

DEVELOPER'S CONSTRUCTION AGREEMENT

THIS DEVELOPER'S CONSTRUCTION AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of _____, 2022, between:

CSH WEST ORANGE, LLC, a Delaware limited liability company, with offices located at 1275 Pennsylvania Avenue, NW, Washington, D.C. 20004, and its successors and assigns (collectively, the "**Developer**")

and

THE TOWNSHIP OF WEST ORANGE, in Essex County, a municipal corporation of the State of New Jersey, with offices located at 66 Main Street, West Orange, New Jersey 07052 (the "**Township**")

RECITALS

WHEREAS:

1. The Developer intends to develop the land located at 609 Eagle Rock Avenue, West Orange, New Jersey, and more formally known as Lot 1412.01, in Block 152.22 (the "**Property**").

2. By application of the Developer's affiliate CSH Development, LLC, the Developer obtained preliminary and final major site plan approval, with the following associated use variances, bulk variances and design/waivers exceptions: (1) a "d(1)" use variance for an assisted living facility where same is not permitted in the B-2 zone, (2) a "(d)6" use variance for a 38.33 foot high building, whereas only a 35 foot high building is permitted, (3) a "c" variance for a three (3) story building, whereas only 2.5 stories are permitted, (4) a "c" variance for lot coverage greater than permitted where 60% is permitted and 66.8% (based on Effective Lot Area, as defined by the Township's Code) is proposed, (5) a "c" variance for parking spaces proposed to be located in the front yard where same is not permitted, (6) a "c" variance for one (1) loading dock proposed whereas three (3) loading docks are required, (7) a "c" variance for

number of parking spaces less than required, where 100 parking spaces are required and 51 parking spaces are proposed, (8) a “c” variance for relief from the requirement of a 50-foot buffer from an adjoining residential zone, and (9) a “c” variance for an 8-foot wall to enclose the dumpster and generator, when the maximum wall height allowed is 6 feet (collectively, the “**Approval**”) to effectuate the Developer’s demolition of the existing structure at the Property and construction at the Property of a three-story assisted living facility, consisting of 77,190 square feet, along with customary site improvements and amenities (collectively, the “**Project**” or “**Development**”). The Approval was memorialized by resolution entitled “Resolution of the West Orange Zoning Board of Adjustment, Application No. ZB-21-04, 609 Eagle Rock Avenue (CSH Development, LLC)” adopted by the West Orange Zoning Board of Adjustment (the “**Zoning Board**”) on October 21, 2021 (the “**Resolution**”). The Resolution is attached to this Agreement as Exhibit A and incorporated herein at length.

3. The parties intend for this Agreement to set forth the terms and conditions of a Developer’s Construction Agreement to ensure compliance with the Municipal Land Use Law of the State of New Jersey (the “**MLUL**”), the Zoning and Land Development Ordinance of the Township of West Orange (the “**LDO**”), and the enumerated conditions of the Approval as set forth in the Resolution, and to further ensure the installation of all required Improvements. For purposes of this Agreement, the word “**Improvements**” shall be liberally defined to include all project improvements shown on or otherwise referenced on the Project plans submitted to and approved by the Zoning Board as part of the Approval, as modified by any conditions of approval set forth in the Resolution (collectively, the “**Plans**”) or in the Resolution. The original Resolution and the original Plans signed by the Zoning Board Chairman, Board Secretary and the Township Engineer are on file at the Office of Planning and Zoning in West Orange.

4. It is in the best interest of the Developer and the Township that this Agreement be entered to provide for fulfillment / implementation of all the requirements of the MLUL and the LDO, the conditions of the Approval, and the conditions of all other approvals imposed by any other governmental agency having jurisdiction over the matter.

5. In the event that any of the terms of this Agreement are more stringent than those set forth in the MLUL, the LDO or the Resolution, the Developer hereby agrees to comply with the more stringent provisions of this Agreement.

6. As a condition of the Approval, the Developer is required to enter into this Agreement with the Township, satisfactory to the Township Council, the Township Engineer, and the Township Attorney.

NOW, THEREFORE, in consideration of the mutual undertakings set forth below, the Developer and the Township enter into this Agreement and agree to the following terms, covenants, and conditions:

A. GENERAL:

1. The Developer understands and agrees that no clearing, grading, land disturbance, or removal of trees in any areas designated on the plans as an area of disturbance shall take place until such time as all State, County and local permits as required to be issued as a condition to commencement of such activity are obtained. The Developer further understands and agrees that no construction permit will be issued by the Township until the Developer complies with all applicable Township Ordinances and obtains all required permits and approvals from the State and local agencies, the County of Essex, and all other agencies with jurisdiction over the matter. The Developer shall, at Developer's cost, obtain all necessary permits for work within public rights-of-way. The Developer shall also obtain, at Developer's cost, all necessary permits for

excavation, curb removal, and road opening as well as any Township Soil Removal Permit which may be required.

2. The Developer agrees to be bound by all the terms and conditions of the Approval and applicable Township Ordinances, and to be bound by the testimony, representations, commitments, matters of fact and matters of law, as contained in the Resolution and / or which constitute the file and record of the Zoning Board, *i.e.*, exhibits submitted in support of the application for the Approval, Zoning Board transcripts made in connection with the Approval and the Resolution.

3. The Development shall be in accordance with the MLUL, the LDO and the Residential Site Improvement Standards in effect as of the date of the Approval, except those provisions which are expressly waived by formal action of the Zoning Board as evidenced in the Resolution. It is expressly understood that unless a variance or waiver is specifically set forth in the language of the Resolution, no provision of the LDO is waived, even though there may be items on the Plans and supplementary documentation which may not be in strict compliance with the LDO.

4. Construction activity shall be prohibited on Sundays, New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving Day, Christmas Day, the first day of Rosh Hashanah and Yom Kippur. The Developer further agrees to restrict all construction activity for site work and exterior construction to the hours of 8 a.m. to 6 p.m. Monday through Friday and 8 a.m. to 4 p.m. on Saturdays (unless other more stringent restrictions have been adopted by the Township and, in which event, such stricter regulations shall apply). In addition, the Developer agrees to restrict all interior construction activity to the hours of 6:00 a.m. to 8:00 p.m., Monday through Friday, and 6:00 a.m. to 4:00 p.m. on Saturdays (unless other more stringent restrictions

have been adopted by the Township, in which event, such stricter regulations shall apply). Upon written request by the Developer to the Township, work hours may be extended, in the discretion of the Township Engineer, to accommodate special construction operations requiring such extended hours for efficient completion.

5. All noise generated by construction activities shall also comply with the General Ordinances of the Township of West Orange and the rules and prevailing policies of the New Jersey Department of Environmental Protection, with the more restrictive provisions applying.

6. All real estate taxes and assessments on the Property shall be paid in full, as same become due, based upon bills and invoices duly prepared and issued by the Township for the Property. Failure to pay taxes shall be considered an event of default under this Agreement and shall entitle the Township to all remedies prescribed in this Agreement or as otherwise allowed under applicable laws.

B. INFRASTRUCTURE:

The Township shall make public sewer available to the site. The Developer shall provide all other utilities.

C. PHASING OF DEVELOPMENT:

Except as may be approved by the Zoning Board and as permitted by MLUL, the Project will be developed in a single phase. All utility connections shall be appropriately capped and secured. During all periods of construction, the Developer shall provide for appropriate site maintenance.

D. PROJECT CONSTRUCTION:

The Developer shall construct, in accordance with the specifications and design standards of the Township Ordinances, in a manner satisfactory to the Township Engineer, all

Improvements, including but not limited to, the installation of those items specifically set forth herein. The following construction sequence shall be adhered to, by the Developer for the Project.

1. *Conditions to Commencement of Construction.* Prior to issuance of construction permits or commencement of construction,

- (i) all conditions of the Approval applicable to construction of the Project shall be satisfied, the Plans shall be signed accepted by the Township, and all construction cost estimates, performance guarantees, inspection fees and other required fees and contributions shall be posted with the Township;
- (ii) all governmental permits required to be issued as a condition precedent to issuance of a construction permit or to commencement of construction shall be obtained, and the conditions of approval of those permits shall be satisfied as well; and
- (iii) the Developer shall supply the Township Clerk and Zoning Board Secretary with a recorded copy of all documents which must be recorded in conjunction with the Approval, if applicable.

In addition, prior to issuance of zoning, development and construction permits, the Township Engineer must certify, in writing, and the Zoning Officer must find that all conditions of the Approval are satisfied, including, but not limited to, the grant of authority to the Township (at no cost) to exercise jurisdiction over the entire Project under Title 39 of New Jersey Statutes (should the Township wish to receive such authority).

2. *Performance Guarantee.* In accordance with the MLUL, the Developer agrees to post performance guarantees and escrows for the benefit of the Township in the amounts set

forth on Exhibit B, as determined by the Township, on the recommendation of the Township Engineer (collectively, the “**Performance Guarantee**”). The Performance Guarantee will consist of (i) a letter of credit or surety bond, in form and substance acceptable to the Township, as hereinafter provided, and (ii) a cash escrow held by the Township. The Performance Guarantee may be used by the Township to complete certain site improvements required by the Approval, as determined by the Township Engineer and specified on Exhibit B (collectively, the “**Bonded Improvements**”), in the event said Bonded Improvements are not accomplished by the Developer within the time as provided in the Approval or otherwise in this Agreement, and to compensate the Township for any repairs for damage caused by the Developer or the Developer’s agents, employees, representatives, contractors, or vendors (collectively, the “**Developer’s Agents**”) to public facilities resulting from construction of the Project. The Performance Guarantee will be reduced in accordance with the MLUL as the Bonded Improvements are completed, inspected and approved by the Township.

3. *Performance Guarantee – Requirements for Letters of Credit, Surety Bonds and Cash Escrows.* Any performance guarantee posted under this Agreement or in connection with the Project, whether in the form of a performance bond, letter of credit or other arrangement, shall be subject to the review and approval of the Township as to form and amount, through the Township Engineer and Township Attorney, and otherwise meet the requirements of the MLUL and other applicable law. Any performance bond shall be duly executed by the Developer as principal, and the surety company as surety, and shall be issued by an insurance company authorized to do business in the State of New Jersey. Any letter of credit shall provide for automatic extensions thereof, at the discretion of the Township, for a period of time reasonably required to complete the Bonded Improvements or to complete any other work secured by the

Performance Guarantee under this Agreement, and shall further provide for written notice to the Township of not less than thirty (30) days before its expiration, to enable the Township to determine if the letter of credit should be called before its expiration. The Developer agrees that in the event it becomes necessary for the Township to expend any part of any cash deposit, performance bond, letter of credit or other form of performance guarantee, the Developer shall replace the amount so used within thirty (30) days of the date the funds are disbursed. The use of the cash or the letter of credit by the Township shall not be considered a release of the Developer or of the performance guarantee, and the same shall be without prejudice to any rights the Township may have in connection with the construction or installation of the Improvements.

4. *Maintenance Guarantee.* The Developer agrees to post the two-year maintenance guarantees in accordance with and at the time required by the provisions of Township Ordinances, the MLUL, and applicable case law.

5. *Construction Inspection Fee Escrow.* The Developer agrees to pay the costs of inspection of Improvements by the Township Engineer, upon the terms set forth in the MLUL and LDO, by means of a cash escrow to be established by the Developer with the Township, in the amount determined by the Township Engineer and set forth on Exhibit B. (the “**Inspection Escrow**”). Payment of construction inspection fees pursuant to the MLUL and LDO, including those required for any off-tract Improvements shall be current at all times until completion of the Project. Any time the balance on account of the Inspection Escrow falls below the established minimum, the Developer shall, with reasonable notice of not less than ten (10) business days provided by the Township, immediately replenish the Inspection Escrow in an amount determined under and in accordance with the MLUL and LDO. The Township Engineer and other Township officials, in the Township’s discretion, shall suspend providing municipal

services for or with respect to the Project if the account falls below the minimum required amount, except if such municipal services impact public health and safety.

6. *Pre-Construction Meeting.* No later than seventy-two (72) hours prior to commencement of construction, a pre-construction meeting shall occur with the Township Engineer, the Township Construction Official, the Zoning Board Consulting Engineer, representatives of the Township Department of Public Works and the Hudson Essex Passaic Soil Conservation District (the “**HEPSCD**”), and the Developer and the Developer’s authorized representatives. The Developer agrees that arrangement of the said meeting shall be the responsibility of the Developer, and at the reasonable convenience of the Township Engineer. This meeting shall be arranged a minimum of one week prior to the date fixed for the said meeting.

7. *Prior Notice to Commence Construction.* Seventy-two (72) hours’ prior notice of intent to begin construction shall be given to the Township Engineer. Notice may be made by phone or email.

8. *Documentation of Existing Public Improvements.* The Developer shall retain a qualified individual who shall, prior to commencement of construction operations, prepare either a series of 3”x5”, 35mm, color photographs or a color video recording of the construction entrance and the proposed construction vehicle routing plan. The said documents shall be labeled, titled or narrated, time dated and in sufficient detail to document all physical features such as pavement, curbs, sidewalks, driveways, fences, lawns and other features which might be damaged during construction. The Developer shall notify the Township Engineer seventy-two (72) hours prior to preparing the said documents and shall provide the Township Engineer with two (2) copies of all documents produced.

9. *Soil Erosion and Sediment Control.* The Developer shall, at the Developer's cost, arrange for the installation, inspection and approval by the HEPSCD of all soil erosion and sediment control devices. A copy of the approved soil erosion and sediment control plan(s) (the "**HEPSCD Plans**") shall be kept on site at all times (and available for inspection by Township officials).

10. *Construction Traffic and Site Access.* Construction traffic shall be permitted to gain access to the site only through the construction access route specifically shown on the Plans. The construction access shall be maintained throughout the course of construction so as to provide safe, adequate, and appropriate emergency vehicular access to the construction site. The Developer shall arrange for and be responsible to pay for all costs of traffic control officers and vehicles as required under Township Ordinances.

11. *Site Mobilization.* Vehicles and manpower may access the site to commence the construction activities described in this Agreement.

12. *Development Sequence.* Except as otherwise approved by the Township Engineer and as otherwise required by governing permits, approvals or laws and regulations, the following sequence shall be observed by the Developer:

Phase I Construct soil erosion and sediment control measures ("**ESC Measures**") in accordance with the HEPSCD's requirements and recommendations.

- A. Install stone anti-tracking pad and other ESC Measures including down slope perimeter hay bales and silt fence

Phase II Concurrently

- A. Demolish the existing structures and remove required trees on the Property
- B. Clear and rough grade for new building site

Phase III Concurrently

- A. Excavate and install building foundation.
- B. Install electric, telephone and cable utilities underground.
- C. Proceed with building construction.

Phase IV Construct sanitary services in accordance with the approved plans and all local, County, State and federal Codes. At the Developer’s discretion, this work may begin earlier.

Phase V Construct water and gas services in accordance with the approved plans, utility company standards and all local, County, State and Federal Codes. At the Developer’s discretion, this work may begin earlier.

Phase VI Excavation and install site improvements including lighting, curbing, base paving & sidewalks. Construct off-site improvements including driveway openings and pedestrian sidewalk. At the Developer’s discretion, this work may begin earlier.

Phase VII Install final vegetation and landscaping.

Phase VIII Finalize building construction and install final paving and striping.

Phase IX Construct basin sand filter and remove soil erosion and sediment control measures as required.

17. *Developer’s Responsibility to Correct Environmental or Infrastructure Problems.*

In the event that during the course of construction, the Township or other governmental agencies or officials with jurisdiction over the Project identify environmental or infrastructure problems as a result of site activities, the Developer shall take reasonable measures to immediately remedy such environmental or infrastructure problems in a timely manner (in a fashion which is approved by the Township Engineer).

18. *Certificate(s) of Occupancy.* The Township agrees that it will issue a Temporary Certificate of Occupancy and a Certificate of Occupancy for the project pursuant to Section 25-40-26 of the LDO and the Uniform Construction Code, which shall govern the terms and conditions of any such permits and certificates, and provided further that each of the following (as applicable) has occurred:

- a. A valid building permit has been issued pursuant to Section 25-40.2 of the LDO, and any and all other permits required by any governmental agency with jurisdiction over the construction of the Project have been issued;
- b. Any and all inspections required in connection with the completion of work contemplated by all requisite permits are satisfactorily completed.
- c. All required guaranties and deposits on file with the Township are current, including the payment of property taxes and inspection fees.

E. COMPLETION OF IMPROVEMENTS:

1. All driveways and parking areas shall remain privately owned by the Developer or its successors. The Developer shall be responsible for all maintenance of all roads, cartways, access ways and driveways within the Project. Except as required by law, the Township shall have no responsibility for the performance or payment of any maintenance or improvements to any such cartways, roads, access ways or driveways.

2. All site Improvements shall be completely constructed within a period of five (5) years from the date of this Agreement as executed by the parties hereto. The issuance of a Certificate of Occupancy by the Township shall not be deemed a waiver or release of any defect found in the Improvements or acceptance of the Improvements during said period or subsequent thereto.

3. If the Property is sold or otherwise transferred by the Developer prior to the completion of all the Improvements, then, as a condition precedent to the continued construction of the Project, the Developer and the purchaser or transferee of the Property shall enter into an assignment and assumption agreement, with the consent and joinder of the Township, pursuant to which the purchaser or transferee assumes all of the Developer's obligations under this Agreement and otherwise commits in writing to all terms, conditions and provisions of this

Agreement and the Approval (an “**Assignment and Assumption Agreement**”). (If the sale or transfer of the Property is involuntary or by operation of law, then, as a condition precedent to continued construction of the Project, the purchaser or transferee shall enter into a replacement Developer’s Construction Agreement with the Township.)

F. SITE ACCESS:

1. The Township and its authorized representatives, consultants, professionals, employees, contractors, and agents (collectively, the “**Township’s Agents**”) shall be given free and liberal access to observe construction of the Improvements and all roads, sanitary sewers, water mains, storm sewers, buildings, landscaping and appurtenances as shown on the approved plans or required by Township Ordinances. Neither the Township nor any of the Township’s Agents shall incur any liability on behalf of the Developer or any third party as a result of failing to object, comment upon, or take action to stop or alter the means, methods, techniques, sequences or procedures of construction selected by the Developer or the Developer’s Agents for safety precautions and programs incident to the work on the Property, or for any failure or negligence of the Developer or the Developer’s Agents to fully comply with applicable laws, rules, regulations, ordinances, codes or orders.

2. The Developer hereby expressly agrees to release, defend, indemnify and hold the Township and the Township’s Agents harmless from and against any and all claims, damages, costs and liabilities for injury or damage received or sustained by any property, person, or entity in connection with, or on account of, the installation and completion of the Improvements and all other construction and installation anticipated, begun, or completed pursuant to the Approval (or Township Ordinances), which is the result of the Developer’s acts or omissions, or the acts or omissions of the Developer’s Agents. The Developer further agrees to aid and defend the

Township and the Township's Agents or any or all of them, if named in any capacity in an action involving the foregoing claims or related claims with respect to the Property, the Improvements, or any construction or work arising from the Approval or Township Ordinances, which are the result of the Developer's acts or omissions, or the acts of omissions of the Developer's Agents. The parties acknowledge that the Developer is not a representative, consultant, agent or employee of the Township. The foregoing indemnification shall specifically exclude any and all acts or omissions of the Township, the Township's Agents, and any person or entity other than the Developer and the Developer's Agents. The Developer shall obtain and maintain for the duration of this Agreement insurance meeting the coverage requirements set forth on Exhibit C and naming the Township as an additional insured.

G. SOIL EROSION AND SEDIMENT CONTROL:

1. Precautions relating to dust control shall be identified on the HEPSCD Plans and shall otherwise comply with the detail sheets in the latest version of the "Standards for Soil Erosion and Sediment Control in New Jersey" (the "**Standards**"). The Developer agrees to sweep, as frequently as determined to be necessary by the Standards, the HEPSCD or the Township Engineer, any and all public roadways where tracking of sediment occurs on one or more instances during any given day. The Developer further agrees that it shall be solely responsible for any sediment tracked onto public roadways by the Developer's Agents, and any damage caused by the same, until issuance of the Certificate of Occupancy. In addition, the Developer agrees that any and all sediment tracked onto public roadways shall be removed by the Developer in such reasonable timeframe as established by the Township. In the event that the Developer fails to fulfill its obligation to remove sediment in public roadways, the Township may, without any obligation to do so, assume the said obligation and back charge the Developer

at prevailing rates for manpower and equipment necessary, and the Developer shall reimburse the Township within 30 days of receipt of any invoice or bill therefor. The Developer shall indemnify and hold the Township and the Township's Agents harmless from any and all liabilities associated with the work performed in the said regard.

2. The Developer shall be solely responsible for inspection and maintenance of all ESC Measures shown on the approved Plans or required by the Standards. Upon noticing any deficiencies in either the maintenance or effectiveness of the approved ESC Measures, or upon receipt of notice of the same by the Township Engineer, the Developer agrees to take immediate action to correct said deficiencies, in a fashion reasonably acceptable to the Township Engineer. Such action may include, but not be limited to, restoration of the approved ESC Measures or providing a design for new soil erosion and sediment control measures prepared according to the Standards by a New Jersey licensed professional engineer to correct said deficiencies. No new designs for soil erosion and sediment control measures can be implemented or used without prior approval by the HEPSCD and the Township Engineer.

3. The Developer agrees to prevent sediment from leaving the site according to the Soil Erosion Act of New Jersey. The Developer further agrees to be solely responsible for any and all damages resulting from sediment leaving the site. The Developer also agrees to provide dust control as required, according to the Standards, in order to prevent negative impacts to adjacent areas.

4. In the event of a sale or other transfer of the Property, the Assignment and Assumption Agreement (or any replacement Developer's Construction Agreement) shall provide that the purchaser or transferee, as successor to the Developer, shall be solely responsible for

proper maintenance and installation of all soil erosion and sediment control measures, devices, appurtenances, etc., required under this Agreement.

H. TRAFFIC CONTROL AND ROADWAY CLOSING:

1. With respect to traffic, the Developer shall prepare and adhere to an approved traffic control plan based upon the Manual on Traffic Control Devices, specifically the section on construction maintenance signs. The existing structural condition of roadways accessing the site shall be documented as outlined under Section D of this Agreement above, and the Developer shall be responsible for all repairs to the said roadways resulting from damage caused by the Developer's construction activity. Repairs of all damaged pavement found to be the Developer's responsibility shall be made prior to issuance of the Certificate of Occupancy.

2. The Developer agrees there shall be no parking of construction-related vehicles on or within any existing public right-of-way. The Developer and its subcontractors shall become familiar with and utilize all approved truck routes and follow weight limits of all access routes to the Project.

3. In the event of any road closures, the Developer further agrees to first seek the approval of the Township Engineer and Township Council. The Developer is also aware that appropriate detour traffic signs must be in place and there must also be prior notice to the Police Department, all emergency services, the Board of Education and the public at large.

4. Unless otherwise indicated, the Developer agrees to be responsible for the installation, maintenance, and removal of all traffic control signs and traffic safety devices until such time as all site construction is completed, and a Certificate of Occupancy has been issued.

5. The Developer hereby grants Title 39 permission (N.J.S.A. 40:39-1 et seq.) to the Township to permit the enforcement of traffic and motor vehicle regulations.

I. SANITARY FACILITIES:

1. The Developer agrees to install and maintain at the Developer's cost, according to law, sanitary facilities (toilets) necessary to accommodate the entire on-site work force. The sanitary facilities shall be in a suitable / discreet location approved by the Township Engineer.

J. COORDINATION WITH MUNICIPAL EMERGENCY SERVICES:

1. Unless otherwise waived by the Township or the West Orange Fire Department, the Developer shall accommodate the cost of two training sessions for the West Orange Fire Department to be conducted at the Property and the Project.

K. INSPECTION FEES:

As provided in Section D of this Agreement above, the Inspection Escrow shall be established, debited and replenished in accordance with the of the MLUL and the LDO, in an amount to be determined by the Township Engineer.

L. DAMAGE TO PUBLIC AND PRIVATE PROPERTY:

1. Developer is responsible for any damage caused by, or related to, construction of the Project which it fails to correct or repair. Any public facilities damaged during the construction process which contribute to an immediate threat to the public health, safety, or welfare shall be repaired within a reasonable timeframe, as established by the Township. Additionally, any other obligations of the Developer to repair damaged public facilities caused by the Developer shall be required only after the Developer is given written notice of the damage, and a 30-day opportunity to correct or cure the same. Continuous maintenance and repair of municipal roadways damaged during the course of construction shall be a continuing obligation of the Developer, subject to the foregoing provisions.

2. The Developer shall use reasonable precautions to prevent damage to public and private property, trees, landscaping and structures along and adjacent to the Project. The Developer agrees, at the Developer's cost, to make all necessary arrangements with the respective utility companies prior to relocation or interruption of service.

3. The Developer agrees not to enter upon or make use of any private property abutting or in proximity to the Project, except where permission is secured in writing therefor from the owner. The Township agrees to utilize good faith efforts to obtain (at no cost) from the affected private property owner(s) any necessary construction access easements or right-of-entry agreements (each a "**Construction Access Agreement**") so as to allow the Developer to install the improvements required by the Resolution. The Township has no obligation to resort to litigation to obtain any such Construction Access Agreement, and nothing contained in this Agreement shall require the Township to provide money or other consideration to any affected private property owner to fulfill the terms of this Agreement. In the event an affected private property owner does not agree to enter into a Construction Access Agreement, the Developer shall be obligated to completing only such work as can be accomplished with access only to the public right-of-way. The Developer agrees to restore or repair, in a reasonable manner satisfactory to the owner, such property which may be damaged by the Developer or the Developer's Agents during the execution of the Project or by the work associated therewith.

4. Failure to correct damage to public and private property caused by the Developer or the Developer's Agents during the execution of the Project shall render the Developer in breach of this Agreement and subject the Developer to the remedies prescribed in this Agreement or as otherwise allowed under applicable laws.

M. CONSTRUCTION INSPECTIONS AND SPECIFICATIONS:

1. The Developer agrees that all construction methods and materials shall comply with approved plans.

2. Construction inspection shall be performed under the supervision of the Township Engineer. The Developer agrees to request inspection by the Township Engineer a minimum of two (2) business days prior to beginning any of the following activities:

- (i) ESC Measures,
- (ii) preparation of road subgrade,
- (iii) curb and gutter (forms),
- (iv) curb and gutter (material placement),
- (v) road surface and paving,
- (vi) sidewalk (forms),
- (vii) sidewalks (material placement),
- (viii) storm drainage pipes and other drainage or flood control facilities (including detention),
- (ix) street and traffic control signs,
- (x) sanitary sewer trench compactor,
- (xi) water main trench compactor and services,
- (xii) landscaping,
- (xiii) traffic safety measures,
- (xiv) paving of parking areas and
- (xv) parking lot striping.

3. The Developer understands and agrees that failure to request inspection as set forth herein may result in uninspected Improvements being summarily rejected, removed and replaced, and not eligible for release or reduction of the Performance Guarantee.

4. The Developer understands and agrees that in addition to the above, random and periodic inspections of the Project are required to ensure compliance with this Agreement. The

Township is permitted to make such reasonable inspections without notice to the Developer or its site representative.

5. The Developer agrees that inspection by the Township of the installation of Improvements and utilities shall not operate to subject the Township or the Township's Agents to claims, suits or liability of any kind which may at any time arise because of defects or negligence caused by the Developer or the Developer's Agents during or as a result of construction. The Developer recognizes its responsibility to maintain safe conditions at all times during construction, prior to acceptance of the Improvements by the Township, and during the Developer's required maintenance period after Township acceptance. The Developer agrees to provide proper utilities, appropriate temporary site improvements and site accessibility at all times during construction.

6. The Developer agrees that neither the Township nor the Township's Agents shall have control or charge of construction means, methods, techniques, sequences, procedures or safety precautions and programs in connection with the work and, therefore, shall not be held responsible for or have control or charge over any acts or omissions of the Developer, the Developer's Agents or any other person performing any work related to the Development. The Developer agrees, however, that nothing herein shall preclude the Township from exercising all available remedies, including injunctive relief, to insure compliance with the terms and conditions of this Agreement, or to otherwise protect and promote public health, safety, and welfare.

N. ENGINEERING DETAILS:

1. The Developer understands that all conditions cannot be anticipated in the Plans and may require field changes. The Developer agrees that the Township reserves the right to

require reasonable changes to the Project that, in the opinion of the Township Engineer, and after consultation with the Developer's on-site representatives, are necessary to implement the intent of the Plans. Prior to implementation of any such change, the Developer further agrees that the Township Engineer (and if required by Township Ordinance, the Zoning Board) must approve any deviation from the Plans, unless the Township Engineer renders an opinion, in writing, that such approval is not required.

O. DEVELOPER REPRESENTATIVE ON SITE:

The Developer agrees to maintain an authorized English-speaking representative on site who is a competent and responsible person under the Occupational Safety and Hazards Act at all times during construction and installation of Improvements. The said representative shall have authority to correct any deficiency and to correct any unsafe conditions as noted by the Township Engineer, the Township Public Works Superintendent, the Township Construction Official, or the Township Zoning Officer, or any of their respective authorized representatives. The Developer shall be responsible for notifying the aforementioned officials of the name, address, e-mail address and telephone number of Developer's authorized representative. Failure to provide on-site representation shall render the Developer in breach of this Agreement and subject the Developer to the remedies prescribed in this Agreement or as otherwise allowed under applicable laws.

P. PERMITS:

1. The Developer agrees to obtain and keep in its possession at the job site all local and State permits and approvals required to construct this Project, or to perform any activity required to construct the Project. The Developer shall present true copies of the permits to Township officials (when requested to do so). The Developer agrees to provide any and all

notices required by said permits. The Developer's authorized representative shall, at all times, possess on-site copies of all permits and approved plans issued for inspection purposes.

2. In the event that there is any violation of any local, State or federal permit, the Developer shall provide the Township Engineer with notice of any such violation within twenty-four (24) hours of receiving the notice of violation.

Q. AFFORDABLE HOUSING COMPLIANCE:

1. As memorialized in the Resolution, the Project will include 10 Medicaid beds in satisfaction of Township requirements. The Township hereby confirms that the foregoing provision and Medicaid beds and COAH units satisfies all Township affordable housing requirements and that the Project is subject to no further Township fees, contributions or other requirements with respect to affordable housing.

R. CONSTRUCTION AND MAINTENANCE OF ROADWAY AND STORM WATER MANAGEMENT AREAS:

1. The Developer shall be solely responsible for the construction and maintenance of all roadways within the property as hereinafter may be constructed in accordance with the Resolution. The Developer shall provide the necessary easements to the Township permitting access for the purpose of delivering municipal services over said roadways on the Property.

2. Subject to the Township's obligation under Section B of this Agreement above to make sanitary sewer available to the Property, the Developer shall be solely responsible for the installation of any and all utilities, including, but not limited to electricity, water, sewer, storm drainage, cable television, street and exterior lighting and fire prevention.

S. MUNICIPAL RESPONSIBILITY:

1. The Township shall perform all of its obligations under this Agreement and as otherwise set forth in the Resolution.

T. NOTICE OF NON-COMPLIANCE:

The Township shall issue a notice of non-compliance upon any violation of this Agreement. Township Construction Code violations are governed by the Uniform Construction Code and are not modified by this Agreement. The Developer agrees to eliminate any violation within a reasonable time, depending upon the nature of the violation as set forth in a written violation notice, or may be subject to receipt of a stop work order in accordance with this Agreement, provided, however, that the Township Engineer shall have the discretion to extend any period set forth in the violation notice if it is demonstrated to him that the Developer is diligently pursuing a remedy to the non-compliance, and the public interest is not jeopardized. The Developer agrees to use best efforts to eliminate any violation within the time period set forth in any such violation notice.

U. MISCELLANEOUS:

The parties hereby specifically agree as follows:

- a. Any and all easements required by the Project and to which the Township is a party shall be reviewed and approved by the Township Engineer, the Township Attorney and, if so required by Township Ordinance, the Township Council.
- b. All provisions of this Agreement shall comply with prevailing New Jersey law, as may be amended from time to time.

V. REMEDIES:

1. The Township may declare the Developer in default under this Agreement, provided written notice of the facts giving rise to said default is provided to the Developer, and a thirty- (30-) day period is provided within which the Developer may cure or demonstrate the ability to cure such default. In the event the default is not cured within said thirty- (30-) day

period, but the Developer has demonstrated to the satisfaction of the Township the ability and willingness to cure said default and has commenced to cure said default within said thirty- (30-) day period, and further provided the public interest is not jeopardized, the Township may permit the Developer such reasonable time as may be required to cure the default. In the event the Developer shall fail to cure the default within said thirty- (30-) day period or fail to commence and diligently pursue such action as may be required to cure such default within said thirty- (30-) day period, the Township may act to formally declare the Developer in default. A default by the Developer under the terms of this Agreement, the Approval or an approval issued by any other governmental authority having jurisdiction over the Project shall entitle the Township to issue a stop-work order by the Township Zoning Officer or the Township Construction Official. If the default is not cured within the time period indicated in the stop-work order, the Township may proceed to exercise its right and to utilize any and all security available to cure the default.

2. The Township may issue a stop work order for any construction activities associated with the Development if the Developer does not cure the violation set forth in the notice of non-compliance. The Developer agrees not to resume any construction activity until written notice to proceed is received from the Township. The Developer may only perform any construction activity necessary to cure the noticed violation (in conjunction with written approval from the Township Engineer).

3. The parties also acknowledge that any dispute or breach of the terms of this Agreement may also be resolved in the Superior Court, Chancery Division, Essex County. The parties submit to the jurisdiction of said Court and agree that any aggrieved party shall, in addition to all other available remedies, be entitled to injunctive relief on notice to the other party as required by Court rules. The parties also waive any right to a jury trial.

4. The Developer understands that any failure by the Developer in violation of the terms of this Agreement to immediately correct any deficiency determined by the Township to be an imminent hazard or an imminent threat to public health or safety will be considered automatic authorization for the Township to have said deficiency corrected and the Township and the Township's Agents have the right (but not the obligation) to enter the Property to remedy any such defects. The Developer agrees to reimburse the Township for all reasonable costs resulting from the repair of said deficiency and all reasonable costs of damages resulting from the Developer's lack of response to correct said deficiency in breach of this Agreement.

5. In the event that the Township must advance monies to repair any deficiencies, such costs shall be a lien on the Property. The Developer shall sign a lien form to be held in escrow by the Township Attorney for purposes of filing in the event of violation of the within provision.

6. The Township consents to the discharge of the recorded Developer's Agreements dated July 12, 1997, and recorded in Essex County deed book 550, pages 167 et seq. and dated July 12, 1997 and recorded in Essex County Deed Book 5509, pages 611 et seq (collectively, the "**Original Developer's Agreements**"). The Township will take all necessary action reasonably required to release the Original Developer's Agreement of record, at the Developer's sole cost and expense, concurrently with the Township's execution and delivery of this Agreement.

7. It is understood between the parties that the obligations under this Developer's Agreement will terminate when the required bonds are discharged by resolution of the Township Council. Upon such discharge by resolution, the Township promptly will execute one or more

instruments in form and substance sufficient to terminate this Agreement and to release any recorded memorandum of this Agreement of record.

W. ENTIRE AGREEMENT:

This Agreement, together with the Approval, sets forth the promises, agreements, conditions and understandings between the parties hereto relative to the subject matter hereof. Except as herein otherwise specifically provided, subsequent alterations, amendments, changes or additions to this Agreement must be in writing and signed by the Township and the Developer.

X. NO WAIVER:

Nothing herein shall be construed as a waiver by the Township of the requirements of the MLUL, any Township Ordinance, or any requirements or conditions of the Approval unless such waiver is specifically stated.

Y. SUCCESSORS AND ASSIGNS BOUND:

All the terms, covenants and conditions set forth in this Agreement shall be for and shall inure to the benefit of and shall be binding upon the respective parties hereto and their successors and assigns. The Developer's assignment of this Agreement and the Approval to a successor-in-interest is governed by Section E of this Agreement above. If a purchaser or other transferee of the Property assignee fails to enter into an Assignment and Assumption Agreement (or replacement Developer's Construction Agreement) in accordance with Section E of this Agreement, then the Township shall have the right to withdraw the Approval and proceed with such other relief as may be appropriate. No assignment of this Agreement or the Approval shall be complete until notice has been provided to the Township pursuant to Section 94-7.4 of the LDO. A memorandum of this Agreement, in form and substance acceptable to the Developer and

the Township, shall (if desired by the Township) be recorded, at the Developer's expense, in the office of the Essex County Clerk.

Z. NOTICES:

All notices hereunder shall be in writing given by personal delivery or by certified mail, return receipt requested postage prepaid addressed as follows:

As to the Developer addressed to:

CSH West Orange, LLC
1275 Pennsylvania Avenue, NW
Second Floor
Washington, DC 20004
202-469-8400
joe.mcelwee@cshpe.com

With a copy to:

Robert L. Podvey, Esq.
Connell Foley, LLP
56 Livingston Avenue
Roseland, New Jersey 07068
973-535-0500
rpodvey@connellfoley.com

As to the Township, addressed to:

Township Clerk
Karen Carnevale, RMC
66 Main Street
Room 101
West Orange, NJ 07052
973-325-4157
Kcarnevale@westorange.org

With a copy to:

Township Attorney
Richard D. Trenk, Esq.
Trenk Isabel, PC
290 W Mount Pleasant Avenue
Building 3, Suite 2350
Livingston, NJ 07039
973-533-1000
RTrenk@trenkisabel.law

Township Engineer,
Leonard Lepore, P.E.
25 Lakeside Avenue
West Orange, NJ 07052
LLepore@westorange.org

or such other address and to the attention of such person as may be designated in writing from time to time.

Any notice given under this Agreement shall be deemed to be received either on the day of personal service, three business days thereafter if delivered by mail, or on the day following the notice if delivered by overnight mail.

AA. AUTHORIZED ACT:

All parties hereto agree that the execution of this Agreement is the authorized act of each of the respective parties hereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this document to be entered into as of the day and year first above written.

WITNESS:

CSH WEST ORANGE, LLC

By: _____
Joseph F. McElwee, Vice President

ATTEST:

TOWNSHIP OF WEST ORANGE

Karen J. Carnevale, RMC, Township Clerk

By: _____
Robert D. Parisi, Mayor

EXHIBIT A
ZONING BOARD RESOLUTION

EXHIBIT B

**ENGINEER'S SITE IMPROVEMENTS ESTIMATE
AND ASSOCIATED PERFORMANCE GUARANTEE AND ESCROWS**

EXHIBIT C

INSURANCE COVERAGE REQUIREMENTS

Worker's Compensation Limits	Statutory Limits, including Employers Liability not less than \$ 500,000.	
Commercial General Liability Limits	Not less than \$1,000,000. per occurrence Not less than \$2,000,000. aggregate per location or project Not less than \$2,000,000. operations and completed ops Waiver of Subrogation, and Primary & Noncontributory	
Automobile Liability Limits	Not less than \$1,000,000.	
Excess Umbrella Liability Limits	Not less than \$5,000,000. Follow Form	
Pollution Liability Limits	Not less than \$1,000,000.	<i>If applicable</i>
Professional Liability Limits	Not less than \$1,000,000.	<i>If applicable</i>
Carrier Rating	AM Best: A- VIII	
Cancellation Days		