written notice of any such assignment, which notice shall identify the name, address and members of such LLC, and (ii) a copy of any and all documents or instruments effecting such assignment. In the event of such an assignment, such LLC shall be bound by this Agreement without the need for any further act by any Party and all of the Applied Parties’ obligations under this Agreement shall be enforceable against such LLC.

e. Effectuation of Releases. On the completion of the Closings, and without the need for any further act by any Party, and without a separate release being executed:

   (1) Release of the Applied Parties. The Hoboken Releasors shall have, and shall be deemed to have fully, finally and forever released, waived, relinquished and discharged each and all of the Applied Parties Releasees from all Released/Waived Claims that they individually or collectively, whether directly, representatively, derivatively or in any other capacity, ever had,
now have, or hereafter can, shall or may have against any Applied Parties Releasee related to the Litigation; and

(2) Release of Hoboken. The Applied Parties Releasors shall have, and shall be deemed to have fully, finally and forever released, waived, relinquished and discharged each and all of the Hoboken Releasees from all Released/Waived Claims that they individually or collectively, whether directly, representatively, derivatively or in any other capacity, ever had, now have, or hereinafter can, shall or may have against any Hoboken Releasee related to the Litigation.

f. Covenant of Releasors. Each Releasor hereby covenants and agrees not to bring, commence, continue or institute any action, proceeding or claim in any court, arbitration panel, agency or other tribunal against any Releasee seeking to adjudicate or recover on any of the Released/Waived Claims.

g. Mutuality of Releases. For the avoidance of doubt, this paragraph 15 is intended to effect a mutual general release and waiver to be effective at Closing.

16. Sole Remedy of Termination. The Parties recognize that this Agreement is dependent upon the occurrence of various events and resolution of issues that are difficult and uncertain. As a result, if the events and issues noted in this Agreement do not occur or are not resolved, the Parties agree that no Party may have a claim for breach of contract or any damages pursuant to this Agreement. The Parties agree that the sole remedy for the failure of any event to occur under this Agreement or for any claimed breach of this Agreement shall be limited to the respective party’s right to termination as set forth in this Agreement, except as otherwise provided in this paragraph. No legal or equitable remedies are available to any Party for any claimed breach of this Agreement, except that if prior to the termination of this Agreement the Applied Parties commence construction of the residential building on the pier or platform for the Monarch at Shipyard on the Shipyard Properties, then Hoboken shall be entitled to apply for an injunction to temporarily prevent or stop construction of the residential building on the pier or platform for the Monarch at Shipyard and Shipyard shall be deemed to have waived any defense against such application. Unless this Agreement is terminated in accordance with the provisions herein, by entering into this Agreement, Hoboken shall be deemed to have waived all rights to apply for an injunction to temporarily prevent or stop construction of the pier or platform for the Monarch at Shipyard.

17. Notices. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be given by (i) personal delivery; or (ii) a widely recognized national overnight courier service for next business day priority delivery that provides written confirmation of delivery (e.g., FedEx):
a. If to the Applied Parties:
   Michael Barry
   David Barry
c/o Ironstate Development
50 Washington Street
Hoboken, New Jersey 07030

   With a concurrent copy to:
   Kevin J. Coakley, Esq.
   Connell Foley, LLP
   56 Livingston Ave.
   Roseland, New Jersey 07068

b. If to Hoboken:

   Attn: Brian Aloia, Esq., Corporation Counsel
   City of Hoboken
   94 Washington St.
   Hoboken, New Jersey 07030

   With a concurrent copy to:
   Joseph J. Maraziti, Jr., Esq.
   Joanne Vos, Esq.
   Maraziti Falcon, LLP
   240 Cedar Knolls Road
   Suite 301
   Cedar Knolls, New Jersey 07927

18. **No Waiver Unless In Writing.** The waiver of any term or condition of this Agreement by any party shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach or failure of the same term or condition or a waiver of any other term or condition of this Agreement.

19. **Titles Irrelevant.** The titles given to the enumerated paragraphs of this Agreement are for convenience only, and are not intended to be used in construing or interpreting the terms of the provisions of this Agreement.
20. **Parties Bound.** This Agreement expressly binds and inures to the benefit of all Parties hereto as well as to all of their heirs, successors and assigns.

21. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the Parties or their representatives, oral or written, respecting such subject matter. No amendment, modification, or cancellation of any term or condition of this Agreement shall be effective unless executed in writing by the parties hereto. Nothing in the Monroe Interim Cost Agreement shall modify the terms of this Agreement. In the event of any inconsistency between the terms of the Monroe Interim Cost Agreement and this Agreement, or the Municipal Garage Amended and Restated Interim Cost Agreement, this Agreement shall prevail.

22. **Review by Counsel.** This Agreement shall be construed and enforced without regard to any presumption or other rule requiring construction against the party drafting or causing this Agreement to be drafted since counsel for all Parties have reviewed and approved this Agreement.

23. **Execution in Counterparts.** This Agreement may be executed in counterparts, or by facsimile, all of which shall constitute a single, entire agreement. Additionally, the execution and delivery of this Agreement may be conducted by electronic means in accordance with the Uniform Electronic Transmissions Act, N.J.S.A. 12A:12-1.

24. **Governing Law.** This Agreement shall be construed in accordance with the law of the State of New Jersey, without regard to conflict of law principles.

25. **Further Assurances.** Subject to the specific terms of this Agreement, each party shall make, execute, acknowledge and deliver such other instruments and documents and take such other actions as may be necessary, reasonable and appropriate to effectuate the purposes of this Agreement and to consummate the transactions contemplated hereby.

*(signatures on following page)*
SHIPYARD ASSOCIATES, L.P.

Date: ____________________________
By: ____________________________

WITNESS: _________________________

__________________________

APPLIED MONROE LENDER, LLC

Date: ____________________________
By: ____________________________

WITNESS: _________________________

__________________________

CITY OF HOBOKEN

Date: ____________________________
By: ____________________________

Ravinder S. Bhalla, Mayor

ATTEST: _________________________
Exhibit A
Portion of Shipyard Properties Survey
Exhibit B
Description of Observer Redevelopment Project
Exhibit C
Title Report: Block 264.2, Lot 1 of the Shipyard Properties
Exhibit D
Title Report and Survey for the Municipal Garage Site
Exhibit E
Monarch Appraisal Assumptions