

ACCESS AGREEMENT

THIS ACCESS AGREEMENT (“Agreement”) is made as of the last date of execution below (the **“Effective Date”**) by and between the **CITY OF LAMBERTVILLE**, with offices at 18 York Street, Lambertville, New Jersey 08530 (the **“City”**) and **LAMBERTVILLE URBAN RENEWAL, LLC**, with an address at 2 Hennessey Boulevard, Atlantic Highlands, New Jersey 07716 (hereinafter referred to as the **“Redeveloper”**, and together with the City, the **“Parties”**).

A. The City owns the real property known as Block 1003, Lot 3 on the tax maps of the City (the **“Property”**).

B. Simultaneously with the execution of this Agreement, the City and Redeveloper are entering into a Redevelopment Agreement (the **“Redevelopment Agreement”**) to provide for the redevelopment of the Property by Redeveloper.

C. The Parties intend to execute a Purchase and Sale Agreement (the **“PSA”**) whereby the City would sell its interest in the Property to Redeveloper (the **“Transaction”**).

D. Redeveloper has requested the right to access the Property to perform due diligence in connection with the Transaction and the City is willing to grant Redeveloper access to the Property solely for conducting due diligence and for no other purpose, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the promises, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby agree as set forth below.

1. Recitals Incorporated. The recitals hereto are incorporated herein as if set forth at length.

2. Definitions. For purposes of this Agreement, the following capitalized terms shall have the meanings provided below:

“Environmental Laws” shall mean all federal, state or local laws, ordinances, statutes, codes, rules, regulations, treaty, judgment, orders or decrees or published directive, guideline, requirement or other governmental rule or restriction which has the force of law, by or from a court, arbiter, or other federal, state, county, municipal or regional governmental authority, agency or other entity of a similar nature, exercising any executive, legislative, judicial, regulatory or administrative function of government, now or hereinafter in effect relating to, or imposing obligations, liabilities, or standards of conduct concerning or otherwise relating to (A) pollution, (B) the protection or regulation of human or animal health or safety, natural resources or the environment, including flora and fauna, (C) the treatment, storage, distribution, use, recycling, transport, handling or disposal of Hazardous Materials, or (D) the generation, manufacture, processing, distribution, emission, discharge, release or threatened release of Hazardous Materials into the environment, including, without limitation: the Comprehensive Environmental

Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 41 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, as amended (“RCRA”), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, as amended (“TSCA”), 15 U.S.C. § 2601 et seq.; the New Jersey Spill Compensation and Control Act (the “Spill Act”), as amended, N.J.S.A. 58:10-23.11 et seq.; the New Jersey Industrial Site Recovery Act (“ISRA”), as amended, N.J.S.A. 13:1K-6 et seq.; the New Jersey Underground Storage of Hazardous Substances Act, as amended, N.J.S.A. 58:10A-21 et seq.; the New Jersey Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq.; the New Jersey Solid Waste Management Act (“SWMA”), N.J.S.A. 13:1E-1 et seq.; the New Jersey Brownfield and Contaminated Site Remediation Act; N.J.S.A. 58:10B-1 et seq.; the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.; the Administrative Requirements for the Remediation of Contaminated Sites, N.J.A.C. 7:26C et seq.; the NJDEP Remediation Standards, N.J.A.C. 7:26D et seq.; the Technical Requirements for Site Remediation, N.J.A.C. 7:26E et seq.; any other applicable state and local environmental laws and regulations promulgated or enforced by any governmental authority.

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

3. Permission to Enter Upon Property. Redeveloper along with its agents, representatives, employees, contractors, consultants, attorneys, accountants, lenders, investors, partners and third party experts (collectively, the “**Entrants**”) shall have the right to access the Property during the term of this Agreement during normal business hours to perform due diligence investigations, including inspections of the physical condition of the Property and conducting physical and environmental tests and inspection thereof in connection with the Transaction (collectively “**Due Diligence**”). All access to the Property by Entrants shall be conditioned upon providing the City with a least one (1) day notice prior to the date and time of entry, which notice shall include (i) the date and time the Entrants intend to enter the Property; (ii) the identity of all persons and entities expected to enter the Property; (iii) the specific activity to be undertaken; (iv)

the impacted location within the Property; and (v) the expected duration of the entry. Any fees or other expenses of any kind incurred by the City relating to the Access will be solely at Redeveloper's expense (unless such fees or expenses are caused by the City or its Agents). The Access provided by this Agreement does not create any interest in title or right of possession of the Property, or any rights as a tenant by Entrants. The City may cause the Entrants to cease any activity at the Property if such activity is not conducted in accordance with this Agreement or Environmental Laws upon giving oral notice (a "**Stop Notice**") to Redeveloper. The City shall provide Redeveloper with written explanation of the basis for any Stop Notice within two (2) business days after giving the Stop Notice. **In conducting the Due Diligence, Redeveloper shall NOT utilize the services of a Licensed Site Remediation Professional (LSRP) or Licensed Subsurface Evaluator (as such terms are defined under Environmental Laws).** The CITY shall have the right to, but is not obligated to, have representatives present during each such access to the Property to observe all Redeveloper's Due Diligence and any activities related thereto at no cost to Redeveloper.

4. Term. This Agreement shall commence on the Effective Date and shall terminate upon the earlier of: (a) the closing on the acquisition of the Property by Redeveloper (b) termination of the Redevelopment Agreement, or (c) termination of this Agreement by the City pursuant to Paragraph 13 (the "**Term**").

5. Inspection Reporting. Copies of any data, reports or other correspondence obtained or generated by or on behalf of Redeveloper during the Due Diligence (collectively "**Due Diligence Reporting**") shall be kept entirely **CONFIDENTIAL** and not shared with any federal, state, or local government entity or any third-parties without five (5) business days prior written notice to and the express written consent of the City, except that Redeveloper may share copies of same with its employees, agents, consultants, attorneys or lenders as reasonably necessary. Redeveloper shall maintain copies of all such Due Diligence Reporting for a period of one (1) year after the termination of this Agreement and, **only upon written request of the City**, shall provide the City with an electronic copy of same at no cost and expense of the City.

6. Performance. Entrants shall conduct all activities on the Property in a workmanlike manner. Entrants shall not cause any release, spill, leak, or discharge of any Hazardous Materials on the Property or cause any permanent damage to the Property. Entrants shall exercise that degree of care and skill ordinarily exercised under similar circumstances by members of their respective professions, as applicable, performing the kind of activities being performed hereunder and practicing in the same or similar locality during the same general period of time. While on the Property, Entrants shall take necessary precautions for the safety of their officers, employees, contractors and agents. All Entrants shall comply with all applicable Environmental Laws and other federal, state, county and local applicable statutes, laws, regulations, ordinances, rules, orders, permits or guidance documents in performing hereunder and shall comply with any directions of governmental agencies relating to safety, security, traffic or other like matters. Any groundwater monitoring well installed pursuant to this Agreement shall be permanent, flush-mounted, with a well cover.

7. Hazardous Materials; Property Condition. In no event shall Entrants bring any hazardous, toxic or contaminated materials or substances on the Property, including, without

limitation, any Hazardous Materials. Entrants shall take reasonable precautions to minimize damage to the Property while performing the Due Diligence. Entrants shall restore the Property to as close to its condition existing at the time Due Diligence began as is possible, normal wear and tear excepted. Entrants, at their own cost and expense, shall obtain all governmental approvals (local, state and federal) and any other approvals necessary for the Due Diligence, including obtaining applicable permits and obtaining a mark-out of all utilities at the Property, including but not limited to public and private subsurface utilities, prior to the commencement of any Due Diligence. Entrants shall be fully responsible for any and all damage to existing improvements, utilities, or communications systems on the Property caused as a result of the Due Diligence. Provided, however, Redeveloper shall not be liable or responsible for (i) any damage or costs caused by any of the City's Indemnitees (defined below), (ii) the mere discovery of pre-existing conditions at the Property, or (iii) any punitive or consequential damages. In the event that any groundwater monitoring wells are installed on the Property pursuant to this Agreement, Entrants shall properly close and abandon such wells within thirty (30) days of the termination of this Agreement.

8. Wastes Derived from Due Diligence. Entrants shall be solely responsible for the handling, storage, removal and disposal of any and all soils, materials, debris, drill cuttings, purge water, investigative derived waste, wastes, Hazardous Materials, or materials containing Hazardous Materials regardless of concentration generated during the Due Diligence performed pursuant to this Agreement ("**Waste Derived Materials**"). Absolutely no Waste Derived Materials shall be stored on the Property, and, at the end of each day of access under this Agreement, any such Waste Derived Materials shall be removed from the Property. Redeveloper alone shall be listed as the generator of all such Waste Derived Materials on any manifests, permits, or other documentation required for the handling, storage, removal, or disposal of same.

9. Removal of Property and Trash. At the end of each day of access under this Agreement, Entrants, at their sole cost and expense, shall remove all equipment, fixtures, vehicles, objects, and trash used on the Property during the access, provided that any equipment may remain on the Property at the end of the day if the equipment is needed to continue the investigation of the Property on the following day. In the event that same is not removed after reasonable efforts are made to contact Redeveloper, the same shall be deemed abandoned and the City shall have the right to dispose of the same and charge Redeveloper for any cost of disposing thereof.

10. Liens. Redeveloper shall pay for all activities performed and shall cause its authorized consultants, agents, contractors, and/or subcontractors to pay for all Due Diligence activities, free and clear of any mechanics', materialmens', contractors' or subcontractors' liens to attach to the Property by reason of or otherwise arising from Entrants Due Diligence activities.

11. The City Not Liable. The City shall not be liable, and Redeveloper, and any individual or entity claiming through Redeveloper, forever releases and discharges the City, for any loss, damage or injury of any kind or character to any person, property or the Property to the extent arising from any Access to the Property by Entrants or any act or omission by Entrants related to or connected with Access to the Property, including any claims for loss, damage, or injury resulting from exposure to any Hazardous Materials present on, beneath or migrating from the Property. The City shall not be responsible for any loss or theft sustained by Entrants during

Entrants' access to the Property. Redeveloper shall indemnify, protect, defend and hold the City and the City's representatives, advisors, attorneys and employees (collectively, "**the City's Indemnitees**") harmless from any and all claims, actions, third-party costs and expenses (including reasonably attorneys' fees), damages and liabilities (in each case, as and to the extent actually incurred) relating to any claims, damages, losses, liens, actions, causes of action, rights, demands, liabilities, physical damage or personal injury, which result from the Access, breach of this Agreement or any acts or omissions of Entrants on the Property in connection with this Agreement. Provided, however, the foregoing release and indemnity shall not apply to, and Redeveloper shall not be liable or responsible for the gross negligence or willful misconduct of the City or any of the City's Indemnitees.

12. Insurance. Redeveloper shall, at all times while accessing the Property, maintain at its sole expense the following insurance coverage, from commercially reputable insurance companies: (a) Commercial General Liability insurance not less than \$1,000,000 for each occurrence and \$2,000,000 annual aggregate, with \$3,000,000 excess coverage (provided that such excess coverage amount shall be reduced to \$1,000,000 for any contractor or subcontractor performing a scope of work less than \$500,000.00 in the aggregate) covering bodily injury, death and property damage; (b) Automobile Liability no less than \$1,000,000 per accident for bodily injury and property damage; (c) Workers' Compensation as required by the State of New Jersey's statutory limits; and (d) Professional Liability (errors and omissions) no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. All such insurance policies issued to Redeveloper shall name the City as an additional insured. Prior to its initial entry onto the Property, Redeveloper shall provide the City with evidence of the foregoing required insurance – specifically policy declaration pages and accompanying policy endorsements identifying the City as an additional insured.

13. Termination. The City shall have the right to terminate this Agreement in whole or in part upon fourteen (14) days' written notice to Redeveloper in the event that the conditions cited in any Stop Notice are not cured, which termination shall be effective upon the date indicated in such notice. In the case of exigent circumstances, however, the City reserves the right, in its sole and unreviewable discretion, to immediately terminate this Agreement to protect public health or safety. Entrants shall immediately discontinue performing Redeveloper's Due Diligence on or before the date indicated in the termination notice. Redeveloper's right to inspect the Property granted herein shall otherwise terminate on the first to occur of (i) the execution of the PSA and (ii) termination of the Redevelopment Agreement.

14. Assignment. Redeveloper shall not transfer or assign its rights or obligations under this Agreement without the express written consent of the City except to an Urban Renewal Entity established by Redeveloper. The City, however, may freely assign its rights or obligations under this Agreement, but shall provide Redeveloper with reasonable advance notice of such assignment.

15. Notices. All notifications made pursuant to this Agreement, shall be served by UPS or Federal Express and shall be simultaneously sent in writing via electronic mail:

CITY:
Cynthia Ege, RMC

City of Lambertville
18 York Street
Lambertville, New Jersey 08530
cityclerk@lambertvillenj.org

with copies to:

William P. Opel
McManimon, Scotland & Baumann, LLC
75 Livingston Avenue, Suite 200
Roseland, New Jersey 07068
wopel@msbnj.com

REDEVELOPER:

Lambertville Urban Renewal, LLC
Attn: Mazin Patrick Kalian
2 Hennessey Boulevard
Atlantic Highlands, New Jersey 07716
mkalian@kalian.com

with copies to:

Kalian Management
Attn: Debbie Kramer Gregg
2 Hennessey Boulevard
Atlantic Highlands, New Jersey 07716
dgregg@kalian.com

16. Waiver. No waiver by a party of a breach of any of the terms, covenants or conditions of this Agreement will be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. The consent or approval by a party to or of any act by the other requiring consent or approval does not waive or render unnecessary the consent or approval to or of any subsequent similar acts.

17. Miscellaneous.

(a) This Agreement shall be construed under and in accordance with the laws of the State of New Jersey. Each of the Parties hereto irrevocably submits to the jurisdiction of the Superior Court of New Jersey, Hunterdon County, for the purpose of any suit, action, proceeding or judgment relating to or arising out of this Agreement and the transactions contemplated thereby and to the laying of venue in such court. Each Party hereto irrevocably waives any objection to the laying of venue or that any such action or proceeding brought in said Court has been brought in an inconvenient forum. The Parties further agree that any claims relating to or arising out of this Agreement and the transactions contemplated thereby shall be tried before a judge and without a trial by jury.

(b) This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and permitted assigns. Each person executing this Agreement

represents that the Party on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on behalf of such Party.

(c) In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

(d) The parties may execute this Agreement in one or more identical counterparts, all of which when taken together will constitute one and the same instrument. Facsimile and electronic portable document format (PDF) signatures on this Agreement shall be binding, and copies of this Agreement containing the signature of both parties shall be deemed originals.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date set forth above.

THE CITY:

CITY OF LAMBERTVILLE

By: _____
Name: _____
Title: _____
Date: _____

REDEVELOPER:

LAMBERTVILLE URBAN RENEWAL, LLC

By: _____
Name: Mazin A. Kalia
Title: Manager
Date: _____