REDEVELOPMENT AGREEMENT

By and Between

THE BOROUGH OF DUNELLEN, NEW JERSEY,
as the Redevelopment Entity

and

1879 MORRIS ASSOCIATES, LLC,
as Redeveloper

Dated as of July __, 2023

THIS REDEVELOPMENT AGREEMENT (referred to herein as the "Agreement" or "Redevelopment Agreement"), dated as of July __, 2023 (the "Effective Date"), by and between the **BOROUGH OF DUNELLEN**, a municipal corporation of the State of New Jersey with offices at the 355 North Avenue, Dunellen, New Jersey 08812, acting in the capacity of a redevelopment entity, and its respective successors and assigns (the "Borough"), and **1879 MORRIS ASSOCIATES, LLC**, a New Jersey limited liability company, and its permitted successors and assigns, with offices at c/o Villani Builders, 376 North Avenue, Suite A, Dunellen, New Jersey 08812 (the "Redeveloper"; each a "Party" and, together with Borough, the "Parties").

W I T N E S S E T H

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.*, as amended from time to time (the "Redevelopment Law") authorizes municipalities to determine whether certain parcels of land in the municipality constitute "areas in need of redevelopment," as defined in the Redevelopment Law; and

WHEREAS, the municipal council of the Borough ("Borough Council") directed the Borough planning board ("Planning Board") to investigate whether certain properties within the Borough's downtown area (the "Study Area") constituted an "area in need of redevelopment" as defined in the Redevelopment Law; and

WHEREAS, pursuant to the Redevelopment Law, on or about May 5, 2003, Borough designated as a redevelopment area certain properties within the downtown area of the Borough (the "Redevelopment Area"); and

WHEREAS, on or about August 9, 2004, Borough Council adopted an ordinance approving and adopting the Dunellen Downtown Redevelopment Plan Phase I, which was thereafter amended, most recently on July 5th, 2022, pursuant to Ordinance #2022-15 (as amended, the "Redevelopment Plan") in accordance with the Redevelopment Law; and

WHEREAS, Redeveloper is the owner of, or is under contract to acquire, certain property designated on the Borough's tax map as Block 66, Lot 17 and 17.01, more commonly known as 435 North Avenue and 441 North Avenue, respectively (collectively, the "Property"); and

WHEREAS, Redeveloper proposes to construct a mixed-use building with approximately 4,200 square feet of commercial space, forty-eight (48) one-bedroom residential units, twelve (12) two-bedroom residential units, and two (2) three-bedroom residential units, which shall include nine (9) residential Affordable Units, with amenity spaces and related improvements (collectively the "Project") on the Property and

WHEREAS, pursuant to the Redevelopment Law, Borough in its capacity as the redevelopment entity, with full authority to exercise the powers contained in the Redevelopment Law, desires to facilitate and implement the Project in accordance with the Redevelopment Plan; and

WHEREAS, Redeveloper has made application to be designated as the redeveloper for the Property, Redeveloper has provided information consisting of documentation evidencing financial responsibility and capability with respect to the Project, estimated total development costs, and estimated time schedule for commencement and completion of construction, and Redeveloper appeared before Borough Council, acting as redevelopment entity, to present the Project, pursuant to which Borough Council adopted Resolution 12-19-2022 #11 conditionally designating Redeveloper as redeveloper of the Project; and

WHEREAS, pursuant to a Settlement Agreement dated March 18, 2018 entered into between Borough and Fair Share Housing Center, Section 6.1.4 of the Redevelopment Plan and Section 89-13B.(1)(d) of the Borough Code, fifteen percent (15%) of the rental dwelling units in the Project are required to be Affordable Units and, in order to ensure that such Affordable Units that can be credited against Borough's affordable housing obligations, the Affordable Units shall be developed in accordance with Council on Affordable Housing ("COAH") Second Round regulations, N.J.A.C. 5:93-1.1, *et seq.*, the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 *et seq*. ("UHAC"), and all other Applicable Law (as defined herein), and said Affordable Units shall be deed restricted for such purposes for a period of at least thirty (30) years; and

WHEREAS, in order to implement the development, financing, construction, operation and management of the Project, Borough has determined to enter into this Agreement with Redeveloper, which specifies the rights and responsibilities of Borough, designates Redeveloper as redeveloper of the Property and specifies the rights and responsibilities of Redeveloper with respect to the Project; and

WHEREAS, Borough and Redeveloper may, each in its sole discretion, negotiate a long-term tax exemption in accordance with the provisions of the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et seq.*, and may enter into a Financial Agreement that will set forth the terms and conditions of that long-term property tax exemption.

NOW, **THEREFORE**, for and in consideration of the premises and of the mutual representations, covenants and agreements herein set forth, the Parties, each binding itself, its successors and assigns, do mutually promise, covenant and agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.1 Governing Law. This Agreement shall be governed by applicable provisions of (a) the Redevelopment Law and such other statutes as may be the sources of relevant authority, and (b) all other Applicable Laws.

Section 1.2 Definitions. Words that are capitalized, and which are not the first word of a sentence, are defined terms. Unless specifically provided otherwise or the context otherwise requires, the following terms when used in this Agreement shall have the following meanings:

"**Administrative Agent**" has the meaning ascribed thereto in Section 8.8(d).

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

"Affordable Housing Plan" shall mean the Borough of Dunellen Housing Element and Fair Share Plan dated February 1, 2016 as approved by the Court, as amended.

"**Affordable Unit(s)**" shall mean a housing unit proposed or created pursuant to the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.), which complies with the affordability controls and other requirements of UHAC, and is credited pursuant to applicable COAH regulations, the FSHC Settlement Agreement, or an order of the Superior Court of New Jersey.

"**Agreement**" or "**Redevelopment Agreement**" has the meaning ascribed thereto in the preamble.

"**Applicable Law(s)**" shall mean all federal, State and local laws, statutes, ordinances, approvals, rules, regulations, common law, resolutions and requirements applicable hereto including, but not limited to, the Redevelopment Law, the Land Use Law, the New Jersey Fair Housing Act ("FHA"), COAH Prior Round regulations and UHAC regulations (as amended from time to time), as applicable, relevant construction codes including construction codes governing access for people with disabilities, and such zoning, sanitary and safety ordinances, laws and such rules and regulations thereunder, including all applicable federal and State labor standards and all Environmental Laws.

"**Approved Concept Plan**" shall mean the concept plan for the Project approved by Borough and attached hereto as **Exhibit B**.

"**Borough**" has the meaning ascribed thereto in the preamble.

"**Borough Costs**" has the meaning ascribed thereto in Section 4.1(b).

"**Borough Council**" has the meaning ascribed thereto in the recitals.

"**Borough Indemnified Parties**" has the meaning ascribed thereto in Section 10.1(a).

"**Borough Representative**" has the meaning ascribed thereto in Section 2.3(a).

"**Certificate of Completion**" shall mean a certificate in the form attached hereto as **Exhibit A**, issued by Borough pursuant to Section 2.2.

"**Certificate Denial Statement**" has the meaning ascribed thereto in Section 2.2(e).

"Certificate of No Default" has the meaning ascribed thereto in Section 2.7.

"**Certificate of Occupancy**" shall mean a temporary or permanent certificate of occupancy as defined in the applicable provisions of the Uniform Construction Code, issued by the Borough building department.

"**Claims**" shall mean any and all liabilities (statutory or otherwise), obligations, claims, damages (including condemnation damages and abandonment damages by third parties other than Borough), causes of action, proceedings, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs), losses and injuries.

"COAH" has the meaning ascribed thereto in the recitals.

"**Commence**" or "**Commencement**" shall mean the mobilization of a construction force and/or machinery for the remediation of environmental conditions, demolition of existing improvements and/or for construction of the Project.

"**Complete**" or "**Completion**" shall mean with respect to the Project, the date that the Project may, in all material respects, be used and operated for its intended purpose and Borough has received a written certificate from Redeveloper affirming that the Project is complete in a manner consistent with the Redevelopment Plan, all Governmental Approvals and all Applicable Laws.

"**Completion Date**" shall mean the date set forth on **Exhibit C** for completion of construction of the Project.

"**Court**" shall mean the applicable Superior Court in the Middlesex Vicinage with jurisdiction to issue a judgment of compliance and repose with respect to Borough's Affordable Housing Plan pursuant to *In re Adoption of N.J.A.C. 5:96 & 5:97 ex rel. New Jersey Council on Affordable Hous.*, 221 N.J. 1 (2015).

"**DCA**" has the meaning ascribed thereto in Section 8.8(d).

"**Declaration**" has the meaning ascribed thereto in Section 6.3.

"**Deed Notice**" shall mean a document identical in wording to the model deed notice found in *N.J.A.C.* 7:26C, Appendix D, except where such model deed notice indicates that property specific information is to be inserted.

"**Deed Restriction Period**" has the meaning ascribed thereto in Section 8.8(b).

"**Default Notice**" has the meaning ascribed thereto in Section 12.1(a).

"**Effective Date**" has the meaning ascribed thereto in the preamble.

"**Environmental Claims**" shall mean any claim (in whatever form) made or asserted by any Person (including enforcement notices and proceedings) in connection with or with respect to environmental matters respecting the Property, including without limitation, any non-compliance (or alleged non-compliance) with Environmental Laws.

"**Environmental Laws**" shall mean any and all applicable present or future laws and decisional law, statutes, rules, regulations, codes, orders, decrees, directives, policies, technical guidance, judgments and executive orders, federal, state or local related to the protection of human health or the environment and environmental conditions, including but not limited to the Compensation Environmental Response Compensation and Liability Act, 40 U.S.C. 9601 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. §§2601-2629, the New Jersey Spill Compensation and Control Act, *N.J.S.A.* 58:10-23.11 *et seq.*, the Industrial Site Recovery Act, *N.J.S.A.* 13:1K-6 *et seq.*, the New Jersey Water Pollution Control Act, *N.J.S.A.* 58:10A-1 *et seq.*, the Site Remediation Reform Act, *N.J.S.A.* 58:10C-1 *et seq.*, the Brownfield and Contaminated Site Remediation Act, *N.J.S.A.* 58:10B-1 *et seq.* and the New Jersey Environmental Rights Act, *N.J.S.A.* 2A:35A-1, *et seq.*, together with any amendments thereto, regulations promulgated thereunder and all substitutions thereof, and any successor legislation and regulations promulgated under any or all of the foregoing, whether now existing or hereafter enacted or promulgated.

"**Escrow Account**" has the meaning ascribed thereto in Section 4.1(b).

"**Event of Default**" has the meaning ascribed thereto in Section 12.1.

"**Financial Agreement**" has the meaning ascribed thereto in Section 2.9.

"**Force Majeure**" has the meaning ascribed thereto in Section 12.3.

"**Foreclosure**" has the meaning ascribed thereto in Section 4.3.

"**FSHC Settlement Agreement**" shall mean the settlement agreement dated May 16, 2016, entered into by and between Borough and Fair Share Housing Center in connection with Borough's declaratory judgment action captioned "In the Matter of the Application of the Borough of Dunellen, County of Middlesex" filed in the Superior Court of New Jersey and assigned docket number MID-L-3947-15.

"**Governmental Applications**" shall mean the applications, including all plans, drawings, documentation and presentations necessary and appropriate in support thereof, for the purpose of obtaining any and all Governmental Approvals.

"**Governmental Approvals**" shall mean all government approvals by a Governmental Body having jurisdiction thereof issued as a result of or in reliance on Governmental Applications, including: with respect to the development of the Project, an approved site plan submitted to, and approved by, the Planning Board in accordance with the Land Use Law, as amended from time to time; approvals for all Infrastructure Improvements, Project

Improvements, NJDOT improvements and Remediation required by NJDEP and/or other Governmental Bodies with jurisdiction to administer Environmental Laws; building permits; sewerage capacity approvals; and any and all other necessary governmental permits, licenses, grants, consents and approvals.

"**Governmental Body**" means any federal, State, county or local government, department, commission, authority, court or tribunal and any designee or successor thereto, exercising executive, legislative, judicial or administrative functions of or pertaining to government, including without limitation, Borough, State and public entities with jurisdiction over Environmental Laws..

"**Hazardous Substance**" means any substance, material or waste (whether liquid, gaseous or solid) and any pollutant, irritant or contaminant that is: (i) infections, toxic, hazardous, explosive, corrosive, flammable or radioactive; or (ii) regulated under, or defined, listed or referred to or included in any Environmental Laws; including, without limitation, CCPW, extractable petroleum hydrocarbons, petroleum products and petroleum-based derivatives, polychlorinated biphenyls, asbestos and asbestos-containing materials, urea formaldehyde, and contaminated historic fill material (as defined in *N.J.A.C.* 7:26E-1.8). Where an Environmental Law defines any of these terms more broadly than another, the broader definition shall apply.

"**Holder**" has the meaning ascribed thereto in Section 4.3(b).

"**Holder Failure**" has the meaning ascribed thereto in Section 4.3(e).

"**Infrastructure Improvements**" shall mean the preparation and installation (i) on, in, under and to the Property of site work, building foundations and other on-site improvements and (ii) off-site or off-tract improvements required to implement the Project, including but not limited to, the Streetscape Improvements, consistent with the requirements of Governmental Approvals, this Redevelopment Agreement, the Redevelopment Plan and Applicable Laws.

"**Interim Fund**" has the meaning ascribed thereto in Section 4.1(b).

"**Interim Cost Agreement**" shall mean that certain Interim Cost Agreement dated as of January 11, 2023, by and between Borough and Redeveloper.

"**Land Use Law**" shall mean the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 *et seq.*, as amended from time to time.

"**Licensed Site Remediation Professional**" shall mean an individual that has been issued a license pursuant to N.J.S.A. 58:10C-1 *et seq.*

"**Long Term Tax Exemption Law**" shall mean the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 *et seq.*, as amended from time to time.

"**Mandatory Deed Restriction for Rental Projects**" has the meaning ascribed thereto in Section 8.8(b).

"**Material Adverse Change**" shall mean any change, effect, development, or circumstance that is materially adverse to maintenance of the Project Schedule appended hereto as **Exhibit C**.

"**Milestones**" has the meaning ascribed thereto in Section 2.2(c).

"**NJDEP**" shall mean the New Jersey Department of Environmental Protection.

"**NJDOT**" shall mean the New Jersey Department of Transportation.

"**Party**" or "**Parties**" has the meaning ascribed thereto in the preamble.

"**Permitted Transfers**" has the meaning ascribed thereto in Section 11.2.

"**Person**" means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability company, partnership, trust, unincorporated association, institution, public body, Governmental Body or any other entity.

"Planning Board" has the meaning ascribed thereto in the recitals.

"**Preliminary Site Plan**" has the meaning ascribed thereto in Section 3.2.

"Progress Report" has the meaning ascribed thereto in Section 2.3(b).

"**Project**" has the meaning ascribed thereto in the recitals.

"**Project Costs**" has the meaning ascribed thereto in Section 4.1(a).

"**Project Improvements**" means all buildings, structures, improvements and amenities necessary for the implementation and completion of the Project as conceptually described and depicted in **Exhibit B** attached hereto and made a part hereof, and any additional work incidental thereto, all of which shall be consistent with the Redevelopment Plan and any approved site plan, including to the extent applicable, the Infrastructure Improvements.

"**Project Schedule**" shall mean the schedule for obtaining required permits and approval for the development, construction and Completion of the Project as the same may be amended or modified from time to time by the Parties. The Project Schedule is attached hereto as **Exhibit C**.

"**Property**" has the meaning ascribed thereto in the recitals.

"**Redeveloper**" has the meaning ascribed thereto in the preamble.

"**Redevelopment Area**" has the meaning ascribed thereto in the recitals.

"**Redevelopment Law**" has the meaning ascribed thereto in the recitals.

"**Redevelopment Plan**" has the meaning ascribed thereto in the recitals.

"**Remedial Action Permit**" shall have the meaning given to such term under Environmental Laws.

"**Remediation**" shall mean the performance and completion of all investigations, remediation and management required by a Governmental Body for all Hazardous Substances, known or unknown, on, under or migrating to or from the Property, and the construction of the remedial systems, all in compliance with Applicable Law and Governmental Approvals, and in accordance with Environmental Laws, to address any environmental contamination or environmental damage on the Property.

"**Response Action Outcome**" or "**RAO**" shall have the meaning given to such term under Environmental Laws.

"**Special Master**" shall mean the Court-appointed special master for affordable housing Elizabeth K. McManus, P.P., A.I.C.P. and any successor appointed by the Court.

"**State**" shall mean the State of New Jersey.

"**Streetscape Improvements**" shall mean those improvements required under the Redevelopment Plan and any applicable Planning Board approval for the beautification of the streetscape that are located within the NJDOT-owned right-of-way along the boundaries of the Property.

"**Study Area**" has the meaning ascribed thereto in the recitals.

"**Third Party Approvals**" shall mean those approvals granted by a third party that is a not a Governmental Body, which approvals are necessary in connection with the implementation of the Project and which includes, but is not limited, to the receipt of any consents or approvals required of any property owners.

"**Transfer**" as used in Article XI shall mean any sale, conveyance, lien, pledge, hypothecation, transfer, lease or assignment, whether by law or otherwise, of, on, in or affecting (i) all or part of the Property (including any legal or beneficial direct or indirect interest therein), or (ii) any direct or indirect interest in Redeveloper.

"**Uniform Construction Code**" shall mean the Uniform Construction Code, N.J.A.C. 5:23, *et seq*., as same may be amended from time to time.

"**UHAC**" has the meaning ascribed thereto in the recitals.

"**United States Bankruptcy Code**" means the United States Bankruptcy Code, 11 *U.S.C.* 1 *et seq.,* and the accompanying regulations.

Section 1.3 Interpretation and Construction. In this Agreement, unless the context otherwise requires:

(a) The terms "hereby," "hereof," "hereto," "herein," "hereunder" and any similar terms, as used in this Agreement, refer to this Agreement, and the term "hereafter" means after the Effective Date, and the term "heretofore" means before the Effective Date.

(b) Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice versa.

(c) Unless otherwise noted, the terms "include," "includes" and "including" when used in this Agreement shall be deemed to be followed by the phrase "without limitation."

(d) The terms "agree," "agreements," "approval" and "consent" when used in this Agreement shall be deemed to be followed by the phrase "which shall not be unreasonably withheld, conditioned or unduly delayed," except or unless the context or the express terms of this Redevelopment Agreement may otherwise provide, specify or dictate.

(e) Any headings preceding the text of the several Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect. Any references to Articles and Sections in this Agreement shall be deemed to be references to the Articles and Sections in this Agreement except or unless the context or express terms of this Agreement may otherwise provide, specify or dictate.

(f) Unless otherwise indicated, all approvals, consents and acceptances required to be given or made by any person or party hereunder shall not be unreasonably withheld, conditioned, or delayed, and where withheld, a statement in reasonable detail shall be provided setting forth the reason for withholding of consent, approval or acceptance.

(g) All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within a reasonable time, which shall not be less than ten (10) days nor more than thirty (30) days, unless the context dictates otherwise.

(h) All exhibits referred to in this Agreement and attached hereto are incorporated herein and made a part hereof.

(i) Each right or obligation of a Party to review or approve any actions, plans, specifications, or other obligations hereunder shall be made by a natural person with legal authority to conduct such review or grant such approvals. Any review contemplated by this Agreement shall be made in a prompt and timely manner.

(j) Unless otherwise indicated, any "costs, fees and expenses" shall be required to be actual, out of pocket, necessary, customary and reasonable.

(k) Any reference to Applicable Laws or any Applicable Law shall be read to mean as the Applicable Law is amended from time to time except where Redeveloper's obligation to comply was satisfied prior to the amendment.

(l) The recitals contain statements of fact and/or expressions of intention and are incorporated into and made part of the substance of this Agreement.

ARTICLE II
IMPLEMENTATION OF THE PROJECT

Section 2.1 Description of the Project.

(a) Subject to the terms and conditions in this Agreement, Redeveloper agrees, at its sole cost and expense (except to the extent financed, reimbursed by, or paid by third parties other than Borough in the ordinary course of business in connection with the development of the Project), to implement and complete the redevelopment of the Property which shall consist of the following, as applicable: (i) construction of the Project on the Property; (ii) procurement of all applicable and unappealable Governmental Approvals for all Project Improvements; (iii) financing, design, construction and Completion of all Project Improvements; (iv) marketing of the Project as necessary to ensure sufficient tenants to facilitate the financing, leasing, sale and occupancy of the improvements; and (v) payment of Borough Costs in accordance with the terms of this Agreement. All activities performed under this Agreement shall be provided in accordance with the level of skill and care ordinarily exercised by developers of first class developments of the same type and nature of the Project.

(b) The Project shall in all material respects be developed consistent with this Agreement, the Redevelopment Plan, including but not limited to the Payment in Lieu of Parking requirement as defined therein, and Applicable Law. In addition, the Project shall adhere to the specific requirements as described in **Schedule 2.1(b)** attached hereto.

(c) Redeveloper has been designated as the exclusive redeveloper of the Property and shall have the exclusive right to redevelop the Property and implement the Project in accordance with the terms and conditions of this Agreement.

Section 2.2 Project Schedule.

(a) The Project Schedule shall control the Commencement, progress and Completion of the Project. The Parties agree and acknowledge that adherence to the Project Schedule is of the essence, subject to the terms of this Agreement, including but not limited to Section 2.4.

(b) Upon Completion of the Project, Redeveloper shall apply to the appropriate Governmental Body for a Certificate of Occupancy for the Project.

(c) If Redeveloper fails to complete any tasks as described in the Project Schedule (the "Milestones") by their corresponding completion date for any reason or determines that it

will fail to complete any Milestones by their corresponding completion date for any reason, Redeveloper shall promptly provide notice to Borough stating: (i) the reason for the failure or anticipated failure to meet the applicable completion date (ii) Redeveloper's proposed method for correcting such failure, (iii) Redeveloper's proposal for revising the applicable completion date, and (iv) the method or methods by which Redeveloper proposes to achieve subsequent tasks by the relevant completion date. In such event, if the modification involves an extension of the applicable completion date of six (6) months or less, the Mayor of Dunellen may grant or deny consent on behalf of Borough and Borough shall notify Redeveloper in writing of Borough's decision to consent or the reasons why it cannot provide its consent within ten (10) days of such notification. In the event that the proposed modification to the applicable completion date is in excess of six (6) months, Redeveloper shall submit a request to Borough for an amendment to this Agreement, and Borough's consent to such an amendment shall not be unreasonably withheld. In either case, if Borough does not so consent and Redeveloper fails to complete any Milestones by their corresponding completion date, then Redeveloper shall be in default hereunder.

(d) If Redeveloper has performed all of its duties and obligations under this Agreement and Completed the Project in its entirety, Borough shall, within thirty (30) days of receipt of a written request from Redeveloper, issue a Certificate of Completion. The Certificate of Completion shall constitute a recordable, conclusive determination of the satisfaction and termination of the agreements and covenants in this Agreement, the Redevelopment Plan and Applicable Laws, with respect to the obligations of Redeveloper to construct the Project, as applicable.

(e) In the event Borough does not issue any such Certificate of Completion, as applicable, within thirty (30) days after submission of written request by Redeveloper, Borough shall provide Redeveloper with a written statement setting forth in detail the reasons why it believes that Redeveloper has failed to Complete the Project in accordance with the provisions of this Agreement, the Redevelopment Plan and Applicable Laws and what measures or acts Borough deems will be necessary in its reasonable opinion in order for Redeveloper to be entitled to the applicable Certificate of Completion (the "Certificate Denial Statement"). Redeveloper may rely on the Certificate Denial Statement in determining what action it must take in order to achieve the requested Certificate of Completion, as applicable. In the event of a dispute over issuance of a Certificate of Completion, the Parties shall cooperate in good faith to resolve such dispute and, thereafter, either Party may take such legal action as it deems appropriate.

(f) Upon the issuance of the Certificate of Completion, the conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment shall be deemed to no longer exist with respect to the Property. Unless otherwise provided, the Property and the Project shall no longer be subject to any covenant herein encumbering the Redevelopment Area.

Section 2.3 Project Oversight.

(a) Redeveloper agrees to hold at least one (1) regular progress meeting per quarter with designated representatives of the Borough (each a "Borough Representative," a complete list of whom is attached as **Exhibit E**) upon Borough's reasonable request to review the progress under the Project Schedule. To the extent practicable, the meetings shall be held within five (5) Business Days of Redeveloper's receipt of Borough's request for such a meeting, at such office as is maintained by Redeveloper in the Borough, as designated by Redeveloper, or at the Property.

(b) Redeveloper shall submit to Borough detailed quarterly written progress reports (or more frequently, if reasonably requested by Borough) which shall include a description of activities completed, the activities to be undertaken prior to the next Progress Report, the status of all Governmental Approvals, status of all Remediation activities, status of leasing and sales, an explanation of each activity, if any, which is showing delay, a description of problem areas, current and anticipated delaying factors and their estimated impact on performance of other activities and Completion Dates in the Project Schedule, an explanation of corrective action taken or proposed and such other information as may be reasonably requested by Borough (collectively, the "Progress Report").

(c) Borough and Borough Representatives reserve the right to enter upon the Property, upon reasonable notice to Redeveloper and during business hours, to visually inspect the site for informational purposes and observe Remediation, demolition and construction activities, subject to Borough's acknowledgment that the Property will be an active construction site, and Redeveloper shall not be liable or responsible to Borough, Borough Representatives, or their respective employees, agents or invitees for damages arising from injury to person or property sustained in connection with such inspections except to the extent that Redeveloper violates the standard of due care owed to invitees. Any persons present at the Property pursuant to the foregoing sentence will comply with all applicable reasonable health and safety rules established by Redeveloper for personnel present on the Property. Borough shall have the right but not the obligation to obtain duplicate samples from Redeveloper collected as part of the Remediation of the Property. Such inspections and observations shall not relieve Redeveloper from its obligation to implement the Project and Remediate the Property in accordance with this Agreement. In no event shall Borough's inspection of the Project under this Section 2.3(c) be deemed acceptance of the work or deemed to waive any right Borough has under this Agreement. Representatives of any Governmental Body with permitting jurisdiction over the Project, the Property or the Remediation shall be permitted to enter the Property at any time.

Section 2.4 Tolling. (a) Redeveloper shall diligently adhere to the Project Schedule and the provisions set forth in this Article II, provided that such obligations shall be extended on a day for day basis for each day that Redeveloper's performance hereunder is delayed by (i) an act or omission by Borough or a third party that has a material adverse effect on Redeveloper's ability to perform any obligation, requirement, commitment, or responsibility prescribed under this Agreement; (ii) the occurrence of an event of Force Majeure; (iii) any extension granted by either Party to the other Party, to extend any proposed date in this Agreement; (iv) the denial of any Governmental Approval by the Governmental Agency with jurisdiction thereover; (v) if an appeal is filed as to any Governmental Approval, the Project Schedule timing shall be tolled as set forth in this Section 2.4; or (vi) any reasonable request by one Party to the other to extend the

time for performance of any obligation, requirement, commitment or responsibility arising pursuant to this Agreement. If a delay only affects a portion of the Project, the extension granted hereunder shall only apply to the obligations so affected and Redeveloper shall, to the extent practicable, continue to perform its obligations with respect to that portion of the Project.

(b) In the event either Party is delayed or rendered unable to perform due to Force Majeure, the affected Party shall give written notice thereof and its expected duration to the other Party promptly after the occurrence of the Force Majeure event; and, thereafter, the obligations of the affected Party shall be tolled in accordance with Section 2.4(a). The affected Party shall promptly take commercially reasonable steps to remedy or mitigate the effects of the Force Majeure event, but such obligation shall not require the settlement of strikes or labor controversies on terms unfavorable to the affected Party.

(c) Cumulative delays resulting from any extension, as described in Section 2.4(a), not resulting from the act or omission by Borough shall in no event be permitted to extend beyond three (3) years.

Section 2.5 Infrastructure Improvements.

(a) Redeveloper will design and construct the Infrastructure Improvements in a good and workmanlike manner and in substantial accordance with all Applicable Laws. The Infrastructure Improvements shall be included in Redeveloper's application for site plan approval for the Project. Redeveloper acknowledges the presence of certain existing utility structures, including but not limited to electric power transmission lines, sewer transmission conduits or pipes, water lines or pipes, storm sewers, telephone transmission lines, television cable lines and other utilities, and agrees to undertake the appropriate measures to negotiate with, acquire, relocate or otherwise address the existence of these utilities and easements therefor, in order to complete the Project as provided by this Agreement. Site plan approval may be conditioned upon other on-site, off-site and/or off-tract improvements specific to the Project, consistent with the authority of the Planning Board and consistent with the Land Use Law, as amended from time to time. If site plan approval is so conditioned, Redeveloper shall exercise commercially reasonable efforts to ensure the effective coordination of such improvements and shall cooperate with Borough in all respects to ensure that the implementation of the Project does not unreasonably interfere with the operation of the existing utilities and infrastructure. Redeveloper agrees to provide the Performance and Maintenance Bonds as required by the Planning Board, consistent with the authority of the Planning Board under the Land Use Law.

(b) With respect to the Streetscape Improvements, in addition to the obligations set forth in subparagraph (a), Redeveloper shall use its best efforts to obtain the approval of NJDOT to install same in the NJDOT right-of way, and Redeveloper shall retain all responsibility for maintenance of the Streetscape Improvements, all at Redeveloper's sole cost and expense. To the extent that NJDOT may seek to impose any requirements on Borough with respect to the Streetscape Improvements, Redeveloper shall assume such responsibilities, and such assumption shall be set forth in the Declaration in terms acceptable to Borough, or, as may be necessary, in an amendment thereto, to run with the land in perpetuity. In the event that NJDOT does not approve some or all of the Streetscape Improvements, the Parties shall cooperate to propose

alternate or modified Streetscape Approvals (as may be suggested by NJDOT) or streetscape approvals outside of NJDOT jurisdiction. As an alternative to the preceding sentence, Borough may require Redeveloper to make a development contribution to Borough in the amount equal to the cost of any Streetscape Improvement element not approved by NJDOT.

(c) Redeveloper shall construct all necessary on-site and off-site Infrastructure Improvements, including curb, sidewalk, and Streetscape Improvements, and decorative lighting to enhance and highlight said Streetscape Improvements, lighting to enhance the architecture of the building (commonly known as up and down lighting); features on the building to enhance a railroad theme, such as corbels and other iron-rail like features, all in accordance with the Redevelopment Plan. Redeveloper further agrees to utilize rain gardens and native species in the landscaping pieces of their open space on the Property and in the parking areas, as to be approved by the Planning Board.

Section 2.6 Prohibition Against Suspension, Discontinuance or Termination. Redeveloper shall not suspend or discontinue its performance of its obligations under this Agreement for a period exceeding sixty (60) consecutive days or terminate this Agreement (other than in the manner provided for herein) for any reason except to the extent permitted by Section 2.4, but only to the extent and for the period of time permitted by Section 2.4, unless otherwise agreed to in writing by Borough.

Section 2.7 Certificate of No Default. Within thirty (30) days of a request by Borough or Redeveloper, the other Party shall deliver to the requesting Party a certificate to the effect that it is not aware of any condition, event or act which constitutes a violation of this Agreement or which would constitute an Event of Default hereunder and to its act and knowledge no condition, event or act exists which, with notice or lapse of time, or both, would constitute such a violation, or Event of Default, or if any such condition, event or act exists, specifying the same (the "Certificate of No Default").

Section 2.8 Cooperation. The Parties shall fully cooperate with each other as necessary and desirable to accomplish the Project, including entering into additional agreements that may be required, provided, however, that such actions shall not result in a material increase in Borough's and Redeveloper's respective obligations hereunder or material decrease in Borough's and Redeveloper's respective rights hereunder. Borough specifically agrees to cooperate with Redeveloper to effect changes to the Redevelopment Plan consistent with the instructions of the Redevelopment Plan and this Agreement.

Section 2.9 Tax Abatement and Financial Agreement. The parties recognize that a Financial Agreement under the Long Term Tax Exemption Law may benefit Redeveloper, Borough, and the potential residents and tenants of the Project. Redeveloper anticipates submitting an application to Borough under the Long Term Tax Exemption Law for an agreement for payments in lieu of taxes (hereinafter referred to collectively or individually as "Financial Agreement"). Redeveloper shall be permitted to assign any Financial Agreement to an urban renewal entity with identical ownership to act as Redeveloper in connection with such application. Borough shall reasonably consider such application in good faith on terms acceptable to Borough, and any Financial Agreement shall be subject to the receipt of all

Governmental Approvals required by the Applicable Laws. Redeveloper shall have the right to terminate this Agreement with respect to the Project, (i) if, within ninety (90) days after the Effective Date, Borough has not approved such application pursuant to a duly adopted resolution, and (ii) within one hundred twenty (120) days after the Effective Date, Borough has not approved the Financial Agreement as specified in the approved application, in form reasonably satisfactory to Redeveloper and Borough, which Financial Agreement shall have been approved by ordinance duly adopted by Borough. Notwithstanding anything to the contrary contained herein, Redeveloper may elect to extend such periods in (i) and (ii) above for up to an additional thirty (30) days upon written notice to Borough and any such extension shall constitute a Tolling Event under this Agreement. If this Agreement is terminated pursuant to the terms of this Section 2.9, then this Agreement shall be of no further force and effect and the Parties hereto shall have no further liability hereunder.

ARTICLE III
PROJECT APPROVALS

Section 3.1 Governmental Approvals and Third Party Approvals.

(a) Redeveloper shall use commercially reasonable efforts to secure, or cause to be secured, any and all Governmental Approvals and Third Party Approvals for the Project in order to cause Commencement, Completion and Remediation of the Project and Property in accordance with the Project Schedule and the provisions of Section 2.2.

(b) Borough agrees to reasonably cooperate with Redeveloper and use reasonable efforts to support any application for and to obtain any Governmental Approvals and Third Party Approvals that are consistent with the terms of this Agreement, the Redevelopment Plan and Applicable Laws and the Approved Concept Plan, and at the request of Redeveloper to execute any documents required to obtain such approvals, provided that, nothing in this Section shall be deemed: (i) to constitute an approval of all or any portion of the Project for which Governmental Applications have been submitted or are required; or (ii) a waiver of the ability of the Planning Board or any other Governmental Body having jurisdiction thereof from exercising its statutorily authorized responsibilities with respect to the Governmental Applications or Governmental Approvals required by Applicable Law. Redeveloper shall update the list of all Governmental Approvals as part of the Progress Reports, if and as appropriate during the Project and provide copies to Borough. All Governmental Applications shall be consistent with the Approved Concept Plan. Redeveloper shall provide Borough with copies of all other Governmental Applications promptly upon submission of same. Further, Redeveloper shall provide Borough with copies of all hearing notices promptly upon receipt of same and shall promptly inform Borough of the results of such hearings and Governmental Applications.

(c) No Governmental Approval shall be deemed "final" until (i) the time for all appeals has run without the filing of an appeal or (ii) in the event an appeal is filed, all such appeal(s) have been resolved fully in favor of the Project and/or Redeveloper and the time for filing any further appeal has expired without the filing of any such appeals.

(d) Redeveloper shall have the right but not the obligation to contest any unsatisfactory requirement or condition with respect to the Project imposed on Redeveloper as a condition to a Governmental Approval, and in such event the Project Schedule timing shall be tolled as set forth in Section 2.4. Redeveloper shall comply with any such requirement or condition if Redeveloper is unsuccessful in contesting same and the requirement or condition will not have a material adverse financial or operational impact on Redeveloper in connection with the Project, as determined by Redeveloper in the exercise of its reasonable business judgment. If Redeveloper is unsuccessful in contesting any unsatisfactory requirement or condition or Redeveloper determines that such condition will have a material adverse financial or operational impact on Redeveloper in connection with the Project, in the exercise of Redeveloper's reasonable business judgment, Redeveloper may terminate this Redevelopment Agreement pursuant to Section 12.2(c) of this Agreement.

(e) In the event that Redeveloper's application for any Governmental Approval is denied or any Person brings an action that contests or challenges the grant of any Governmental Approval, and in such event the Project Schedule timing shall be tolled as set forth in Section 2.4, then Redeveloper shall have the right in its sole discretion to (i) modify and resubmit such application, if applicable, in order to secure such Governmental Approval, provided that such modification is consistent with this Redevelopment Agreement and the Redevelopment Plan, and does not result in a material change to the Project as contemplated herein, or (ii) appeal or defend against such action, or (iii) terminate this Agreement by providing written notice to Borough in accordance with the provisions of Section 12.2(c) of this Agreement.

Section 3.2 Borough Approval. Prior to Redeveloper's submission of an application to the Planning Board for preliminary site plan approval (the "Preliminary Site Plan") for the construction of the Project, Redeveloper shall submit the proposed site plan to Borough for a determination as to whether the proposed site plan is consistent with the Approved Concept Plan and the Redevelopment Plan. Borough agrees to rely upon the Planning Board's review of all development applications, but Borough reserves the right to provide its recommendations to the Planning Board for consideration by the Planning Board in connection with Redeveloper's site plan applications. Redeveloper shall provide samples of proposed façade materials to be used in the construction of the Project for review by the Planning Board. Redeveloper shall provide initial construction drawings to Borough prior to issuance of a building permit for the Project. Upon Completion, Redeveloper shall provide as-built drawings for the Project to Borough.

ARTICLE IV
FINANCING OF THE PROJECT

Section 4.1 Redeveloper Financial Commitment.

(a) Project Costs. All costs of implementing and Completing the Project, including but not limited to, the cost of obtaining all Governmental Approvals, the cost of the acquisition of the Property, the cost of designing and constructing (including the costs of any construction observation services) all Project Improvements, all financing costs, all marketing and leasing costs for the Project Improvements, and Borough Costs (collectively, the "Project Costs") shall

be borne by Redeveloper (except to the extent financed, reimbursed by, or paid by third parties in the ordinary course of business, other than Borough).

(b) Payment of Borough Costs.

(i) Redeveloper agrees to provide funding to Borough for all reasonable out-of-pocket costs incurred by Borough in connection with the redevelopment of the Property (the "Borough Costs"). Borough Costs shall include, but not be limited to, any reasonable fees and costs of any professional consultant, contractor or vendor retained by Borough including attorneys, engineers, technical consultants, environmental consultants, planners and financial consultants, among others, and all out-of-pocket costs and expenses of Borough, which are incidentally necessary for Borough to meet its obligations as it pertains to the Project.

(ii) Redeveloper has established an Escrow Account (also referred to as the "Interim Fund"), pursuant to the Interim Cost Agreement, having an initial balance of Ten Thousand Dollars ($10,000.00). The Interim Fund defined therein shall now be referred to as the "Escrow Account." If, when and as often as may occur that the balance of the Escrow Account is drawn down to or below One Thousand Five Hundred Dollars ($1,500.00), within five (5) days of Borough's written request, Redeveloper will replenish the Escrow Account to Ten Thousand and 00/100 Dollars ($10,000.00). Simultaneously with such replenishment request, Borough shall use good faith efforts to provide Redeveloper with a reasonable estimate of Borough's remaining costs to be paid.

(iii) Funds in the Escrow Account will be applied to the payment or reimbursement of Borough Costs as provided in this Redevelopment Agreement. Borough shall provide Redeveloper with invoices setting forth the costs incurred by Borough drawn down against the Escrow Account. Any dispute concerning payment of Borough Costs shall be resolved in accordance with the procedures set forth in N.J.S.A. 40:55D-53.2a. Upon the issuance of the Certificate of Completion of the Project, or upon termination of this Redevelopment Agreement, any money remaining in the Escrow Account shall be disbursed to Redeveloper, except that Borough may retain an amount sufficient to cover any remaining Borough Costs.

(iv) On the Effective Date of this Agreement, the Interim Cost Agreement shall cease to be operative and effective and the terms and obligations contained therein shall be replaced by the terms contained herein.

Section 4.2 Governmental Approval Fees. Redeveloper shall pay all fees for permits required by Borough (in accordance with standard fees provided in the Borough's municipal code) and any other Governmental Body for the construction and development of the Project in accordance with Applicable Laws. Redeveloper shall pay all other permit fees, which include any permit fees payable by Borough or Redeveloper to all required Governmental Bodies other than Borough, or for which Borough is required to reimburse other Governmental Bodies or for which Borough pays to the County of Middlesex or the State of New Jersey.

Section 4.3 Mortgage Financing.

(a) Holder. Redeveloper, or its successor in interest, shall notify Borough in advance of any financing secured by a mortgage or other lien instrument which it proposes to enter into with respect to the Property and/or Project Improvements, or any part thereof (the mortgagee thereunder, a "Holder," it being hereby expressly acknowledged that under no circumstances shall an Affiliate of Redeveloper be deemed a Holder hereunder) and, in any event, Redeveloper shall promptly notify Borough of any encumbrance or lien (other than liens for governmental impositions) that has been created on or attached to any portion of the Property and/or the Project Improvements, whether by voluntary act of Redeveloper or otherwise, upon obtaining knowledge or notice of same. Redeveloper shall provide Borough with written notice that Redeveloper has obtained financing for the Project within fifteen (15) days after Redeveloper's acceptance of the financing commitment.

(b) Forbearance. If any Holder seeks to effect a Foreclosure (as defined here) as a result of a default by Redeveloper under any agreements executed by Redeveloper, Borough agrees to forbear from the enforcement of any remedies provided under this Redevelopment Agreement that it may have against Redeveloper in order to permit such Holder to assume the obligations of Redeveloper under this Redevelopment Agreement, provided, however, that Borough shall not be obligated to forbear from the exercise of any remedies available to it against Redeveloper or the Property or Project hereunder if such forbearance will result (or may result, in the reasonable judgment of Borough) in a waiver of Borough's rights under this Redevelopment Agreement or a material and adverse effect on Borough's rights or performance obligations hereunder or any material increase in Borough's financial obligations hereunder.

(c) No Guarantee of Construction or Completion by Holder.

(i) A Holder shall in no manner be obligated by the provisions of this Redevelopment Agreement to construct or Complete the Project Improvements, or to guarantee such construction or Completion; nor shall any covenant or any other provisions be construed so as to obligate a Holder. Nothing contained in this Redevelopment Agreement shall be deemed to permit or authorize such Holder to undertake or continue the construction or Completion of the Project Improvements (beyond the extent necessary to conserve or protect the Holder's security, including the improvements or construction already made) without the Holder first having expressly assumed Redeveloper's obligations to Borough with respect to the Project Improvements by written agreement reasonably satisfactory to Borough.

(ii) If a Holder forecloses its mortgage secured by the Property or Project Improvements, or takes title (in its name or the name of an Affiliate) to the Property or Project Improvements by deed-in-lieu of foreclosure or similar transaction (collectively, a "Foreclosure"), the Holder or its Affiliate shall have the option to either (i) sell the Property or Project Improvements, as applicable, to a responsible Person reasonably acceptable to Borough, which Person shall expressly assume the obligations of Redeveloper under this Redevelopment Agreement, and/or (ii) itself, or its Affiliate, expressly assume the obligations of Redeveloper under this Redevelopment Agreement. In the event of a Foreclosure and provided the Holder or the purchaser is in compliance with this Redevelopment Agreement, Borough shall not seek to enforce against the Holder or purchaser of such parcel any of the remedies available to Borough pursuant to the terms of this Redevelopment Agreement available in connection with the events preceding the Foreclosure. The Holder, or the entity assuming the obligations of Redeveloper as

to the parcel affected by such Foreclosure or sale, in that event must agree to Complete the Project Improvements as per this Redevelopment Agreement, but subject to reasonable extensions, and shall submit evidence reasonably satisfactory to Borough that it has the qualifications and financial ability to perform such obligations. Any such Holder, or other entity assuming such obligations of Redeveloper, properly Completing the Project Improvements shall be entitled, upon written request made to Borough, to Certificates of Completion. Nothing in this Redevelopment Agreement shall be construed or deemed to permit or to authorize any Holder, or such other entity assuming such obligations of Redeveloper, to devote the Property, or any part thereof, to any uses, or to construct any improvements thereon, other than those uses or improvements provided for or authorized by this Redevelopment Agreement. The Holder or such other entity that assumes the obligations of Redeveloper shall be entitled to develop the Property or Project Improvements in accordance herewith.

(d) Borough's Option to Pay Mortgage Debt or Purchase Land. In any case where, subsequent to an Event of Default by Redeveloper under this Agreement and/or Foreclosure, the Holder:

(i) has, but does not exercise, the option to construct or Complete the Project or part thereof covered by its mortgage or to which it has obtained title, and such failure continues for a period of ninety (90) calendar days after the Holder has been notified or informed of the Event of Default; or

(ii) undertakes construction or Completion of the Project but does not Complete such work within a reasonable period, and such default shall not have been cured within ninety (90) calendar days after written demand by Borough to do so unless such work cannot be reasonably completed in such time frame but the Holder is diligently and continuously undertaking construction and completion then Borough will extend such time frames accordingly ((i) and (ii) each a "Holder Failure"); then Borough, or its designee, shall have the option of paying to the Holder the amount of the mortgage debt including all accrued and unpaid interest and obtaining an assignment of the mortgage and the debt secured thereby, or, in the event ownership of the Project Improvements and Property (or part thereof) has vested in such Holder by way of the Foreclosure, Borough, or its designee, shall be entitled, at its option, to a conveyance to it of the Project Improvements and Property or part thereof (as the case may be) upon payment to such Holder of an amount equal to the sum of: (a) the mortgage debt inclusive of all costs and expenses Holder was so entitled under the mortgage documents, at the time of the Foreclosure (less all appropriate credits, including those resulting from collection and application of rentals and other income received during Foreclosure proceedings); (b) all expenses with respect to the Foreclosure, including reasonable attorney's fees and expenses; (c) the net expense, if any (exclusive of general overhead), incurred by such Holder in and as a direct result of the subsequent management of the mortgaged property; (d) the costs incurred by such Holder in making any Project Improvements; and (e) an amount equivalent to the interest that would have accrued on the aggregate of such amounts had all such amounts become part of the mortgage debt and such debt had continued in existence. Every mortgage instrument made prior to completion of the Project with respect to any phase of development of the Project by Redeveloper shall provide for the foregoing.

(e) Cooperation with Holder. Borough shall reasonably cooperate with a Holder to modify the provisions of this Agreement if reasonably requested by Holder or a proposed Holder; provided, however, that such modifications shall not substantially reduce the rights or increase the responsibilities of Borough hereunder.

ARTICLE V
GENERAL REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations and Warranties of Redeveloper. Redeveloper hereby makes the following representations and warranties, understanding that Borough has relied upon the same as a material element in entering into this Agreement:

(a) Redeveloper is a limited liability company, duly organized and validly existing in good standing under the laws of the State of New Jersey and is authorized to do business in the State of New Jersey.

(b) Redeveloper has the legal right, power and authority to enter into this Agreement and the instruments and documents referenced herein to which Redeveloper is party, to consummate transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform the obligations hereunder.

(c) All necessary consents have been duly adopted to authorize the execution and delivery of this Agreement and to authorize and direct the persons executing this Agreement to do so for and on Redeveloper's behalf, and this Agreement constitutes a valid and legally binding obligation of Redeveloper, enforceable in accordance with its terms.

(d) No receiver, liquidator, custodian or trustee of Redeveloper shall have been appointed as of the Effective Date, and no petition to reorganize Redeveloper pursuant to the United States Bankruptcy Code or any similar statute that is applicable to Redeveloper shall have been filed as of the Effective Date.

(e) No adjudication of bankruptcy of Redeveloper or a filing for voluntary bankruptcy by Redeveloper under the provisions of the United States Bankruptcy Code or any other similar statute that is applicable to Redeveloper shall have been filed.

(f) Redeveloper has received no actual notice asserting any noncompliance in any material respect by Redeveloper with any Applicable Law with respect to the transactions contemplated in and by this Agreement, which would have a material adverse effect on Redeveloper's ability to perform its obligations in connection with this Agreement. Redeveloper is not in default with respect to any judgment, order, injunction or decree of any court, administrative agency, Borough, or other Governmental Body which is in any respect material to the transactions contemplated hereby.

(g) To the best of Redeveloper's knowledge, there is no action, proceeding or investigation now pending or threatened, nor has Redeveloper received notice of any such action, proceeding or investigation, which (i) questions the authority of Redeveloper to enter into this Agreement or any action or act taken or to be taken by Redeveloper pursuant to this Agreement;

or (ii) is likely to result in a Material Adverse Change in Redeveloper's property, assets, liabilities or condition which will impair its ability to perform its obligations pursuant to the terms of this Agreement.

(h) Redeveloper's execution and delivery of this Agreement and its performance hereunder will not constitute a violation of or conflict with any of Redeveloper's organizational documents or of any agreement, mortgage, indenture, instrument or judgment, to which Redeveloper is a party or by which it is bound or affected.

(i) Redeveloper agrees that the cost and financing of the Project is the responsibility of Redeveloper, pursuant to and as set forth in this Redevelopment Agreement, the Financial Agreement and any other agreements between the Parties. Borough shall not be responsible for any cost whatsoever in respect to same.

(j) Redeveloper is financially capable (subject to the procurement of financing) and technically capable (with the assistance of its consultants) of developing, designing, financing, constructing, operating, and maintaining the Project, as well as Remediating the Property in conformance with the requirements of this Agreement, the Redevelopment Plan, Governmental Approvals and Applicable Laws.

(k) The ownership of each member of Redeveloper owning ten percent (10%) or more of the ownership interest in Redeveloper is set forth on **Exhibit D**. Upon a transfer of an ownership interest that constitutes a transfer of 10% or greater, or annually, Redeveloper shall furnish Borough with a complete statement subscribed and sworn to by a managing member of Redeveloper, setting forth all of the ownership interests of Redeveloper owning ten percent (10%) or more of the ownership interest in Redeveloper.

(l) Neither Redeveloper nor its members have been convicted in a criminal proceeding, and none of them are a named subject in a pending criminal proceeding (excluding traffic violations or other similar minor offenses), and, to the best of Redeveloper's knowledge and belief the principals and members of Redeveloper, are not a target of a criminal investigation.

(m) Neither Redeveloper nor its members directly or beneficially, is a party to or beneficiary of any contract or agreement with Borough which has been terminated due to a default by such individual, partnership or entity or which is currently the subject of a dispute in which Borough alleges such default, nor is such individual, partnership or entity an adverse party in any currently pending litigation involving Borough.

(n) Neither Redeveloper nor any of its members has been found in any civil or criminal action in or by any court or Governmental Body of competent jurisdiction to have violated any federal or State law or regulation relating to the sale of securities or commodities or been enjoined from engaging in any trade or business for any reason other than the violation of a contractual non-competition provision.

(o) Redeveloper is not aware of any physical or legal condition of the Property, including, but not limited to, environmental contamination, that would prevent Redeveloper from timely Completing the Project.

Section 5.2 Representations and Warranties by Borough. Borough hereby makes the following representations and warranties, understanding that Redeveloper has relied thereon as a material element in entering into this Agreement:

(a) Borough has the legal power, right, authority and means to enter into this Agreement and the instruments and documents referenced herein to which Borough is or may be a party, to consummate the transactions contemplated hereby, to take any steps or actions contemplated hereby, and to perform its obligations hereunder.

(b) (i) All requisite consents have been obtained in connection with the entering into of this Agreement and the instruments and documents referenced herein to which Borough is party, (ii) the consummation of the transaction contemplated hereby, and to the best of Borough's knowledge and belief, are permitted and/or authorized by all Applicable Laws, and (iii) after due inquiry, to the actual knowledge of Borough, there are no writs, injunctions, orders or decrees of any court or governmental body that would be violated by Borough entering into or performing its obligations under this Agreement.

(c) This Agreement is duly executed by Borough, and is valid and legally binding upon Borough and enforceable in accordance with its terms on the basis of laws presently in effect and the execution and delivery hereof shall not, with due notice or the passage of time, constitute a default under or violate the terms of any indenture, agreement or other instrument to which Borough is a party.

(d) Borough represents that, to its actual knowledge, there is no action, proceeding or investigation now pending or threatened in writing, nor any basis therefore, known or believed to exist which questions the validity of this Agreement or any action or act taken or to be taken by Borough concerning the subject matter of or pursuant to this Agreement.

Section 5.3 Mutual Representations. In the event that any contractual provisions that are expressly required by Applicable Law have been omitted, then Borough and Redeveloper agree that this Redevelopment Agreement shall be deemed to incorporate all such clauses by reference and such requirements shall become a part of this Redevelopment Agreement. If such incorporation occurs and results in a change in the obligations or benefits of one of the Parties, Borough and Redeveloper agree to act in good faith to mitigate such changes in position in order to conform as nearly as possible to the terms of this Agreement at the time of execution. In the event, despite the efforts of the Parties to mitigate, such change results in a material adverse financial impact on either Party, either Party may terminate this Redevelopment Agreement by providing written notice to the other Party within thirty (30) days of the discovery of the deemed incorporation of any such clause.

ARTICLE VI
COVENANTS AND RESTRICTIONS

Section 6.1 Redeveloper Covenants. Redeveloper covenants and agrees that:

(a) Redeveloper shall design, construct, and complete the Project in compliance with the Redevelopment Plan, Governmental Approvals, Applicable Laws and this Redevelopment Agreement.

(b) Subject to the terms of this Agreement, including, without limitation, Section 12.3, Redeveloper shall undertake with due diligence (i) the financing of the Project, (ii) construction and development of the Project, (iii) to begin and complete each item in the Project Schedule on or prior to the date set forth in the Project Schedule (and for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period), and (iv) to seek tenants for the Project Improvements. All activities performed under this Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first class developments of the same type and nature as the Project.

(c) Redeveloper shall undertake with due diligence the Remediation of the Property, if required, or, as applicable, enforce all rights it has against third parties with respect to Remediation of the Property.

(d) Redeveloper shall not seek any material changes in the number and distribution of residential units and/or any other changes that would cause the Project to become nonconforming under the Redevelopment Plan, without first obtaining the consent of the Borough, to be granted in its sole discretion, and the Planning Board, if required.

(e) Redeveloper shall use diligent efforts to obtain all Governmental Approvals and Third Party Approvals requisite to the construction, development, use and occupancy of the Project and Remediation of the Property, if any, including evidence reasonably satisfactory to Borough that the Project is in compliance with all Applicable Laws, including Environmental Laws.

(f) Subject to the terms of this Agreement, including but without limitation the provisions of Sections 2.4 and 2.6 of this Agreement, Redeveloper shall not suspend or discontinue the performance of its obligations under this Redevelopment Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project.

(g) Redeveloper shall not use the Property, Project Improvements, or any part thereof in a manner that is inconsistent with the Redevelopment Plan and this Redevelopment Agreement.

(h) Until a Certificate of Completion has been issued for the Project, Redeveloper cannot sell, convey, lease, or otherwise transfer all or any portion of the Project without consent from Borough, except as otherwise permitted by this Agreement (including as set forth in Article

XII), provided that nothing contained in this Agreement shall prevent Redeveloper from entering into contracts of leases which are conditioned upon obtaining a Certificate of Occupancy or Certificate of Completion as applicable.

(i) Redeveloper shall comply with all Applicable Laws that prevent discrimination against any person, or group of persons, on the basis of age, race, color, religion, creed, national origin, ancestry, physical handicap, familial status, sex, or sexual orientation in the sale, lease, sublease, rental, transfer, use, or occupancy of any Property in the Redevelopment Area, or any part thereof.

(j) Redeveloper shall not knowingly employ, hire or otherwise involve in the Project any Person that has previously been disbarred, suspended or otherwise ruled unable to participate in the process of bidding for, and being awarded, public contracts.

(k) Redeveloper shall promptly notify Borough of any material adverse change in its financial condition from the information provided to Borough by Redeveloper indicating Redeveloper's financial capability to develop, finance and construct the Project in furtherance of Borough's consideration in designating 1879 Morris Associates, LLC as Redeveloper.

(l) Redeveloper shall make all payments in satisfaction of Redeveloper's financial obligations as set forth in this Redevelopment Agreement, including but not limited to payment of Borough Costs.

Section 6.2 Borough Covenants. Borough hereby covenants and agrees that:

(a) Borough shall cooperate with Redeveloper to ensure that all Governmental Approvals and additional financing sources, if necessary, are obtained for the Project.

(b) Borough shall undertake and complete, with due diligence, all of its obligations under this Redevelopment Agreement.

(c) Borough agrees that its respective officials will respond to any land use, environmental, infrastructure or building permit application filing and any related inspections requested by or on behalf of Redeveloper within reasonable time periods so as not to cause any undue delay in the processing of such application filings and inspection requests.

Section 6.3 Declaration of Covenants and Restrictions. Within ten (10) days of the Effective Date, Redeveloper shall execute and record a Declaration of Covenants and Restrictions, approved by Borough (the "Declaration"), imposing Redeveloper's covenants on the Property, together with such other matters indicated in this Redevelopment Agreement as to be included in the Declaration, and the provisions hereof relating to Transfers, all as may be limited by the rights of a Holder granted hereunder, in substantially the form attached hereto as **Exhibit F**. Except for the mortgage recorded on January 14, 2022 in Book 18790, Page 1357, Redeveloper confirms that there exist no liens, including mortgages or deeds of trust, recorded against the Property as of the Effective Date, and Redeveloper agrees that none will be recorded prior to the recording of the Declaration.

Section 6.4 Effect and Duration of Covenants. It is intended and agreed that the covenants and restrictions set forth in Section 6.1 shall be covenants running with the land referenced in any deeds, leases, or other documents of conveyance for the Property. All covenants in Section 6.1, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, shall be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by Borough and its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any party in possession or occupancy of the Property or any part thereof. Notwithstanding the foregoing, the agreements and covenants set forth in Section 6.1 shall cease and terminate upon the issuance of a Certificate of Completion for such improvements, provided, however, that the covenant in Section 6.1(i) shall remain in effect without limitation as to time.

Section 6.5 Enforcement by Borough.

(a) In amplification, and not in restriction, of the provisions of this Article VI, it is intended and agreed that Borough and its successors and assigns shall be deemed beneficiaries of the terms and covenants set forth in this Redevelopment Agreement, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall run in favor of Borough for the entire period during which such agreements and covenants shall be in force and effect (and the Declaration shall so state), without regard to whether Borough has at any time been, remains, or is an owner of any land or interest therein. Borough shall have the right, in the event of any material breach of any such agreement or covenant beyond any applicable notice and cure period, to exercise all the rights and remedies and to maintain any actions or suits at law or in equity or other lawful proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

(b) Upon Completion of the Project, the conditions that were found and determined to exist at the time the Redevelopment Area was determined to be in need of redevelopment shall be deemed to no longer exist and the conditions and requirements of N.J.S.A. 40A:12A-9 shall be deemed to have been satisfied with respect to the Project.

ARTICLE VII
ENVIRONMENTAL OBLIGATIONS

Section 7.1 Remediation of Property. Redeveloper shall be responsible for the Remediation and management (including, but not limited to, excavation, characterization, segregation, storage, permitted reuse or off-site disposal, as applicable) of any Hazardous Substances, which shall include soils, groundwater and vapor, generated in connection with, caused by or discovered during any demolition or construction activities associated with the Project in accordance and compliance with all applicable Environmental Laws. Additionally, Redeveloper shall not cause any release or discharge of any Hazardous Substances in connection

with the Project at, on, under or upon the Property or elsewhere within the Borough and any such release or discharge shall be promptly remediated in accordance with applicable Environmental Laws. In the event that Redeveloper or any agent, employee or contractor of Redeveloper shall cause any release or discharge of any Hazardous Substances in connection with the Project (i) at, on, under or upon the Property or (ii) elsewhere within the Borough, Redeveloper shall promptly notify Borough in writing and investigate and remediate same in accordance with applicable Environmental Laws. To the extent required, all costs for Remediation shall be the sole responsibility of Redeveloper, including ongoing compliance with engineering and/or institutional controls. Redeveloper shall diligently prepare and submit all applications and documentation required to comply with the requirements of all Environmental Laws. Redeveloper shall also use diligent efforts to obtain all environmental approvals for the Remediation of the Property. Redeveloper's Remediation, if any, shall be consistent with the proposed uses of the Property and shall implement the applicable standard of remedy as deemed appropriate by a Licensed Site Remediation Professional or otherwise required by the NJDEP in accordance with applicable Environmental Laws. Redeveloper shall submit to Borough periodic reports of its investigation and characterization of contamination on the Property and Redeveloper's plan and timeline for the Remediation thereof. The information set forth in the foregoing reports to Borough shall be kept current, and, no less frequently than quarterly, Redeveloper shall provide Borough with information regarding the implementation of and revisions to the process set forth therein. In the event of contamination with or a discharge of Hazardous Substances, the establishment of a Deed Notice, issuance of any Remedial Action Permit(s) and issuance of any Response Action Outcome(s) associated with or arising out of Redeveloper's Remediation shall be conditions precedent to the issuance of any Certificate of Completion to be furnished to Redeveloper by Borough for the Project, all as may be applicable.

Section 7.2 Indemnification of Borough. Redeveloper shall, in accordance with Section 10.1, defend, protect, indemnify and hold harmless Borough Indemnified Parties from any Environmental Claims which may be sustained as a result of any environmental conditions on, in, under or migrating to or from the Property to the extent that any such liabilities, obligations, claims, damages, losses, proceedings or costs attached to Borough Indemnified Parties as a result of this Agreement or the actions or omissions of Redeveloper pursuant to this Agreement, including, without limitation, Environmental Claims against Borough Indemnified Parties by any third party.

ARTICLE VIII
REQUIRED UNDERTAKINGS

Section 8.1 Supervision. Redeveloper shall supervise and direct the contractors and subcontractors for the Project. Redeveloper shall use reasonable efforts to cause such contractors and subcontractors to (a) confine operations to within the Property, or areas appurtenant thereto, or to areas permitted by the Governmental Approvals and Applicable Laws, and (b) not unreasonably encumber the Property or areas appurtenant thereto with materials or equipment.

Section 8.2 Neighborhood Impacts. Redeveloper shall take all commercially reasonable steps to minimize negative effects that the construction of the Project may produce to the areas immediately surrounding the Property.

Section 8.3 Traffic. Redeveloper and Borough agree that the direction, flow and amount of traffic in and around the Property during the time of construction are an issue to be addressed during the construction of the Project. Redeveloper herein commits to exert commercially reasonable efforts to minimize the traffic effects of the Project upon the surrounding neighborhoods during construction.

Section 8.4 Rodent, Insect and Animal Control. Redeveloper will take all commercially reasonable steps necessary to minimize and control the migration of rodents, insects, or other animals from the Property during the construction of the Project. Redeveloper will undertake to provide controls in accordance with all Applicable Laws and other construction standards such that the issue of rodent, insect and animal control is reasonably addressed prior to the Commencement of construction. Redeveloper agrees to coordinate this effort with Borough and the Middlesex County Department of Health.

Section 8.5 Illumination, Noise, Pollution or Damage. Redeveloper is mindful of the size of the Project and the potential effects that the construction of such an undertaking may have on the surrounding communities during construction. Therefore, Redeveloper agrees that it will take all steps reasonably necessary to minimize the passage of excessive or unwarranted illumination, noise or pollution into the surrounding communities during construction. Redeveloper shall take measures necessary to ensure that the improvements outside of the perimeter of the Property shall not be damaged or disturbed during construction. To the extent any damage or disturbance occurs outside of the perimeter of the Property as a result of Redeveloper's construction activities, Redeveloper shall repair or replace such damage or disturbance to its original condition at its sole cost and expense. Redeveloper shall be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to illumination issues related to the Project and will address the issue in the context of review of site plan applications.

Section 8.6 Maintenance and Landscaping. During construction but not during demolition and clearing of the Property, Redeveloper shall keep the Property free from any substantial accumulation of debris or waste materials. Following completion of construction, Redeveloper will be bound by any conditions imposed by the Planning Board, which has jurisdiction with respect to maintenance and landscaping issues related to the Project and will address the issue in the context of review of site plan applications.

Section 8.7 Speculative Development. Redeveloper represents its undertakings pursuant to this Agreement are for the purpose of redevelopment of the Property and not for speculation in land holding. Redeveloper shall not use the Property, or any part thereof, as collateral for an unrelated transaction.

Section 8.8 Affordable Housing Requirement. (a) Pursuant to Borough's affordable housing ordinance Section 89-13B.(1)(d) and Section 6.1.4 of the Redevelopment Plan, the Project is required to include a fifteen percent (15%) affordable housing set-aside for rental units, which equates to 9.3 Affordable Units, such obligation to be satisfied by (i) the inclusion in the Project of nine (9) Affordable Units (which shall include at least two (2) three-bedroom

Affordable Units, at least three (3) two-bedroom Affordable Units, at most one (1) one-bedroom/studio Affordable Unit with the remaining Affordable Units being three-bedroom or two-bedroom) for rental and (ii) making a payment-in-lieu of constructing the three tenths (0.3) portion of an Affordable Unit pursuant to Borough's ordinance governing the making of a payment in lieu of constructing fractional Affordable Units, or otherwise addressed pursuant to said ordinance. All Affordable Units created in this Project shall comply with UHAC, applicable COAH affordable housing regulations, FSHC Settlement Agreement, any applicable order of the Court, and other Applicable Laws. Notwithstanding the provisions of N.J.A.C. 5:80-26.3(d), thirteen percent (13%) of all low and moderate income housing units shall be affordable to households earning no more than thirty percent (30%) of median income (i.e., very low income housing), and such units may be counted as part of the fifty percent (50%) low income housing requirement imposed by N.J.A.C. 5:80-26.3(a). With respect to bedroom distribution, the very low-income housing units shall also comply with the requirements of N.J.A.C. 5:80-26.3(b) except that half of such very low-income housing units shall be made available to families in accordance with the requirements of N.J.A.C. 5:80-26.4(c).

(b) The Affordable Units shall remain as such for a period of at least thirty (30) years ("Deed Restriction Period") so that Borough may count the units against its obligations to provide affordable rental housing. This obligation includes, but is not limited to, Redeveloper's obligation to comply with UHAC bedroom distribution requirements, income split requirements, pricing requirements, affirmative marketing requirements, candidate qualification and screening requirements, and deed restriction requirements. Redeveloper shall have the obligation to pay all costs associated with properly deed restricting the Affordable Units in accordance with UHAC and other applicable laws for the Deed Restriction Period. The form of deed restriction to be recorded against the Property with respect to the Affordable Units shall be in substantially the form of Appendix E to UHAC ("Mandatory Deed Restriction for Rental Projects") and be submitted to Borough for approval prior to recordation. Redeveloper shall provide Borough with proof of recordation of said deed restriction against the applicable units. Said deed restriction shall be recorded by Redeveloper prior to the issuance of the first Certificate of Occupancy for the Project. Any liens, including mortgages or deeds of trust, recorded against the Property, if any, shall be subordinated to the Mandatory Deed Restriction for Rental Projects at the time of recording the same.

(c) To the extent possible, Affordable Units shall be integrated with the market rate units. The bedroom distribution and distribution of low and moderate income Affordable Units shall be in compliance with COAH's Second Round substantive regulations, N.J.A.C. 5:93-1.1 et seq., or as approved by the Special Master and the Court.

(d) The UHAC affordability controls shall be administered and enforced by an administrative agent (the "Administrative Agent"). Borough shall either (i) act as Administrative Agent itself; (ii) select the Housing Affordability Service in the Department of Community Affairs ("DCA") as Administrative Agent; or (iii) select an experienced private entity (which, with the consent of Redeveloper, may be Redeveloper itself) that must be approved by the Division of Housing in DCA, COAH or HMFA, as applicable, pursuant to UHAC. If Borough selects Redeveloper to act as Administrative Agent (with the consent of Redeveloper), Borough and Redeveloper shall enter into a written agreement in substantially the form attached hereto as

Exhibit G. Redeveloper and the Administrative Agent shall work with Borough and Borough's Municipal Housing Liaison and/or Administrative Agent regarding any affordable housing monitoring requirements imposed by COAH or the Court.

(e) Redeveloper and any subsequent owner of the Project shall be responsible for payment of the administrative fees and costs to be incurred by (i) Borough in connection with the administration of the Affordable Units and (ii) the performance by the Administrative Agent of its duties with respect to administering the Affordable Units, affirmative marketing and advertising, and maintenance of the affordability restrictions for the Affordable Units, with such administrative fees and costs to be reasonable in accordance with generally prevailing rates charged by administrative agents for similar work. Such payment shall be a condition of Planning Board approval and a condition of the affordable housing deed restriction. In the event the Administrative Agent is retained by Redeveloper or any subsequent owner, such payments shall be paid by Redeveloper or such owner to the Administrative Agent pursuant to their subcontract; in the event the Administrative Agent is retained by Borough or Borough is acting as Administrative Agent, such payments shall be paid by Redeveloper or any subsequent owner to Borough's Affordable Housing Trust Fund.

(f) The Parties agree that it is their intention that credit for the Affordable Units to be constructed by Redeveloper will be applied against the affordable housing obligations assigned to Borough by the Court.

(g) Upon receipt of written notice from Borough, or Borough's Municipal Housing Liaison and/or Administrative Agent, Redeveloper shall provide detailed information concerning Redeveloper's compliance with UHAC and other Applicable Laws within thirty (30) days.

(h) With respect to the commercial component of the Project, Redeveloper shall comply with the Statewide Non-Residential Development Fee Act, N.J.S.A. 40:55D-8.1 et seq., provided, however, that nothing herein is intended to waive any rights or obligations Redeveloper may have under Applicable Law with respect to such obligation.

(i) Subject to the Project Schedule and Section 2.2 of this Agreement, Borough may seek Court approval to ensure that this Agreement is deemed to be fair and reasonable to low and moderate income households by way of a properly noticed Fairness Hearing and/or a Compliance Hearing. The inability of Borough to obtain a judgment of compliance and repose or other form of Court approval shall not invalidate this Agreement, delay the Project Schedule or the Parties' implementation of this Agreement.

ARTICLE IX
INSURANCE

Section 9.1 Insurance Required.

(a) At all times during the construction of the Project, Redeveloper shall maintain commercial general liability insurance, naming Borough as an additional insured, insuring Borough against losses, costs, liabilities, claims, causes of action and damages for bodily injury

and property damage on all property in the Property or related to the construction thereon, in the amount of at least One Million Dollars ($1,000,000.00) primary and Five Million Dollars ($5,000,000.00) excess combined single limit coverage. Such insurance shall include blanket contractual liability coverage. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, including, but not limited to, claims of subcontractors, however occasioned, occurring during the policy term, shall be endorsed to add Borough as an additional insured, and to provide that such coverage shall be primary and that any insurance maintained by Borough shall be excess insurance only. Such coverage shall be endorsed to waive the insurer's rights of subrogation against Borough.

(b) At all times during the construction of the Project, Redeveloper or Redeveloper's contractors, shall maintain Comprehensive Automobile Liability Insurance covering all owned, hired and non-owned vehicles with at least the following limits of liability: Bodily Injury Liability and Property Damage Liability in the amount of at least One Million Dollars ($1,000,000.00) primary and Two Million Dollars ($2,000,000.00) excess combined single limit coverage.

(c) Prior to the Commencement of the construction of the Project Improvements, Redeveloper shall furnish or cause to be furnished to Borough duplicate originals of Builder's Risk Insurance for the benefit of Redeveloper (subject to the interests of any Holder), during the term of construction, sufficient to protect against loss or damage resulting from fire and lightning, the standard extended coverage perils, vandalism, and malicious mischief. The limits of liability will be equal to one hundred percent (100%) of the replacement cost (to current building code) of the applicable Project Improvements, including items of labor and materials connected therewith, whether in or adjacent to the structure(s) insured, and materials in place or to be used as part of the permanent construction.

(d) Upon request, Redeveloper shall also furnish or cause to be furnished to Borough evidence satisfactory to Borough that Redeveloper and any contractor with whom it has contracted for the construction of the Project Improvements carries workers' compensation insurance as required by law, and an employer's liability insurance endorsement with customary limits, and shall be endorsed with a waiver of subrogation clause for Borough.

(e) All insurance policies required by this Section shall be obtained from insurance companies licensed in the State of New Jersey and rated at least A in Best's Insurance Guide or such lesser rated provider that is proposed by Redeveloper and is reasonably acceptable to Borough.

(f) All insurance policies required by this Section shall be non-assignable and shall contain language to the effect that (i) the policies are primary and noncontributing with any insurance that may be carried by Borough, (ii) the policies cannot be canceled or materially changed except after thirty (30) days prior written notice by the insurer to Borough, and (iii) Borough shall not be liable for any premiums or assessments. All such insurance shall have deductibility limits reasonably satisfactory to Borough and shall contain cross liability endorsements. Satisfactory evidence of such insurance shall be provided to Borough prior to the Commencement of Construction.

(g) Redeveloper's obligation to maintain insurance pursuant to, and in accordance with, this Section 9.1 shall terminate upon issuance of a Certificate of Completion with respect to the Project.

ARTICLE X
INDEMNIFICATION

Section 10.1 Redeveloper's Indemnity.

(a) Redeveloper covenants and agrees, at its sole expense, to pay and to indemnify, protect, defend and hold Borough and its employees, officers and agents (the "Borough Indemnified Parties") harmless from and against all Claims resulting from or in any way connected with the acquisition, condemnation, condition, use, possession, conduct, management, planning, design, construction, or installation, of the Project on the Property, or other cause of action arising from the nexus of Borough to Redeveloper as a result of this Redevelopment Agreement or the Financial Agreement, including but not limited to, the death of any person or any accident, injury, loss, and damage whatsoever caused to any person or to the property of any person that shall occur on the Property and that, with respect to any of the foregoing, are directly related to or resulting from any negligence or willful misconduct of Redeveloper, its agents, servants, employees, or contractors.

(b) In any situation in which Borough Indemnified Parties are entitled to receive and desire defense and/or indemnification by Redeveloper, Borough Indemnified Parties shall give prompt written notice of such situation to Redeveloper. Failure to give prompt notice to Redeveloper shall not relieve Redeveloper of any liability to indemnify Borough Indemnified Parties, unless such failure to give prompt notice materially impairs Redeveloper's ability to defend. Upon receipt of such notice, Redeveloper shall resist and defend any action or proceeding on behalf of Borough Indemnified Parties, including the employment of counsel reasonably acceptable to Borough Indemnified Parties, the payment of all expenses and the right to negotiate and consent to settlement. All of Borough Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of the indemnified party unless the employment of such counsel is specifically authorized in advance by Redeveloper, provided, however, that if the defense of such action is assumed by Redeveloper's insurance carrier, employment of such separate counsel by Borough Indemnified Parties shall be at the sole discretion of such carrier, as provided in its endorsement of insurance. Redeveloper shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of Redeveloper or if there is a final judgment against Redeveloper in any such action, Redeveloper shall indemnify and hold harmless Borough Indemnified Parties from and against any loss or liability by reason of such settlement or judgment for which Borough Indemnified Parties are entitled to indemnification hereunder.

(c) Notwithstanding anything to the contrary in this Article X, Redeveloper's indemnity shall not extend to any claims if caused by or as a result of the gross negligence, unlawful conduct or willful misconduct of Borough, Borough Representatives, or their respective employees, officers or agents.

Section 10.2 Survival of Indemnity. The provisions of this Article X shall survive the termination of this Redevelopment Agreement due to an Event of Default by the indemnifying Party and shall exist until such time as Redeveloper's covenants under the Declaration are discharged as a result of the recording of a Certificate of Completion; provided, however, that until such time, such indemnity shall be binding on Redeveloper itself, each successor in interest to the Project, the Property, or any part thereof, and each party in possession or occupancy, only for such period as Redeveloper or such successor or party shall have title to the Property, the Project Improvements or any part thereof. Notwithstanding the foregoing, with respect to events that occur prior to the issuance of a Certificate of Completion for which Borough Indemnified Parties would be entitled to indemnification pursuant to this Article X, Redeveloper's obligations in this Article X shall survive the issuance of a Certificate of Completion.

ARTICLE XI
RESTRICTIONS ON TRANSFER

Section 11.1 Prohibition Against Transfers. Redeveloper recognizes the importance of the Project to the general welfare of the community and that the identity of Redeveloper and its qualifications are critical to Borough in entering into this Redevelopment Agreement. The Parties acknowledge and agree that a change in ownership of Redeveloper from that which is noted in **Exhibit D** attached hereto that results in a change with respect to control of Redeveloper is, for practical purposes, a transfer or disposition of the Project then owned by Redeveloper.

Except for Permitted Transfers, prior to the issuance of the Certificate of Completion, Redeveloper shall not make any Transfers without the prior written consent of Borough, which consent shall not be unreasonably withheld, conditioned or delayed, provided, however, that these restrictions shall not apply following the issuance of the Certificate of Completion.

Section 11.2 Permitted Transfers. Redeveloper, without violating the provisions of Section 11.1 hereof, may effect the following Transfers ("Permitted Transfers"), without the necessity of further action by Borough, provided that the requirements set forth in Section 11.3 have been satisfied:

(a) security for, and only for, the financing necessary to enable Redeveloper to perform its obligations under this Redevelopment Agreement with respect to the Completion of the Project Improvements and any other purpose authorized by this Redevelopment Agreement;

(b) a mortgage or mortgages and other liens and encumbrances (including mechanic's liens) for the purposes of financing the acquisition, development, construction and marketing of the Project;

(c) utility and other development easements;

(d) environmental covenants and restrictions imposed by a regulatory agency as a condition of any permit or approval;

(e) the Transfer, in the aggregate, of less than ten percent (10%) of the ownership interest of Redeveloper or any ownership interest transfers among the members of Redeveloper;

(f) any leasing or sale of a unit within the Project, in the ordinary course of business, provided that the occupancy under such lease or closing on such sale occurs following the issuance of a Certificate of Occupancy as to the unit;

(g) any contract or agreement with respect to any of the foregoing exceptions.

Section 11.3 Notice of Permitted Transfers. Except as further set forth below, with respect to any Permitted Transfers, Redeveloper shall provide to Borough written notice thereof not later than twenty (20) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. In connection with a Permitted Transfer involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, at closing thereon, Redeveloper shall cause the transferee to execute such documentation as is reasonably requested by Borough in order to assure that the transferee has assumed all of Redeveloper's obligations under this Redevelopment Agreement as to the Property and/or Project Improvements, or any portion thereof (if Redeveloper's right, title and interest in the Property and/or Project Improvements is being transferred). Redeveloper shall exercise diligent efforts with respect to the provisions of any documentation relating to the Permitted Transfer as Borough may reasonably request. With respect to Permitted Transfers involving a ground lease, purchase option agreement, contract of sale or conveyance to an urban renewal entity, Redeveloper shall provide to Borough written notice thereof no less than twenty (20) days prior to such Permitted Transfer, including a description of the nature of such Permitted Transfer, and the name(s) and address(es) of the transferee and any parties, individuals and/or entities comprising such transferee. Further, with respect to those Permitted Transfers listed in Section 11.2, the above 20-day notice shall not be required; however, a report on status of leasing and sales shall be provided to Borough at least every sixty (60) days until a Certificate of Completion for the entire Project has been issued. Redeveloper shall not have the right to carry out a Permitted Transfer if an Event of Default has occurred or if there is a breach by Redeveloper hereunder that, if uncured, would give rise to an Event of Default.

Section 11.4 Transfers Void. Any transfer by Redeveloper in violation of this Redevelopment Agreement shall be a Redeveloper Event of Default and shall be null and void ab initio. Such default shall entitle Borough to seek all remedies available under the terms hereof, including termination of this Redevelopment Agreement, and Borough may also seek equitable relief to cause the reversal of the transfer. The Declaration shall contain a restriction against Transfers as set forth in Section 11.1 and, in addition, shall provide that in the event of any attempted transfer in violation of the restriction in Section 11.1, Borough shall be entitled to the ex parte issuance of an injunction restraining such Transfer, and the recovery of reasonable legal fees and related expenses of Borough in connection with any such legal action. Upon the recording of the Declaration in the Office of the Middlesex County Clerk, the provision affording such injunctive relief shall have the same force and effect as a Notice of Lis Pendens.

ARTICLE XII
EVENT OF DEFAULT; REMEDIES

Section 12.1 Events of Default. Either of the Parties shall have the right to declare the other Party in default of this Agreement if any of the following events (each an "Event of Default") occur:

(a) Subject to the tolling and other provisions provided in this Agreement, including but not limited to Section 2.4, a material failure of either Party to substantially observe and perform any covenant, condition, representation, warranty or agreement hereunder and continuance of such failure for thirty (30) days after receipt by the defaulting party of a written notice of default (the "Default Notice") from the non-defaulting party specifying in sufficient detail, accompanied by any relevant documentation therefore, of (i) the nature and extent of such failure, (ii) what action is required to remedy such default and (iii) requesting that such failure be remedied; provided, however, if the breach of any such covenant, condition, representation, warranty or agreement is one which cannot be completely remedied within thirty (30) days after such written notice has been given, it shall not be an Event of Default as long as the defaulting Party has commenced the cure within the thirty (30) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties to reach compliance; or

(b) Subject to the tolling and other provisions provided in this Agreement, including but not limited to Section 2.4, Redeveloper materially defaults in or materially violates obligations with respect to design, development and construction of the Project in accordance with this Redevelopment Agreement, the Redevelopment Plan, Governmental Approvals or Applicable Law, and any such default, or violation shall not be cured, ended or remedied within sixty (60) days after written demand by Borough to do so, provided, however, if the default or violation is one which cannot be completely remedied within sixty (60) days after such written notice has been given, it shall not be an Event of Default as long as Redeveloper has commenced the cure within the sixty (60) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties, to reach compliance; or

(c) Subject to the tolling and other provisions provided in this Agreement, including but not limited to Section 2.4, Redeveloper's default results in an unauthorized Material Adverse Change of the Project Schedule, as the same may be modified or extended from time to time in accordance with this Agreement, or shall abandon or substantially suspend construction work for a period of sixty (60) consecutive days and any such default, or violation shall not be cured, ended, or remedied within sixty (60) days after written demand by Borough to do so, provided, however, if the default or violation is one which cannot be completely remedied within ninety (90) days after such written notice has been given, it shall not be an Event of Default as long as Redeveloper has commenced the cure within the sixty (60) day period after receipt of a Default Notice and is proceeding with due diligence to remedy the same as soon as practicable but in no event later than the later of: (x) one hundred twenty (120) days after such written notice, or (y) a date agreed to by the Parties, to reach compliance; or

(d) Redeveloper causes a Transfer or assignment prohibited under this Agreement and any such default, or violation shall not be cured, ended, or remedied within forty-five (45) days after written demand by Borough to do so; or

(e) Redeveloper or its successor in interest (except for third parties, if any, to which a portion of the Project has been conveyed in the ordinary course of business) fails to pay any real estate taxes, assessments, payments in lieu of taxes on the Property or any part thereof prior to the imposition of any penalty therefore, or shall place on the Property any encumbrance or lien unauthorized by this Agreement and such real estate taxes payments in lieu of taxes, encumbrance or lien have not been paid, removed or discharged or provision satisfactory to Borough made for such payment, removal or discharge within sixty (60) days after written demand by Borough to do so; or

(f) (i) Subject in all cases to Applicable Law, Redeveloper shall have applied for or consented to the appointment of a custodian, receiver, trustee or liquidator of all or a substantial part of its assets; (ii) a custodian shall have been legally appointed with or without consent of Redeveloper; (iii) Redeveloper (1) has made a general assignment for the benefit of creditors, or (2) has filed a voluntary petition in bankruptcy or a petition or an answer seeking an arrangement with creditors or has taken advantage of any insolvency law; (iv) Redeveloper has filed an answer admitting the material allegations of a petition in any bankruptcy or insolvency proceeding; (v) Redeveloper shall take any action for the purpose of effecting any of the foregoing; (vi) a petition in bankruptcy shall have been filed against Redeveloper and shall not have been dismissed or stayed for a period of one hundred twenty (120) consecutive days from the date of filing; (vii) an order for relief materially affecting the rights of Borough under this Redevelopment Agreement shall have been entered with respect to or for the benefit of Redeveloper, under the United States Bankruptcy Code; (viii) an order, judgment or decree shall have been entered, without the application, approval or consent of Redeveloper, by any court of competent jurisdiction appointing a receiver, trustee, custodian or liquidator of Redeveloper, or a substantial part of its assets and such order, judgment or decree shall have continued unstayed and in effect for any period of ninety (90) consecutive days; or (ix) Redeveloper shall have suspended the transaction of its ordinary business activities for more than ninety (90) consecutive days.

(g) A representation made by Redeveloper in Article V was false on the Effective Date.

(h) Redeveloper violates a covenant set forth in Article VI, subject to the notice and cure periods set forth above, to the extent applicable.

Section 12.2 Remedies Upon Default; Termination.

(a) Upon an Event of Default by Borough which is continuing and remains uncured beyond any applicable notice and cure dates, Redeveloper may take whatever action at law or in equity, as may appear necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. Further, Redeveloper shall have the right to terminate this Agreement upon sixty (60) days' written notice

to Borough, in which event the Declaration shall be null and void and Borough shall discharge same of record.

(b) Upon an Event of Default by Redeveloper which is continuing and remains uncured beyond applicable notice and cure dates, Borough may terminate this Agreement and/or take whatever action at law or in equity, as may appear necessary or desirable to enforce the performance or observance of any rights under this Agreement, including an action for specific performance or damages. Further, Borough shall have the right to terminate this Agreement upon sixty (60) days' written notice to Redeveloper, provided, however, that upon issuance of any Certificate of Completion, Borough shall no longer hold any right to terminate this Agreement for an Event of Default or otherwise.

(c) In the event that either Party exercises its right to termination pursuant to Section 3.1(d) and (e) and Section 5.3, the terminating Party shall provide the other Party with not less than thirty (30) days prior written notice of such election. Within thirty (30) days of such termination: (i) Redeveloper shall pay to Borough all outstanding Borough Costs; and (ii) upon full payment of all Borough Costs, Borough shall return the balance of the amounts, if any, in the Escrow Account. In such case neither Party shall have any further rights, claims or obligations against the other Party arising out of this Redevelopment Agreement.

Section 12.3 Force Majeure. Performance by either Party hereunder shall not be deemed to be in default where delays or failure to perform are the result of the following acts, events or conditions or any combination thereof that has had or may be reasonably expected to have a direct, material, adverse effect on the rights or obligations of the Parties to this Redevelopment Agreement; provided, however, that such act, event or condition shall be beyond the reasonable control of the Party relying thereon as justification for not performing an obligation or complying with any condition required of such Party under the terms of this Redevelopment Agreement ("Force Majeure"):

(a) An act of God, lightning, blizzards, hurricane, tornado, earthquake, acts of public enemy, war (whether or not declared), terrorism, blockade, insurrection, riot or civil disturbance, sabotage or similar occurrence, but not including reasonably anticipated weather conditions for the geographic area of the Project, other than those set forth above;

(b) A landslide, fire, explosion, global pandemic, flood or release of nuclear radiation not created by an act or omission of either Party;

(c) The order, judgment, action or inaction and/or determination of any Governmental Body (other than Borough when acting in conformance with this Redevelopment Agreement) with jurisdiction within Borough, excepting decisions interpreting federal, State and local tax laws generally applicable to all business taxpayers, adversely affecting the construction of the Project; provided, however, such order, judgment, action and/or determination shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such order, judgments, action and/or determination, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such party;

(d) The suspension, termination, interruption, denial or failure of or delay in renewal or issuance of any other Governmental Approval, provided, however, such suspension, termination, interruption, denial or failure of or delay in renewal or issuance shall not be the result of the willful, intentional or negligent action or inaction of the Party relying thereon and that neither the contesting of any such suspension, termination, interruption, denial or failure of renewal or issuance, in good faith, nor the reasonable failure to so contest, shall constitute or be construed as a willful, intentional or negligent action or inaction by such Party; provided further that delay in issuance of a Governmental Approval resulting from Redeveloper's failure to make an administratively complete submission for a Governmental Approval shall not be an event of Force Majeure;

(e) Strikes, lockouts, slowdowns, labor unrest, or similar labor action by trade unions or any of their members, equipment manufacturers, suppliers of material and/or transporters of same;

(f) Delays of subcontractors due to any of the foregoing such causes, and actions or inactions by any federal, State or local governmental or quasi-governmental authority, including, but not limited to, utility providers, with respect to Governmental Approvals or the development of the Project, affecting the rights or obligations of Redeveloper or Borough hereunder, court orders, laws, rules, regulations, moratoria or orders of governmental or public agencies, bodies and authorities; or

(g) Delays caused by Redeveloper's or any of its contractors and subcontractor's inability to timely obtain construction materials due to supply chain failures that are in direct result of any of the foregoing causes.

Section 12.4 Remedies Cumulative. No remedy conferred by any of the provisions of this Redevelopment Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.

Section 12.5 Litigation Costs. In the event that a Party successfully pursues an action to enforce any remedy provided in this Article XII that Party shall be entitled to seek payment by the other Party of all reasonable costs and expenses, including attorney fees, incurred in connection with such action.

Section 12.6 Mitigation. The Parties shall act reasonably to mitigate any damages that may be incurred as the result of an Event of Default hereunder.

Section 12.7 Survival of Termination. The provisions of this Article XII shall survive the termination of this Redevelopment Agreement as a result of an Event of Default by Redeveloper.

Section 12.8 Use of Documents. Redeveloper hereby agrees that it shall provide to Borough copies of all documents, reports, studies and analyses prepared by it or on its behalf in connection with the Project. Upon termination of this Agreement, Redeveloper hereby agrees that Borough has the right to all such documents, including but not limited to the Governmental Applications and Governmental Approvals, without cost to Borough.

ARTICLE XIII
MISCELLANEOUS

Section 13.1 Notices and Demands. A notice, demand or other communication under this Agreement by any Party to the other shall be in writing and shall be hand delivered by messenger (with receipt acknowledged in writing), delivered by overnight delivery service (guaranteeing overnight delivery, with receipt acknowledged in writing), or delivered personally, to the Parties at their respective addresses set forth herein:

If to Borough:

Borough of Dunellen
355 North Avenue
Dunellen, New Jersey 08812
Attn: Borough Clerk

with copies to:

John E. Bruder, Esq.
2 West Union Ave
Bound Brook, NJ 08805

Charles B. Liebling, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza, Sixth Floor
New Brunswick, New Jersey 08901

If to Redeveloper:

1879 Morris Associates, LLC
c/o Villani Builders
376 North Avenue, Suite A
Dunellen, New Jersey 08812

with copy to:

Joseph Paparo, Esq.
Porzio Bromberg & Newman, PC
100 Southgate Parkway, PO Box 1997
Morristown, New Jersey 07962

Either Party may, from time to time (upon not less than seven (7) days' prior written notice given to the other Party pursuant to the terms of this Article XIII) change the address to which notices shall be sent or designate one or more additional or substitute persons to whom notices are to be sent.

Section 13.2 Conflict of Interest. No member, official or employee of Borough shall have any direct or indirect interest in Redeveloper or this Agreement, nor participate in any decision relating to this Agreement that is prohibited by law.

Section 13.3 No Improper Consideration For Agreement. Redeveloper warrants it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers, financial consultants and attorneys. Redeveloper and Borough warrant that redeveloper has not paid or incurred any obligation to pay any officer or official of Borough, any money or other consideration for or in connection with this Agreement, nor has Borough or any officer or official of Borough has not received any such payment or accepted any such obligation.

Section 13.4 Non-Liability of Officials and Employees of Borough. No member, official, or employee of Borough shall be personally liable to Redeveloper, or any successor in interest, in the event of any default or breach by Borough, or for any amount which may become due to Redeveloper or its successor, or on any obligation under the terms of this Agreement, unless such member, official, or employee shall have willfully acted unlawfully, in bad faith or in gross negligence.

Section 13.5 Non-Liability of Officials, Members and Employees of Redeveloper. No member, officer, shareholders, director, partner, or employee of Redeveloper, and no member, officer, shareholders, director, partner or employee of the members of Redeveloper or the members of Redeveloper shall be personally liable to Borough, or any successor in interest, in the event of any default or breach by Redeveloper or for any amount which may become due to Borough, or their successors, on any obligation under the terms of this Agreement, unless such member, officer, shareholder, director, partner, or employee shall have willfully acted in bad faith or in gross negligence.

Section 13.6 Inspection of Books and Records. Borough shall have the right during normal business hours and subject to reasonable advance notice (but not less than fifteen (15) Business Days and not more frequently than once every quarter), and following execution of a confidentiality agreement reasonably satisfactory to Redeveloper, to inspect at Redeveloper's place of business, the books and records of Redeveloper pertinent to the purposes of this Agreement, including but not limited to construction contracts, books and records, leases,

insurance policies, and agreements, at a time and in a manner as to not unreasonably interfere with the business operations of Redeveloper.

Section 13.7 Modification of Agreement. No modification, waiver, discharge, or amendment of this Agreement shall be valid unless the same is in writing, duly authorized, and signed by Redeveloper and Borough.

Section 13.8 Severability. To the extent that any article, section, subsection, clause, provision, or term of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of any such article, section, subsection, clause, provision, or term of this Agreement or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each remaining article, section, subsection, clause, provision, or term of this Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that no such severance shall serve to deprive either of the Parties of the enjoyment of its substantial benefits under this Agreement.

Section 13.9 Successors Bound. This Agreement shall be binding upon the respective Parties hereto and their successors and assigns.

Section 13.10 Governing Law. This Agreement shall be governed by and construed by the laws of the State. Any legal action filed in this matter shall be heard in the Superior Court of New Jersey, Middlesex County Vicinage.

Section 13.11 Borough Approvals. All approvals or disapprovals required by Borough shall, unless otherwise stated herein, be valid if given in writing by Borough Representative or his/her authorized designee.

Section 13.12 Counterparts. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together shall constitute one and the same instrument.

Section 13.13 Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior oral and written agreements between the parties with respect to the subject matter hereof.

Section 13.14 Waiver. No waiver made by any Party with respect to any obligation of any other Party under this Agreement shall be considered a waiver of any other rights of the Party making the waiver beyond those expressly waived in writing and to the extent thereof.

Section 13.15 Counting of Days; Saturday, Sunday, or Holiday. The word "days" as used in this Agreement shall mean calendar days unless a contrary intention is stated, provided that if the final date of any period provided herein for the performance of an obligation or for the taking of any action falls on a day other than a Business Day, then the time of such period shall be deemed extended to the next Business Day. The term "Business Day" as used herein means

any day other than a Saturday, Sunday, or a day on which banks and public offices are not open under the laws of the State.

Section 13.16 Review by Counsel. This Agreement shall be construed and enforced in accordance with the laws of the State without regard to or any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both Redeveloper and Borough have collectively reviewed same.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Redevelopment Agreement to be properly executed and their corporate seals affixed and attested as of the date first written above.

WITNESS:

REDEVELOPER:

1879 MORRIS ASSOCIATES, LLC,
a New Jersey limited liability company

By: _____

By: _____

ATTEST:

BOROUGH OF DUNELLEN

_____
William M. Robins, RMC
Borough Clerk

By: _____
Jason Cilento, Mayor

EXHIBIT A

Certificate of Completion

Record and Return to:
Charles B. Liebling, Esq.
Windels Marx Lane & Mittendorf, LLP
120 Albany Street, 6th Floor
New Brunswick, New Jersey 08901

CERTIFICATE OF COMPLETION

Date: _____ , 20_

Project: Construction of mixed-used building with approximately 4,200 square feet of commercial space on the ground floor, forty-eight (48) one-bedroom residential units, twelve (12) two-bedroom residential units, and two (2) three-bedroom residential units, which shall include nine (9) residential Affordable Units, with amenity spaces and related improvements (the "Project"); and

Location: Block 66, Lot 17 and 17.01 in the Borough of Dunellen, County of Middlesex, more commonly known as 435 North Avenue and 441 North Avenue (the "Property")

Pursuant to Section 2.2(d) of the Redevelopment Agreement by and between the Borough of Dunellen (the "Borough") and 1879 Morris Associates, LLC (the "Redeveloper"), dated as of _____, 20___ (the "Redevelopment Agreement"), the undersigned, an authorized representative of the Borough, certifies as of the date hereof that (all undefined terms used herein shall have the same meaning ascribed to them in the Redevelopment Agreement):

(i) the Project in its entirety has been completed as of _____, in accordance with the Redevelopment Agreement; and

(ii) such Completion has been further evidenced by a written certificate of Redeveloper and a certificate of Redeveloper's engineer evidencing completion of the Project Improvements, which certificate is attached hereto as **Exhibit 1**:

The conditions determined to exist at the time the Redevelopment Area was determined to be an area in need of redevelopment no longer exist with respect to the Property. The Property shall no longer be subject to (i) any covenant for the benefit of Borough, set forth in the Declaration, as defined herein below, except as specifically indicated as surviving therein, and (ii) eminent domain for purposes of redevelopment as a result of those determinations.

The Declaration recorded in the office of the Middlesex County Clerk on _____ in Deed Book ____, Page ____ (the "Declaration") is hereby discharged of record and is void and of no further force and effect except as specifically indicated as surviving therein.

This certificate is given without prejudice to any rights against third parties which exist on the date hereof or which may subsequently come into being.

[signatures appear on successive page]

IN WITNESS WHEREOF, the undersigned has caused this Certificate of Completion of Project to be executed as of the ____ day of _____.

ATTEST: **BOROUGH OF DUNELLEN**

_____ By: _____
William M. Robins, RMC Jason Cilento, Mayor
Borough Clerk

Acknowledgment

STATE OF NEW JERSEY :
:SS
COUNTY OF MIDDLESEX :

On this ____ day of _____ before me, personally appeared Jason Cilento, the Mayor of the Borough of Dunellen, a public body corporate and politic organized and existing under and by virtue of the laws of the State of New Jersey, who I am satisfied is the person who executed the foregoing instrument; and he acknowledged that he executed the foregoing instrument as the act of the municipality and that he was authorized to execute the foregoing instrument on behalf of the Borough of Dunellen.

_____

EXHIBIT B

Approved Concept Plan

MIXED USED APARTMENT

431-441 North Ave Dunellen - Dunellen, New Jersey

PROJECT INFORMATION

CODE DATA

BLDG. CODE	NEW JERSEY UNIFORM CONST. CODE 2018 INTERNATIONAL BUILDING CODE
CONST. TYPE	1A / 5A
USE GROUP	R-2 MULTI-FAMILY RESIDENTIAL B - BUSINESS

ZONING DATA

MU	MIXED USE

DRAWING INDEX - PLANNING BOARD

#	NAME
GENERAL	
G0.000	COVER SHEET
ARCHITECTURE	
A1.100	FIRST FLOOR PLAN
A1.101	FLOOR PLAN
A1.102	ROOF PLAN
A2.200	ELEVATIONS
A7.701	ENLARGED UNIT PLANS
A7.702	ENLARGED UNIT PLANS
A7.703	ENLARGED UNIT PLANS
A7.704	ENLARGED UNIT PLANS
A7.705	RENDERINGS

GROSS BUILDING AREA CALCULATION

PROGRAM/USE	AREA
1ST FLOOR	
AMENITY	1,863 SF
CIRCULATION	1,946 SF
COMMERCIAL	4,204 SF
PARKING	24,143 SF
UTILITY	4,152 SF
	36,308 SF
2ND FLOOR	
AMENITY	4,286 SF
CIRCULATION	5,510 SF
RESIDENTIAL	25,355 SF
UTILITY	480 SF
	35,631 SF
3RD FLOOR	
CIRCULATION	5,510 SF
RESIDENTIAL	25,355 SF
UTILITY	480 SF
	31,345 SF
BUILDING GROSS AREA	103,284 SF

RESIDENTIAL DWELLING UNIT MIX

UNIT TYPES PER LEVEL	QUANTITY
1 BEDROOM	
2ND FLOOR	24
3RD FLOOR	24
	48
2 BEDROOM	
2ND FLOOR	6
3RD FLOOR	6
	12
3 BEDROOM	
2ND FLOOR	1
3RD FLOOR	1
	2
UNITS GRAND TOTAL	62

PARKING PROVIDED

FLOOR	COUNT
1ST FLOOR	
	70
PARKING PROVIDED TOTAL	70

PARKING REQUIRED

NAME	COUNT	COEFF.	QUANTITY
RESIDENTIAL			
1 BEDROOM	48	1	48
2 BEDROOM	12	1.5	21
3 BEDROOM	2	1.75	3.5
RESIDENTIAL			72.5

TAYLOR ARCHITECTURE & DESIGN

95 WATCHUNG AVENUE
NORTH PLAINFIELD, NEW JERSEY 07060
908.226.5515
WWW.TAYLORARCHDESIGN.COM

MIXED USE APARTMENT

431-441 NORTH AVENUE
DUNELLEN, NEW JERSEY 08812

PROJECT TEAM

CIVIL ENGINEERING

STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE
1	PLANNING BOARD	11/21/22

NOT FOR CONSTRUCTION

BRIAN M. TAYLOR, AIA **NJ REG. AI 15286**

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ISSUED FOR:
PLANNING BOARD

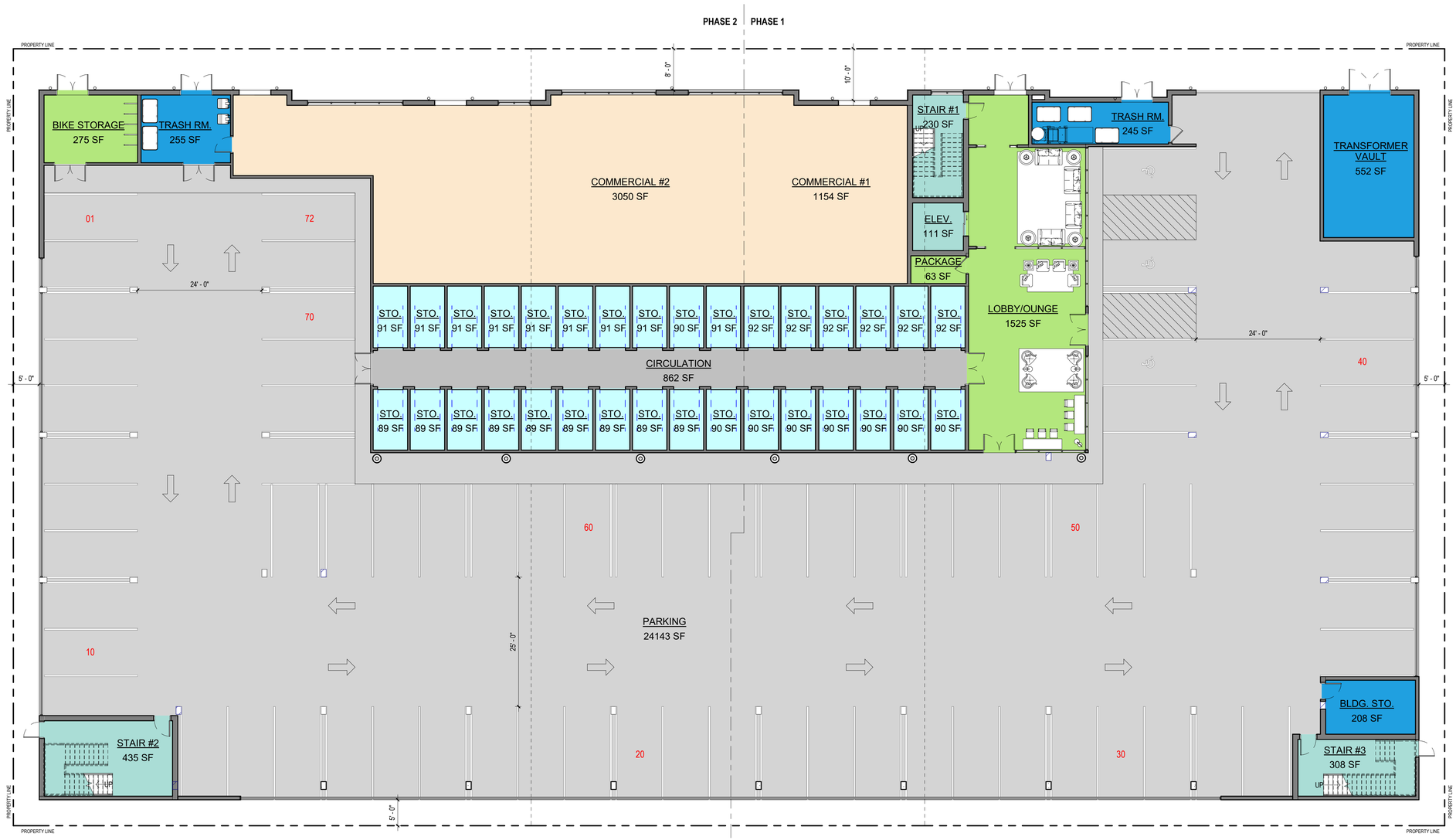
DATE 11/21/22	PROJECT NO. 2228
DRAWN BY IT	CHECKED BY BMT

SHEET TITLE

COVER SHEET

DRAWING NUMBER

G0.000



1 1ST FLOOR PLAN
SCALE: 3/32" = 1'-0"

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PROJECT TEAM

CIVIL ENGINEERING

STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE
1	PLANNING BOARD	11/21/22

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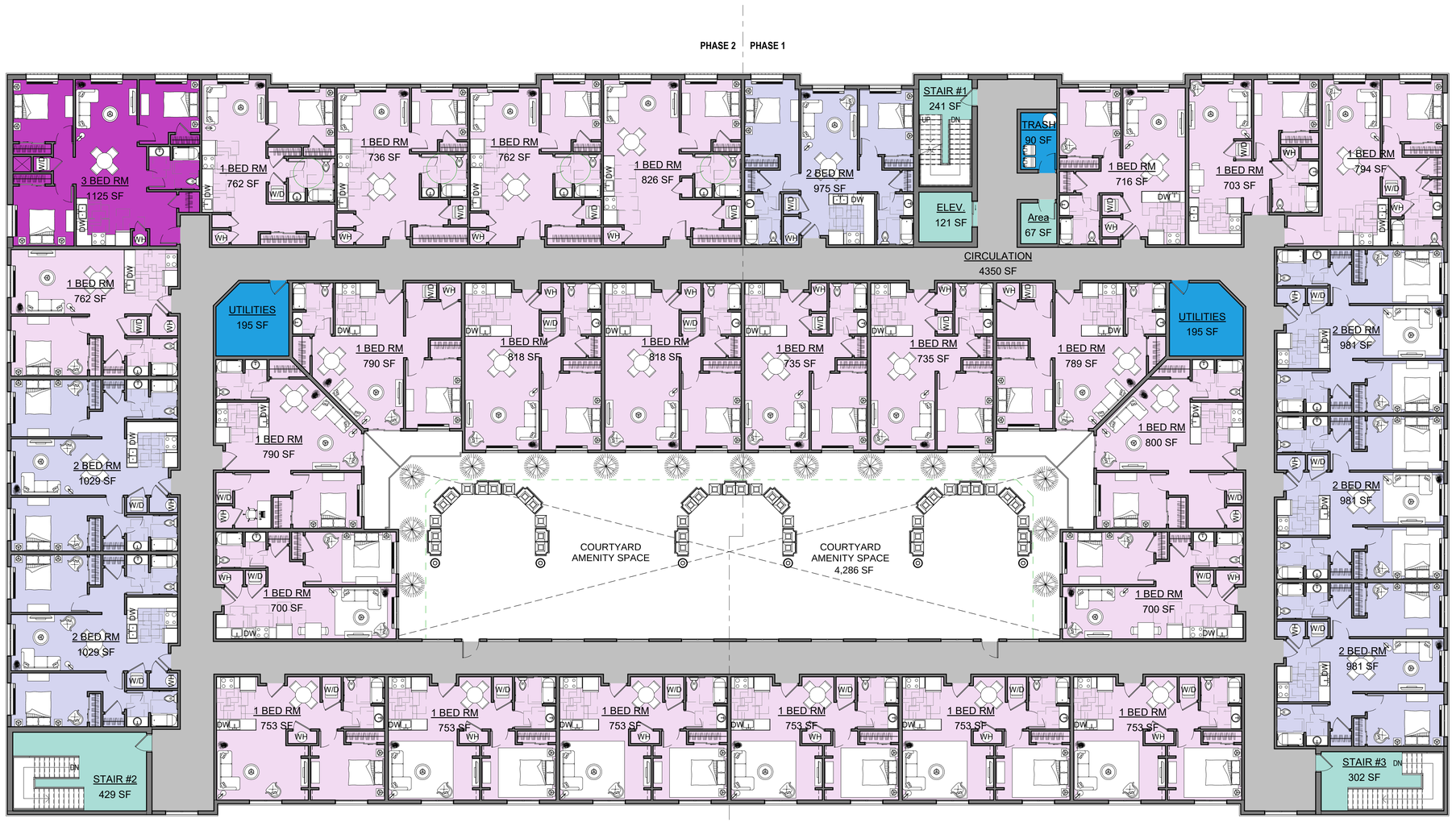
PLANNING BOARD

DATE 11/21/22	PROJECT NO. 2228
DRAWN BY IT	CHECKED BY BMT

SHEET TITLE
FIRST FLOOR PLAN

DRAWING NUMBER
A1.100



1 TYP FLOOR PLAN
SCALE: 3/32" = 1'-0"

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PROJECT TEAM

CIVIL ENGINEERING

STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE
1	PLANNING BOARD	11/21/22

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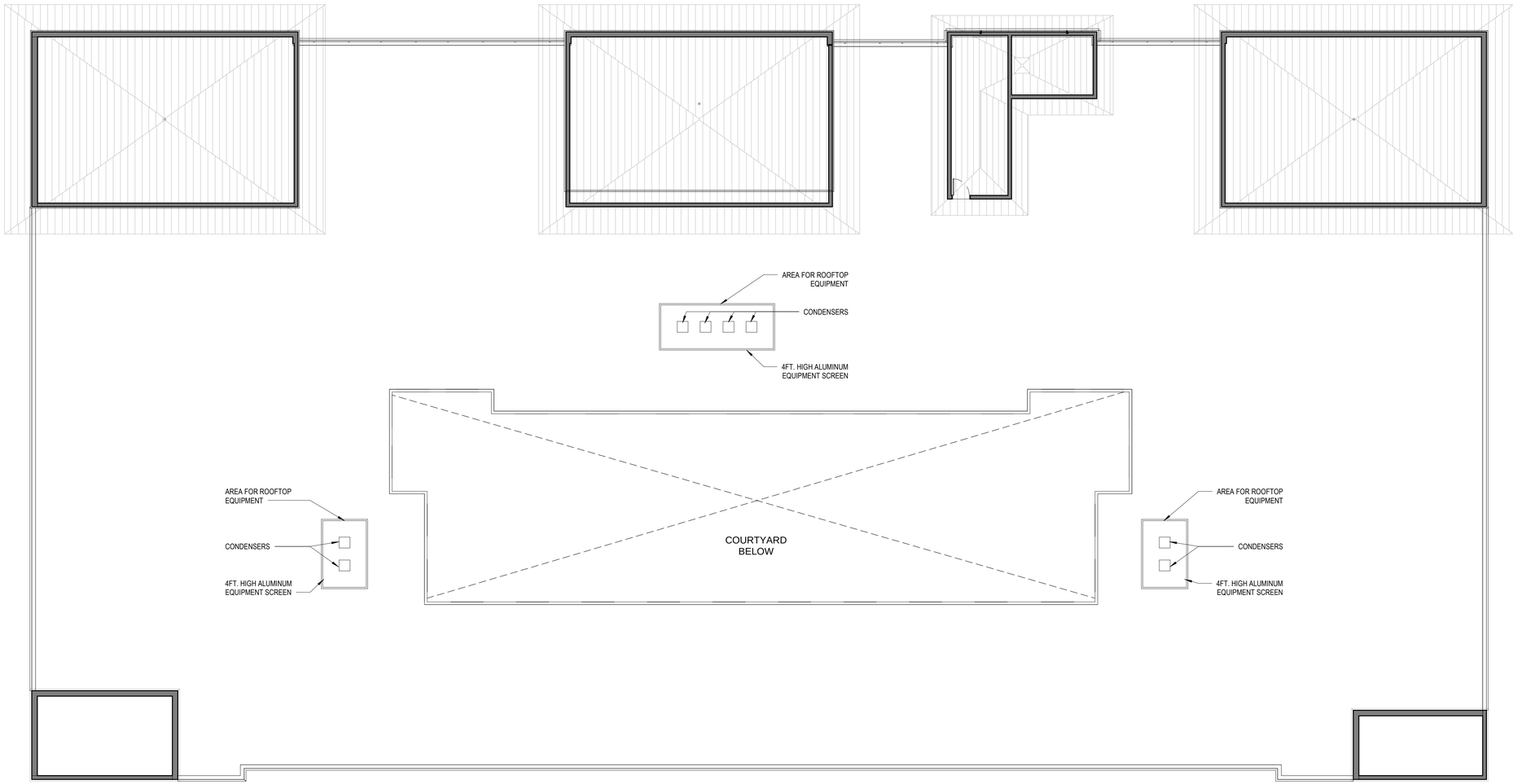
ISSUED FOR:
PLANNING BOARD

DATE	PROJECT NO.
11/21/22	2228
DRAWN BY: Author	CHECKED BY: BMT

SHEET TITLE
FLOOR PLAN

DRAWING NUMBER
A1.101



1 ROOF PLAN
SCALE: 3/32" = 1'-0"

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DUNELLEN, NEW JERSEY 08812

PROJECT TEAM

CIVIL ENGINEERING

STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE
1	PLANNING BOARD	11/21/22

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PLANNING BOARD

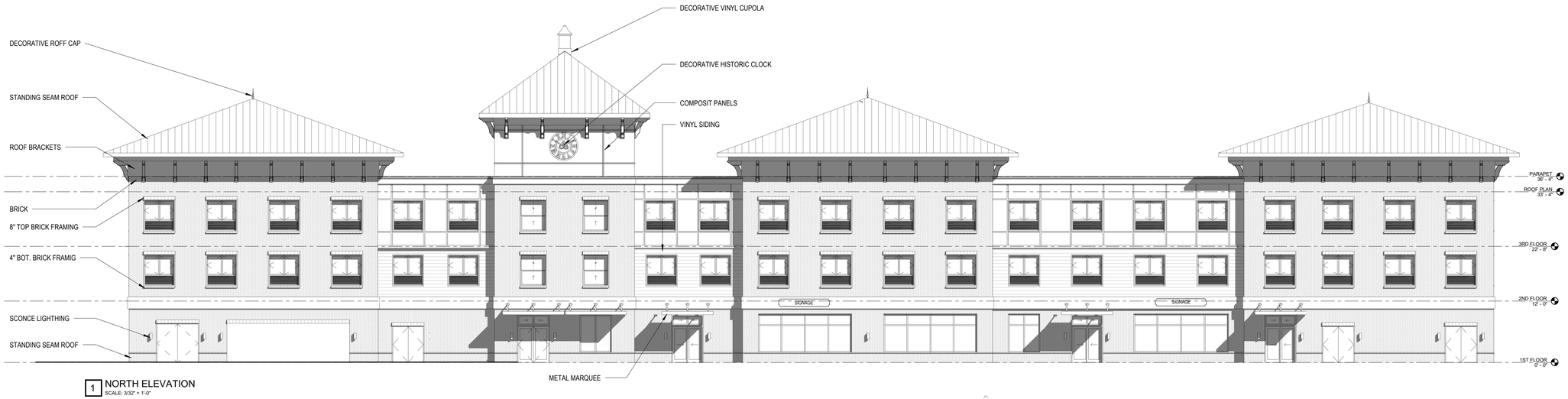
DATE	PROJECT NO.
11/21/22	2228
DRAWN BY: IT	CHECKED BY: BMT

SHEET TITLE

ROOF PLAN

DRAWING NUMBER

A1.102



1 NORTH ELEVATION
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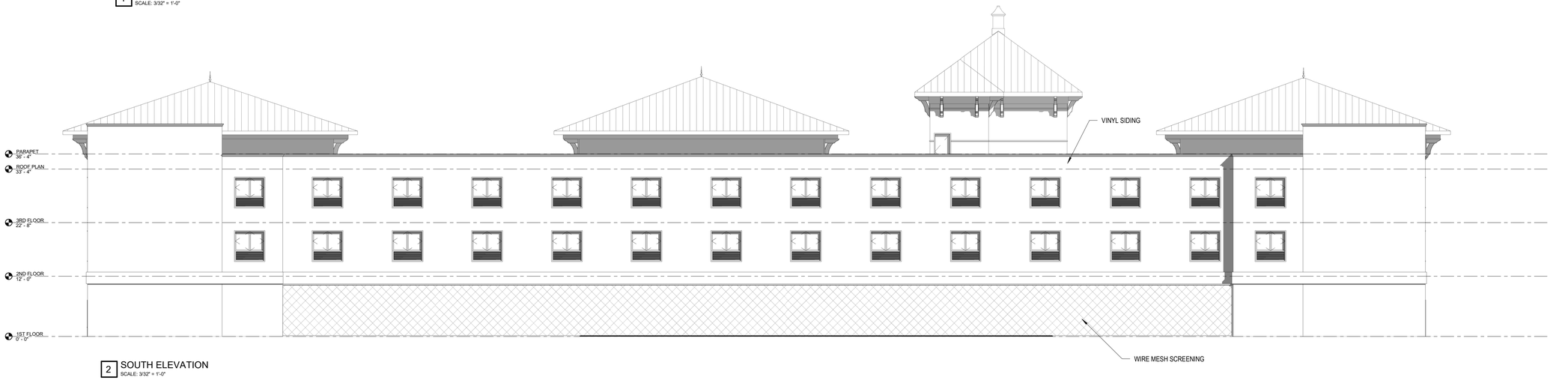

2 SOUTH ELEVATION
SCALE: 3/32" = 1'-0"

4 WEST ELEVATION
SCALE: 3/32" = 1'-0"

3 EAST ELEVATION
SCALE: 3/32" = 1'-0"

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STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE
1	PLANNING BOARD	11/21/22

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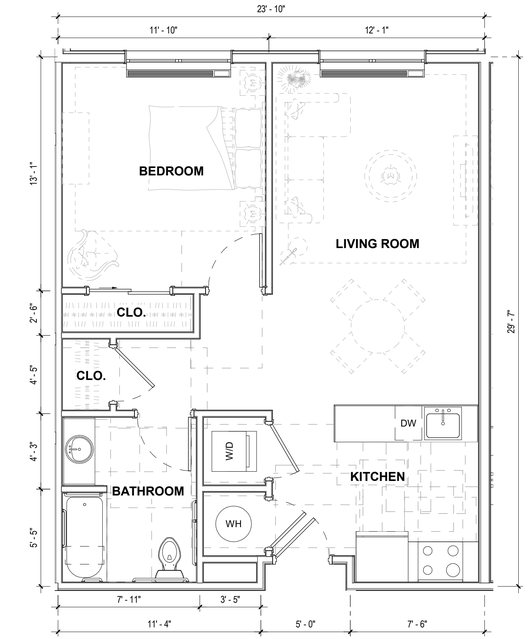
ISSUED FOR:
PLANNING BOARD

DATE	PROJECT NO.
11/21/22	2228
DRAWN BY: IT	CHECKED BY: BMT

SHEET TITLE
ELEVATIONS

DRAWING NUMBER
A2.200



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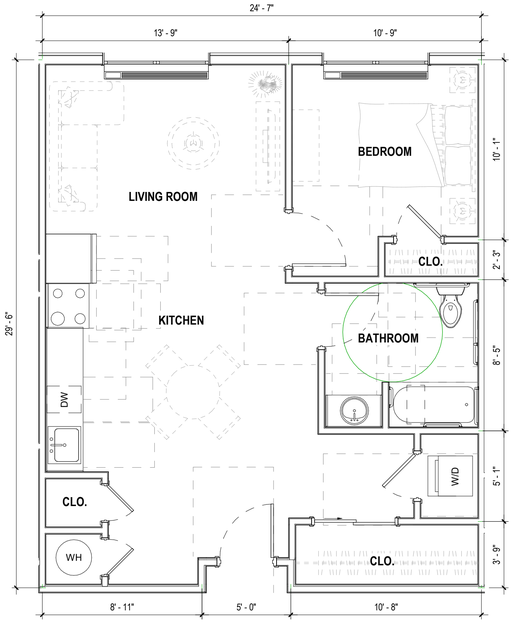

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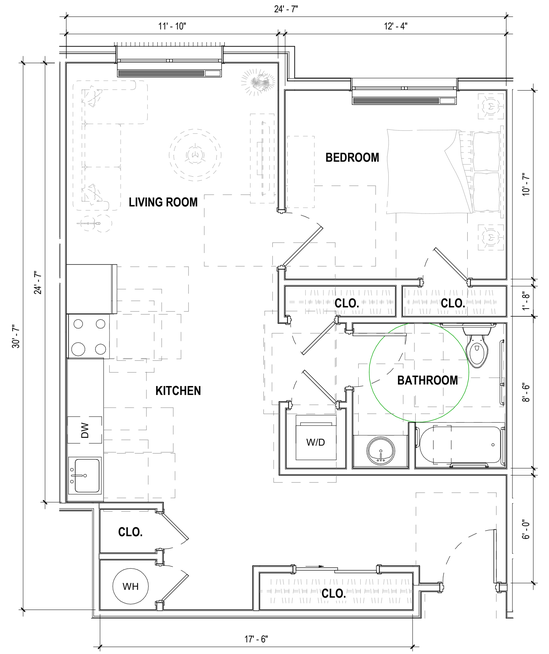

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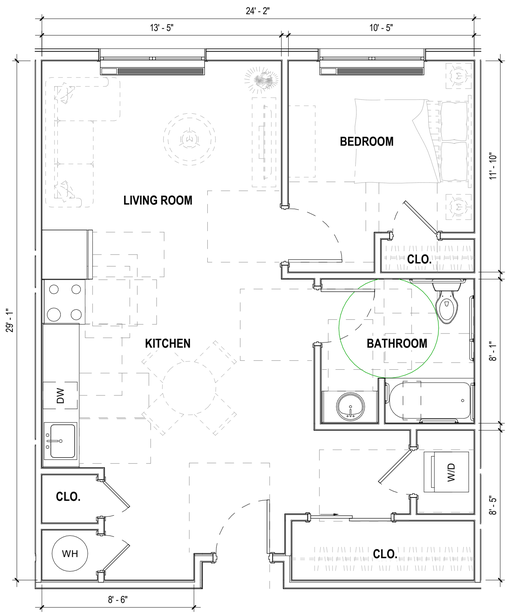

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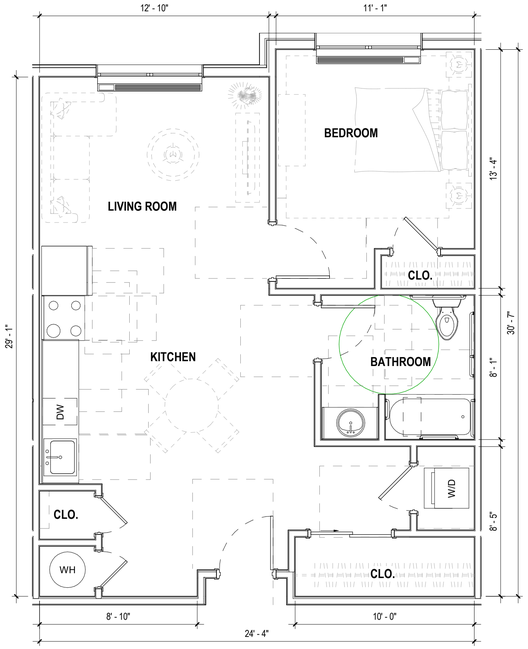

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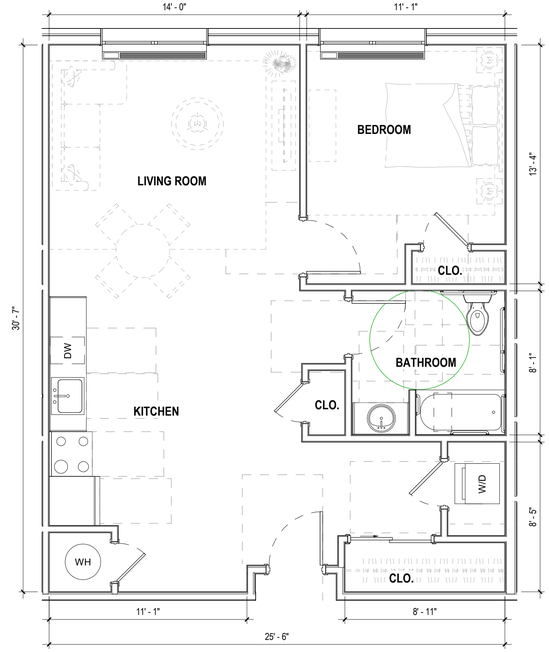

6 UNIT-1C.3
SCALE: 1/4" = 1'-0"

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908.226.5515
WWW.TAYLORARCHDESIGN.COM

MIXED USE APARTMENT

431-441 NORTH AVENUE
DUNELLEN, NEW JERSEY 08812

PROJECT TEAM

CIVIL ENGINEERING

STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE
1	PLANNING BOARD	11/21/22

NOT FOR CONSTRUCTION

BRIAN M. TAYLOR, AIA NJ REG. AI 15286

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DATE	PROJECT NO.
11/21/22	2228
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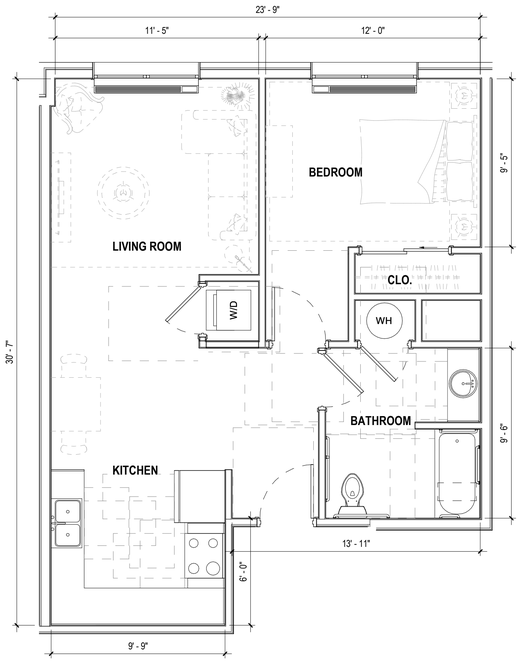
IT	BMT

SHEET TITLE

ENLARGED UNIT PLANS

DRAWING NUMBER

A7.701



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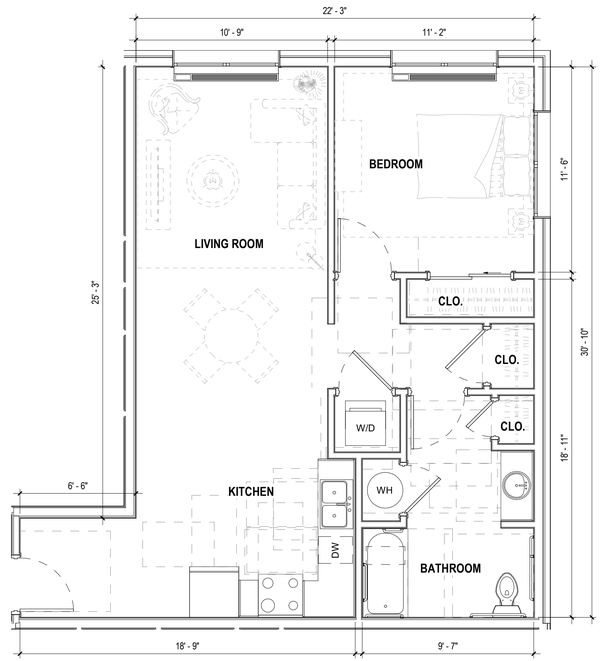

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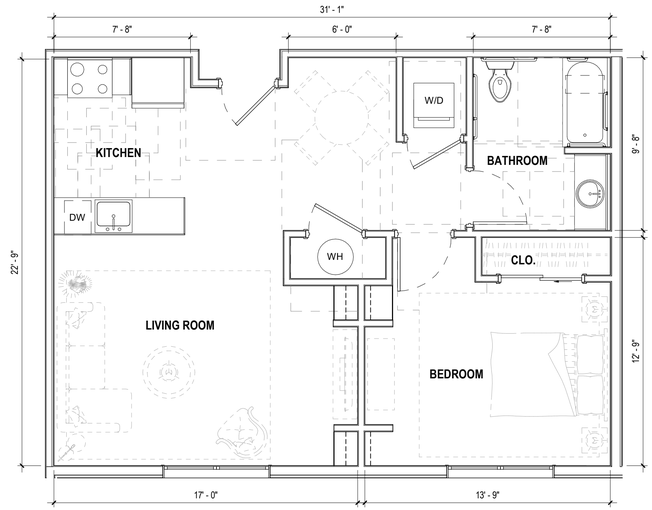

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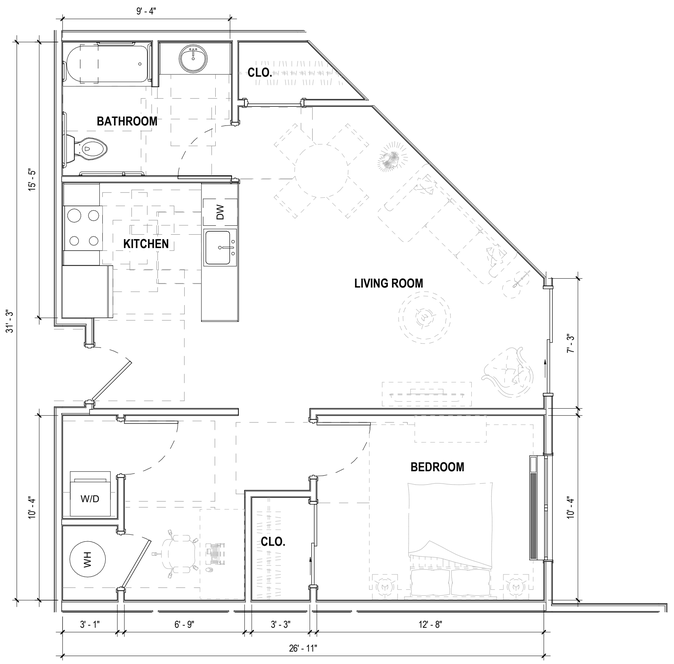

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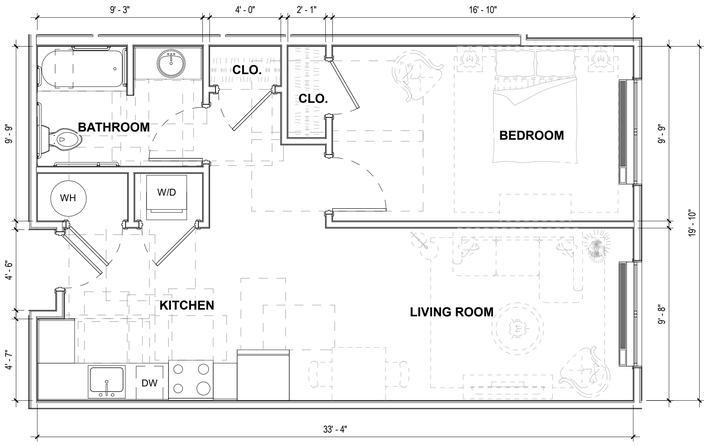

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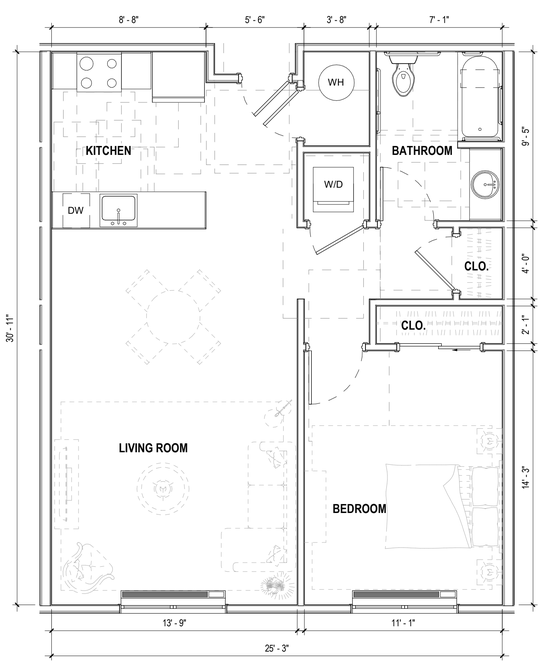

6 UNIT-1I
SCALE: 1/4" = 1'-0"

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PROJECT TEAM

CIVIL ENGINEERING

STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE
1	PLANNING BOARD	11/21/22

NOT FOR CONSTRUCTION

BRIAN M. TAYLOR, AIA NJ REG. AI 15286

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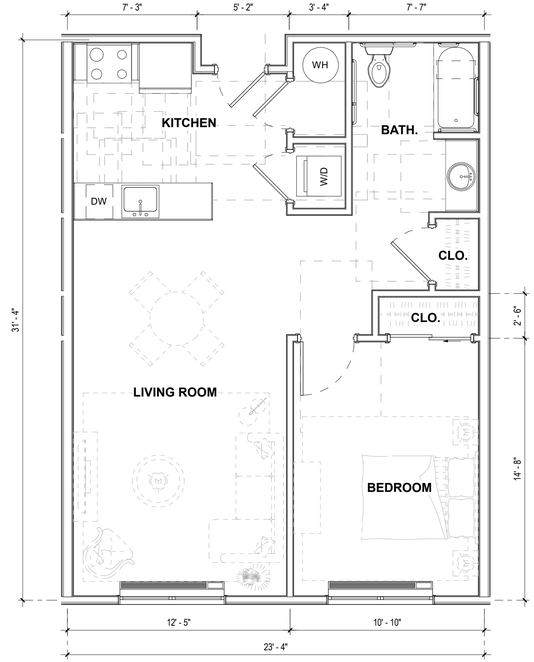
SHEET TITLE

ENLARGED UNIT PLANS

DRAWING NUMBER

A7.702



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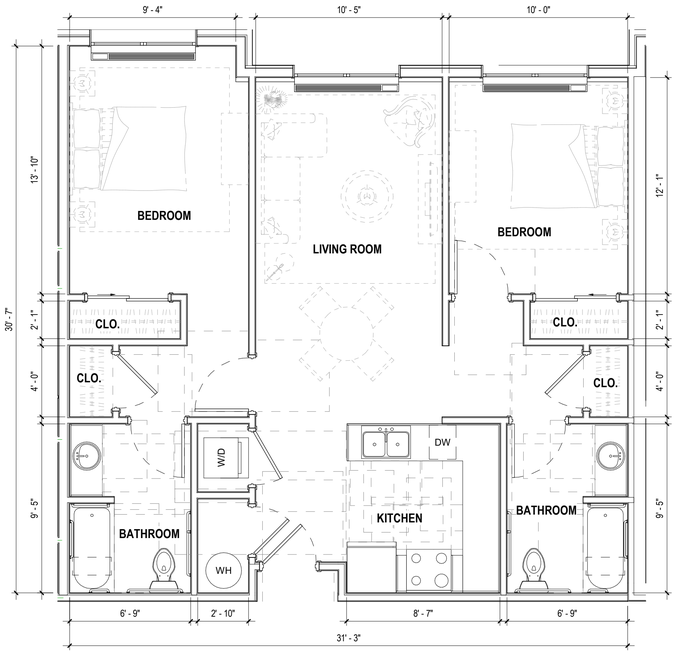

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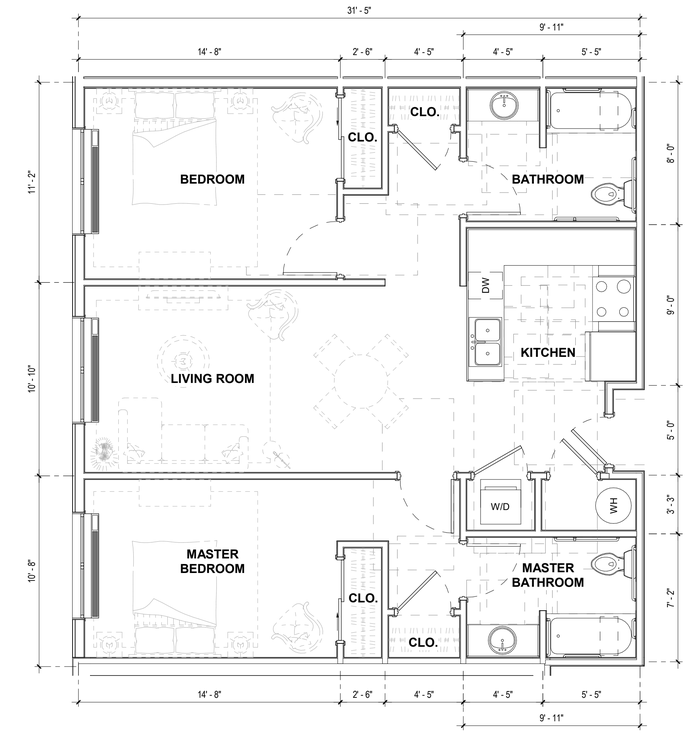

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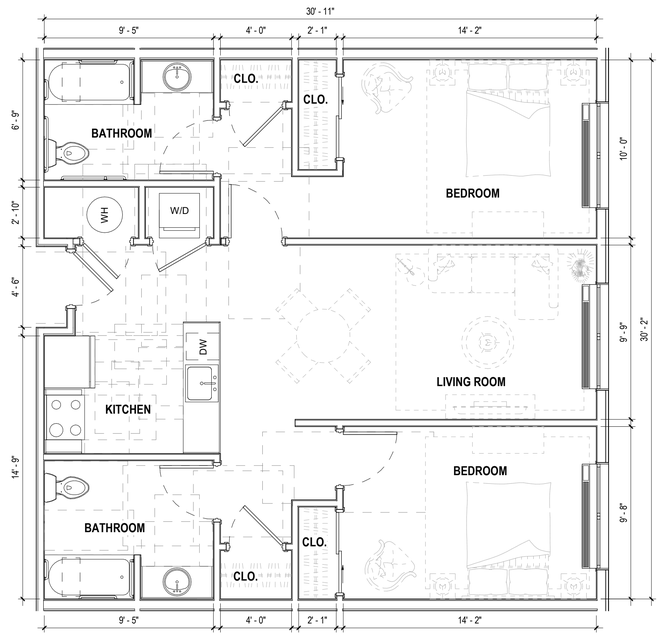

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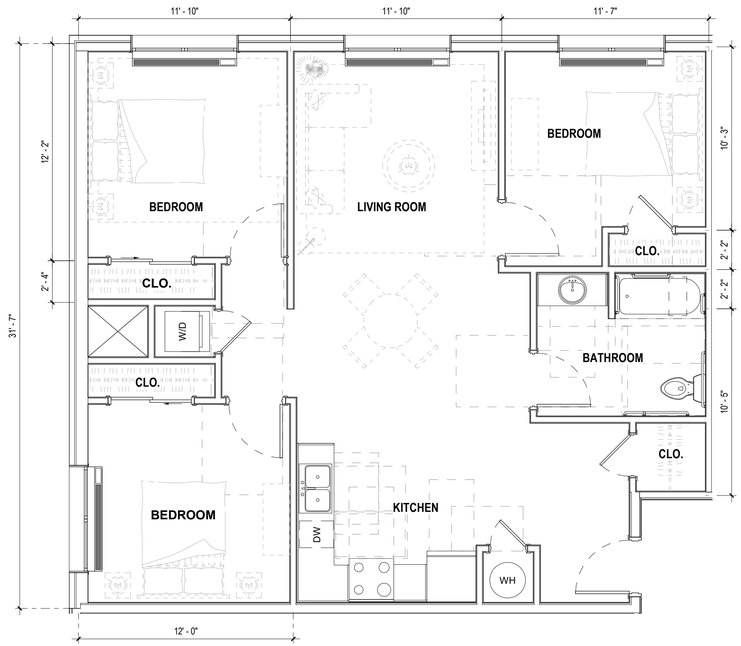

5 UNIT - 3A
SCALE: 1/4" = 1'-0"

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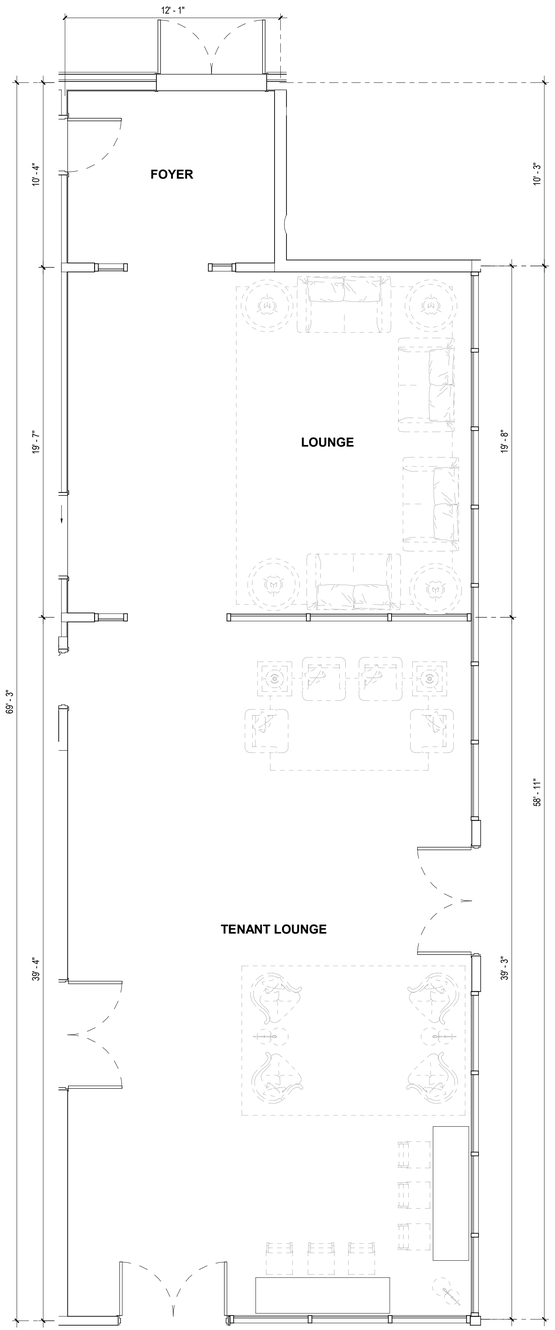
SHEET TITLE
ENLARGED UNIT PLANS

DRAWING NUMBER
A7.703



1 FIRST FLOOR - AMENITY
SCALE: 1/4" = 1'-0"

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PROJECT TEAM

CIVIL ENGINEERING

STRUCTURAL ENGINEERING

MEP ENGINEERING

NO.	DESCRIPTION	DATE

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DATE	PROJECT NO.
04/25/23	2228
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SHEET TITLE

ENLARGED UNIT PLANS

DRAWING NUMBER

A7.704

VIEW 1 - NORTH AVENUE

VIEW 2 - NORTH AVENUE

VIEW 3 - NORTH AVENUE

VIEW 4- AERIAL VIEW

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Author	BMT

SHEET TITLE

RENDERINGS

DRAWING NUMBER

A7.705

EXHIBIT C

Project Schedule

	Task	*Completion Date*
1	Redeveloper and Borough execute Redevelopment Agreement	"Effective Date"
2	Redeveloper submits Preliminary Site Plan to Borough Council pursuant to Section 3.2	Within 90 days of the Effective Date.
3	Redeveloper submits Preliminary/Final Site Plan Application to Planning Board	Within 120 days of the Effective Date
4	Redeveloper submits remaining Governmental Applications for Project	Within 30 days after receipt of Site Plan approval
5	Redeveloper's receipt of all Governmental Approvals for Project excluding building permits	Within 90 days following Site Plan approval from Planning Board, with maximum of two 30-day extensions if necessary to satisfy conditions of approval
6	Submit construction plans for building permits	Within 90 days following receipt of all Governmental Approvals
7	Redeveloper receives Construction Loan Commitment for Project	Within 90 days after receipt of all Governmental Approvals
8	Commencement of Construction	Within 60 days from issuance of the first building permit by Borough
9	Completion of Construction	Within 36 months from issuance of the first building permit by Borough and in no event later than five (5) years from the Effective Date.

EXHIBIT D

Ownership Disclosure

Joseph Villani, Sr.	50%
Joseph Villani, Jr.	50%

EXHIBIT E

List of Borough Representatives

1. Mayor
2. Borough Administrator
3. Construction/Zoning/Code Officials

EXHIBIT F

Form of Declaration of Covenants

Record and Return to:
Windels Marx Lane & Mittendorf, LLP
120 Albany Street Plaza, 6th Floor
New Brunswick, NJ 08901
Attn: Charles B. Liebling, Esq.

DECLARATION OF COVENANTS AND RESTRICTIONS
(as to Block 66, Lot 17 and 17.01 of the Borough of Dunellen,
County of Middlesex (collectively, the "Property"))

This Declaration of Covenants and Restrictions (this "**Declaration**") is made this __ day of _____, 20__, by and between the **BOROUGH OF DUNELLEN**, a municipal corporation of the State of New Jersey with offices at the 355 North Avenue, Dunellen, New Jersey 08812, acting in the capacity of a redevelopment entity, together with its successors and assigns (the "**Borough**"), and

and

1879 MORRIS ASSOCIATES, LLC, a limited liability company of the State of New Jersey authorized to do business in the State of New Jersey, having offices at c/o Villani Builders, 376 North Avenue, Suite A, Dunellen, New Jersey 08812 (together with its permitted successors or assigns, the "**Redeveloper**" or "**Owner**").

W I T N E S S E T H

WHEREAS, the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 *et seq.*, as amended from time to time (the "Redevelopment Law") authorizes municipalities to determine whether certain parcels of land in the municipality constitute "areas in need of redevelopment," as defined in the Redevelopment Law; and

WHEREAS, the municipal council of the Borough ("Borough Council") directed the Borough planning board ("Planning Board") to investigate whether certain properties within the Borough's downtown area (the "Study Area") constituted an "area in need of redevelopment" as defined in the Redevelopment Law; and

WHEREAS, pursuant to the Redevelopment Law, on or about May 5, 2003, Borough designated as a redevelopment area certain properties within the downtown area of the Borough (the "Redevelopment Area"); and

WHEREAS, on or about August 9, 2004, Borough Council adopted an ordinance approving and adopting the Dunellen Downtown Redevelopment Plan Phase I, which was

thereafter amended, most recently on July 5, 2022, pursuant to Ordinance #2022-15 (as amended, the "Redevelopment Plan") in accordance with the Redevelopment Law; and

WHEREAS, Redeveloper is the owner of, or is under contract to acquire, certain property designated on the Borough's tax map as Block 66, Lot 17 and 17.01, more commonly known as 435 North Avenue and 441 North Avenue, respectively (collectively, the "Property"); and

WHEREAS, Redeveloper proposes to construct a mixed-use building with approximately 4,200 square feet of commercial space, forty-eight (48) one-bedroom residential units, twelve (12) two-bedroom residential units, and two (2) three-bedroom residential units, which shall include nine (9) residential Affordable Units, with amenity spaces and related improvements (collectively the "Project") on the Property and

WHEREAS, the Redevelopment Law requires that all agreements, leases, deeds and other instruments between a municipality and a redeveloper shall contain a covenant running with the land requiring, among other things, that " . . . the owner shall construct only the uses established in the current redevelopment plan . . . "; and

WHEREAS, the Redevelopment Agreement contains such a covenant by Redeveloper and its successor or assigns for as long as the Redevelopment Agreement remains in effect, as well as perpetual covenants by Redeveloper and its successor or assigns not to unlawfully discriminate upon the basis of age, race color creed, religion, ancestry, national origin, sex or familial status in the sale, lease, rental, use or occupancy of the Redevelopment Area or any building or structures erected thereon, to comply with Applicable Laws, Governmental Approvals, the Redevelopment Agreement and the Redevelopment Plan and to maintain in good condition any improvements made on the Property in accordance with the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement also provides that the Property, the Redevelopment Agreement, and Redeveloper's interest therein shall not be transferable, subject to certain conditions, prior to the issuance of a Certificate of Completion and further provides certain remedies to Borough for violations of the covenants and defaults under the Redevelopment Agreement; and

WHEREAS, the Redevelopment Agreement requires that such covenants be memorialized in a Declaration of Covenants and Restrictions and said declaration be recorded in the office of the Clerk of Middlesex County.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

Section 1. Defined terms not otherwise defined herein shall have the meaning assigned to such terms in that certain Redevelopment Agreement dated as of _____, 2023 by and between Borough and Redeveloper.

Section 2. Redeveloper covenants and agrees that:

(A) Redeveloper shall design, construct, and complete the Project in compliance with the Redevelopment Plan, Governmental Approvals, Applicable Laws and the Redevelopment Agreement.

(B) Subject to the terms of the Redevelopment Agreement, including, without limitation, Section 12.3 thereof, Redeveloper shall undertake with due diligence (i) the financing of the Project, (ii) construction and development of the Project, (iii) to begin and complete each item in the Project Schedule on or prior to the date set forth in the Project Schedule (and for those items for which commencement dates only are given, such items shall be completed in a commercially reasonable period), and (iv) to seek tenants for the Project Improvements. All activities performed under the Redevelopment Agreement shall be performed in accordance with the level of skill and care ordinarily exercised by developers of first class developments of the same type and nature as the Project.

(C) Redeveloper shall undertake with due diligence the Remediation of the Property, if required, or, as applicable, enforce all rights it has against third parties with respect to Remediation of the Property.

(D) Redeveloper shall not seek any material changes in the number and distribution of residential units and/or any other changes that would cause the Project to become nonconforming under the Redevelopment Plan, without first obtaining the consent of the Borough, to be granted in its sole discretion, and the Planning Board, if required.

(E) Redeveloper shall use diligent efforts to obtain all Governmental Approvals and Third Party Approvals requisite to the construction, development, use and occupancy of the Project and Remediation of the Property, if any, including evidence reasonably satisfactory to Borough that the Project is in compliance with all Applicable Laws, including the Environmental Laws.

(F) Subject to the terms of the Redevelopment Agreement, including but without limitation the provisions of Sections 2.4 and 2.6 of the Redevelopment Agreement, Redeveloper shall not suspend or discontinue the performance of its obligations under the Redevelopment Agreement (other than in the manner provided for herein) for any reason, including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, commercial frustration of purpose, or any damage to or destruction of the Project.

(G) Redeveloper shall not use the Property, Project Improvements, or any part thereof in a manner that is inconsistent with the Redevelopment Plan and the Redevelopment Agreement.

(H) Until a Certificate of Completion has been issued for the Project, Redeveloper cannot sell, convey, lease, or otherwise transfer all or any portion of the Project without consent from Borough, except as otherwise permitted by the Redevelopment Agreement (including as set forth in Article XII), provided that nothing contained in the Redevelopment Agreement shall prevent Redeveloper from entering into contracts of leases which are

conditioned upon obtaining a Certificate of Occupancy or Certificate of Completion as applicable.

(I) Redeveloper shall comply with all Applicable Laws that prevent discrimination against any person, or group of persons, on the basis of age, race, color, religion, creed, national origin, ancestry, physical handicap, familial status, sex, or sexual orientation in the sale, lease, sublease, rental, transfer, use, or occupancy of any Property in the Redevelopment Area, or any part thereof.

(J) Redeveloper shall not knowingly employ, hire or otherwise involve in the Project any Person that has previously been disbarred, suspended or otherwise ruled unable to participate in the process of bidding for, and being awarded, public contracts.

(K) Redeveloper shall promptly notify Borough of any material adverse change in its financial condition from the information provided to Borough by Redeveloper indicating Redeveloper's financial capability to develop, finance and construct the Project in furtherance of Borough's consideration in designating 1879 Morris Associates, LLC as Redeveloper.

(L) Redeveloper shall make all payments in satisfaction of Redeveloper's financial obligations as set forth in the Redevelopment Agreement, including but not limited to payment of Borough Costs.

Section 3. It is intended and agreed that the covenants and restrictions set forth in Section 2 of this Declaration shall run with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Redevelopment Agreement and this Declaration, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, Borough, its successors and assigns, and any successor in interest to the Property, or any part thereof, against Redeveloper, its successors and assigns and every successor in interest therein, and any person in possession or occupancy of the Property or any part thereof. The covenants and restrictions herein shall be binding on Redeveloper itself, each successor in interest to Redeveloper and each party in possession or occupancy, respectively, only for such period as Redeveloper or such successor or party shall be in possession or occupancy of the Property, the Project or any part thereof.

Section 4. In amplification, and not in restriction, of the provisions of Section 2 of this Declaration, it is intended and agreed that Borough and its successors and assigns shall be deemed beneficiaries of the covenants and restrictions set forth in the Redevelopment Agreement and this Declaration, both for and in their own right but also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such covenants and restrictions have been provided. Such covenants and restrictions shall run in favor of Borough for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether Borough has at any time been, remains, or is an owner of any land or interest therein. Borough shall have the right, in the event of any material breach of any such covenant or restriction, to exercise all the rights and remedies and to

maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of covenant or restrictions, to which it or any other beneficiaries of such agreement or covenant may be entitled.

Section 5. Upon redevelopment of the Property and completion of the Project, the covenants contained herein shall terminate and this Declaration will be discharged of record upon Redeveloper's receipt of a Certificate of Completion and termination of the Redevelopment Agreement pursuant to Section 2.2 thereof for the Project, provided, however, that the covenants in Section 2(I) shall remain in effect without limitation as to time.

[signatures appear on successive page]

IN WITNESS WHEREOF, the parties hereto have caused this Declaration to be properly executed and their corporate seals affixed and attested as of the date first written above.

WITNESS:

REDEVELOPER:

1879 MORRIS ASSOCIATES, LLC,
a New Jersey limited liability company

By: _____

By: _____

ATTEST:

BOROUGH OF DUNELLEN

_____
William M. Robins, RMC
Borough Clerk

By: _____
Jason Cilento, Mayor

EXHIBIT G

Form of Administrative Agent Contract

THIS AGREEMENT, entered into as of this the ____day of _____, 20____,

BETWEEN **BOROUGH OF DUNELLEN**, a municipality and instrumentality of the State, having offices at 355 North Avenue, Dunellen, New Jersey 08812, hereinafter called the "Borough"; and

1879 MORRIS ASSOCIATES, LLC, having offices at c/o Villani Builders, 376 North Avenue, Suite A, Dunellen, New Jersey 08812, hereinafter called the "Administrative Agent."

WITNESSETH

WHEREAS, under authorization of the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, *et seq*., hereinafter the "Act") Borough is implementing a program to provide affordable housing units to low- and moderate-income households desiring to live within the Borough; and

WHEREAS, at Title 5, Chapter 80, Subchapter 26 of the New Jersey Administrative Code, the State has promulgated affordability controls in regulations designed to implement the Act, by assuring that low- and moderate-income units that are created under the Act are occupied by low- and moderate-income households for an appropriate period of time (the "Rules"); and

WHEREAS, Section 5:80-26.14 of the Rules provides that affordability controls may be administered by an administrative agent acting on behalf of Borough; and

WHEREAS, Borough has selected 1879 Morris Associates, LLC to be the Administrative Agent for the purposes of providing affordability control services for the mixed use project including 9 Affordable Housing Units at Block 66, Lot 17 and 17.01 of the Official Tax Map of the Borough of Dunellen, Middlesex County, New Jersey, more commonly known as 435 North Avenue and 441 North Avenue, respectively, as included in this contract.

NOW THEREFORE, subject to COAH's approval, Borough and the Administrative Agent hereby agree to the following terms and conditions:

Section 1. Term

This Agreement shall become effective as of the _____day of _____, 20 ___, and shall have a term of *[insert number]* years, terminating at the close of business on the_____day of _____, 20___, subject to the termination and renewal provisions set forth in *Section 4*, below.

Section 2. Applicability and Supersession

This Agreement shall define and govern all terms between the parties with respect to affordability controls for affordable housing units provided under the Act, and shall supersede all prior agreements or documents related thereto.

Section 3. Agency and Enforcement Delegation

Borough and the Administrative Agent acknowledge that under the Rules, the Administrative Agent is acting hereunder primarily as an agent of Borough. Anything herein to the contrary notwithstanding, however, Borough hereby delegates to the Administrative Agent, and the Administrative Agent hereby accepts, primary responsibility for enforcing substantive provisions of the Act and the Rules. The Administrative Agent shall assume all costs and expenses associated with the performance of its duties and responsibilities under this Agreement, at no cost to Borough. Borough, however, shall retain the ultimate responsibility for ensuring effective compliance with the Rules and the Administrative Agent will come under the supervision of the Municipal Housing Liaison.

Section 4. Termination and Renewal

(1) The Agreement may be terminated by either party, by giving *[insert number]* months advanced written notice to the other, to the address and in the form as set forth in *Section 8*, below, provided however, that no such termination may take effect unless and until an alternate Administrative Agent has been selected by Borough and approved by all required governmental authorities.

(2) Unless terminated, this Agreement shall automatically be renewed for *[insert number]* successive terms of *[insert number]* years each.

Section 5. Assignment of Affordable Housing Units

For the term hereof, and without exception, this Agreement shall govern the provision of affordability control services for the following affordable housing units located within the Borough that fall under the jurisdiction of the Act:

[List all affordable housing units to be administered by the administrative agent by development or program name and location. NOTE: This agreement shall not apply to units funded under the Federal Low-Income Housing Tax Credit program under Section 42 of the Internal Revenue Code.]

Section 6. Responsibilities of the Administrative Agent

The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in the Rules, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes: *[include only those duties assigned to the Administrative Agent]*

(1) Affirmative Marketing

(a) Conducting an outreach process to ensure affirmative marketing of affordable housing units in accordance with the Affirmative Marketing Plan of Dunellen and the provisions of N.J.A.C. 5:80-26.15;

(b) Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH; and

(c) Providing counseling or contracting to provide counseling services to low and moderate income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.

(2) Household Certification

(a) Soliciting, scheduling, conducting and following up on interviews with interested households;

(b) Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;

(c) Providing written notification to each applicant as to the determination of eligibility or non-eligibility;

(d) Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et. seq.;

(e) Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located; and

(f) Employing a random selection process as provided in the Affirmative Marketing Plan of Dunellen when referring households for certification to affordable units.

(3) Affordability Controls

(a) Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;

(b) Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;

(c) Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the appropriate county's register of deeds or county clerk's office after the termination of the affordability controls for each restricted unit;

(d) Communicating with lenders regarding foreclosures; and

(e) Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.

(4) Resale and rental

(a) Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and

(b) Instituting and maintaining an effective means of communicating information to low- and moderate-income households regarding the availability of restricted units for resale or re-rental.

(5) Processing requests from unit owners

(a) Reviewing and approving requests from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership;

(b) Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the cost of central air conditioning systems;

(c) Notifying Borough of an owner's intent to sell a restricted unit; and

(d) Processing requests and making determinations on requests by owners of restricted units for hardship waivers.

(6) Enforcement

(a) Securing annually from municipalities lists of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;

(b) Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written

acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;

(c) The posting annually in all rental properties, including two-family homes, of a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent can be made;

(d) Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

(e) Establishing a program for diverting unlawful rent payments to Borough's affordable housing trust fund or other appropriate municipal fund approved by the DCA;

(f) Creating and publishing a written operating manual, as approved by COAH, setting forth procedures for administering such affordability controls; and

(g) Providing annual reports to COAH as required.

(7) Records received, retained, retrieved, or transmitted under the terms of this contract may constitute public records of Dunellen as defined by N.J.S.A. 47:3-16, and are legal property of Dunellen. The Administrative Agent named in this contract must agree to administer and dispose of such records in compliance with the State's public records laws and associated administrative rules.

The Borough of Dunellen has identified the following as public records under this contract, subject to the above-cited provisions:

0120-0000	Affordable Housing Project File
0120-0001	Affordable Housing Project File-Approved
0120-0002	Affordable Housing Project File-Denied/Withdrawn
0120-0003	Affordable Housing Project File-Referral List
0112-0000	Affordable Housing Application File-Individual
0121-0002	Affordable Housing Application File-Certification Denied or Expired
0122-0000	Affordable Housing Unit File
0122-0001	Affordable Housing Unit File-Mailing Notification of Responsibilities
0123-0000	Affordable Housing Unit Inventory
0124-0000	Affordable Housing Trust Fund and/or Regional Contribution Agreement (RCA) Bank Account
0125-0000	Enforcement File-Projects and Units
0126-0000	Monitoring Reports-Annual Submission
0127-0000	Operations Manual

Although the State has used its best efforts to identify all records which qualify as public records under this contract, the State reserves the right to amend the above list from time to time as warranted.

(8) The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities hereunder. *[Describe any other agreed responsibilities of the Administrative Agent.]*

Section 7. Responsibilities of Borough

Borough shall:

(1) Provide to the Administrative Agent the name, title and telephone number of the municipal official designated as the Municipal Housing Liaison to the Administrative Agent on all matters related to this Agreement;

(2) Ensure that applicable local ordinances are not in conflict with, and enable efficient implementation of, the Rules and the provisions of this Agreement;

(3) Monitor the status of all restricted units in Borough's Fair Share Plan;

(4) Compile, verify, and submit annual reports as required by COAH;

(5) Coordinate meetings with affordable housing providers and Administrative Agents, as applicable;

(6) Develop an Affirmative Marketing Plan and distribute to the Administrative Agent;

(7) Ensure that all restricted units are identified as affordable within the tax assessor's office and any Municipal Utility Authority (MUA). Borough and MUA shall promptly notify the Administrative Agent of a change in billing address, payment delinquency of two billing cycles, transfer of title, or institution of a writ of foreclosure on all affordable units; and

(8) Provide all reasonable and necessary assistance to the Administrative Agent in support of efforts to enforce provisions of the Act, the Rules, deed covenants, mortgages, court decisions or other authorities governing the affordability control services to be provided under the Agreement.

Section 8. Notices

All notices and other written communications between Borough and the Administrative Agent shall be to the addresses and personnel specified below:

if to Borough:

_____

_____

_____

Attn: _____

if to the Administrative Agent:

_____

_____

_____

Attn: _____

Section 9. Non-Waiver of Conditions

The failure of either party to insist upon strict performance of any provision of this Agreement in any one or more instances shall not constitute a consent to waiver of or excuse for any other different or subsequent breach of the same or other provision, nor as a result shall either party relinquish any rights which it may have under this Agreement. No terms or provisions hereof shall be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the waiving party.

Section 10. Merger and Amendment

This written Agreement, together with its Exhibits, constitutes the sole agreement between the parties with respect to the matters covered therein, and no other written or oral communication exists which shall bind the parties with respect thereto, provided however that this Agreement may be modified by written amendments clearly identified as such and signed by both Borough and the Administrative Agent.

Section 11. Partial Invalidation of Agreement

Should any provision of this Agreement be deemed or held to be invalid, ineffective or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect.

IN WITNESS WHEREOF, Borough and the Administrative Agent have executed this Agreement in triplicate as of the date first above written.

BOROUGH OF DUNELLEN

BY _____

xxxxxxxxxxxxx
Title

1879 MORRIS ASSOCIATES, LLC

BY _____

xxxxxxxxxxxxx
Title

ACKNOWLEDGEMENTS

On this the ____day of _____ , 20__ before me came _____ known and known to me to be the _____ of the Borough of Dunellen, the municipality identified as such in the foregoing Agreement, who states that (s)he is duly authorized to execute said Agreement on behalf of said municipality, and that (s)he has so executed the foregoing Agreement for the purposes stated therein.

_____
NOTARY PUBLIC

On this the ____ day of _____, 20_____ before me came_____, known and known to me to be the _____ of, 1879 Morris Associates LLC, the Administrative Agent identified as such in the foregoing Agreement, who states that (s)he has signed said Agreement on behalf of said Administrative Agent for the purposes stated therein.

_____
NOTARY PUBLIC

SCHEDULE 2.1(b)

Capitalized terms used herein not otherwise defined shall have the meanings set forth in the Redevelopment Agreement dated as of _____, 2023 by and between Borough and Redeveloper.

1. Redeveloper shall reserve a reasonable number of parking spaces for exclusive use, during the regular business hours of the commercial spaces located within the Property, by the employees and tenants of said commercial spaces. The aforementioned parking spaces shall be those spaces located on the ground floor of the Property closest in proximity to the Property's North Avenue entrance.

2. All package delivery vehicles, moving trucks and loading for commercial uses shall be prohibited from any loading activities in public right-of-ways.

3. On or before the Planning Board's review of the Preliminary Site Plan, Redeveloper shall draft a written plan describing the handling of move-in/move-out operations, loading for retail tenants and mail/package deliveries for the Property to demonstrate that these activities will not impair the traffic flow on North Avenue.

4. To the reasonable satisfaction of Borough, Redeveloper shall install any necessary amenities and improvements to ensure the Property is designed for energy-efficiency.

5. With respect to planters required to be placed by Redeveloper pursuant to the Redevelopment Plan and pursuant to Redeveloper's obligations herein, Redeveloper shall only place self-watering planters as described in **Appendix I** attached hereto (with the exception of tree planters which shall be as described in **Appendix II**). Redeveloper shall place such self-watering planters on (i) North Avenue and any light posts installed on North Avenue on or near the Property, (ii) on or near the side of the Property facing North Avenue, and (iii) in the courtyard amenity space in the Property, all to assist in stormwater runoff and to improve the overall aesthetic quality of the Property, as determined by Borough.

6. Pervious pavers shall be used in all walkways constructed or improved in connection with the Project.

7. Redeveloper shall place deciduous trees, native to New Jersey, on and near the side of the Property facing North Avenue in a manner as described in Section 8.2 of the Redevelopment Plan.

8. Notwithstanding the relevant requirement set forth in Section 8.2 in the Redevelopment Plan, all benches installed by Redeveloper shall be as described in **Appendix III** attached hereto. The Borough shall amend the Redevelopment Plan with respect to same.

9. With respect to lightposts placed by Redeveloper pursuant to the Redevelopment Plan, all lightposts installed by Redeveloper shall be as described in **Appendix IV** attached hereto.

10. With respect to trash receptacles placed by Redeveloper pursuant to the Redevelopment Plan, all trash receptacles placed by Redeveloper shall be those trash receptacles described in **Appendix V** attached hereto.

APPENDIX I

Planter

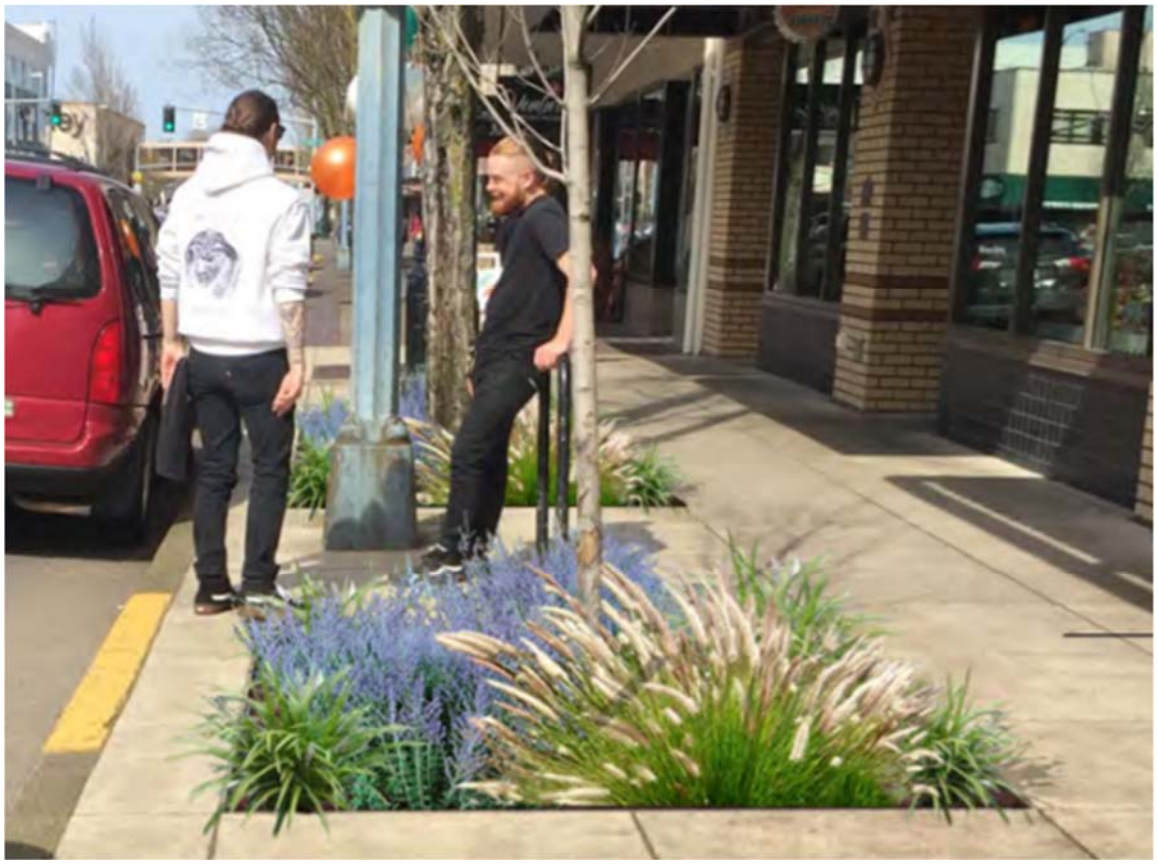
[Attached]

THE
ARMORY

APPENDIX II

Tree Planter

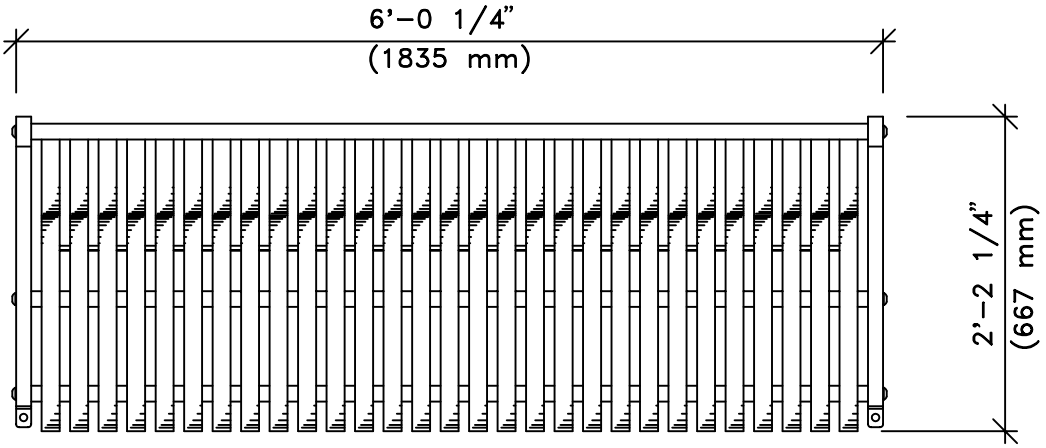
[Attached]



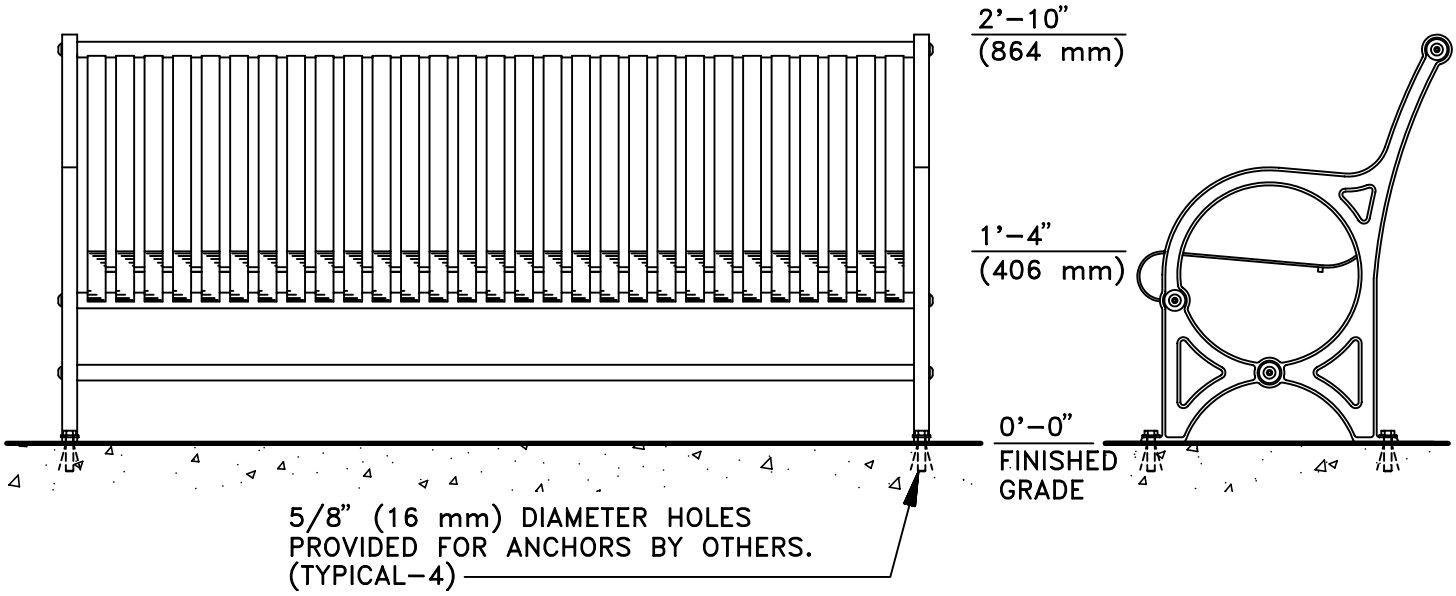
APPENDIX III

Bench

[Attached]



TOP VIEW



FRONT VIEW

END VIEW

AVAILABLE IN 2', 4', 6' (SHOWN) AND 8' NOMINAL LENGTHS.
OTHER LENGTHS AVAILABLE UPON REQUEST.

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△

Scale	Drawn by: AT	07-04-10
3/4"=1'-0"	Ck'd by:	

COLUMBIA CASCADE COMPANY
Makers of TimberForm®, PipeLine® RePlay® TimberForm®-2, InterPlay® CycLoops® and CycLocker® Products.
1300 S.W. Sixth Avenue, Suite 310 Telephone 503/223-1157
Portland, Oregon 97201-3464 Facsimile 503/223-4530
U.S.A.
WWW.TIMBERFORM.COM

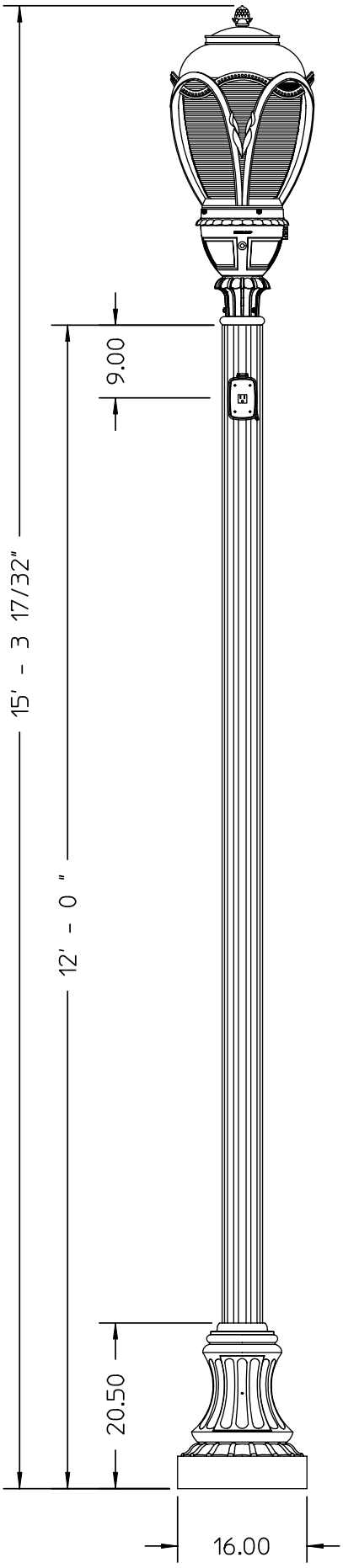
Title:
TIMBERFORM CREST
MODEL NO. 2311-6
BENCH WITH ARMRESTS

Drawing No.	Sheet
W-2311-6	1 of 1

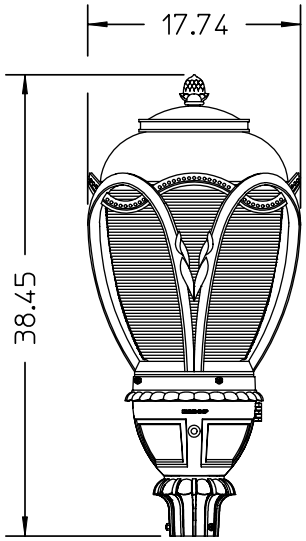
APPENDIX IV

Lightpost

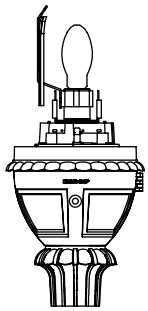
[Attached]



Luminaire Detail
Scale 1:16



Lamping & Reflector Detail



C/C	PART #	DESCRIPTION
05-3200	S5824C-A	Capitol, 100W HPS, T5, Black
04-1280	SP5844-A	Classic I Pole, 12', Black

PRODUCT APPROVALS

HADCO	JAZ
CUST.	

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Full Specification Drawing

(Complete Assembly)

PSEG
PUBLIC SERVICE ELECTRIC AND GAS COMPANY
NEWARK, N.J.

PHILIPS
HADCO

100 Craftway P.O. Box 128
Littlestown, Pennsylvania 17340-0128
Phone 717-359-7131
Fax 717-359-9515
www.hadco.com

JOB NAME: *Dunellen*

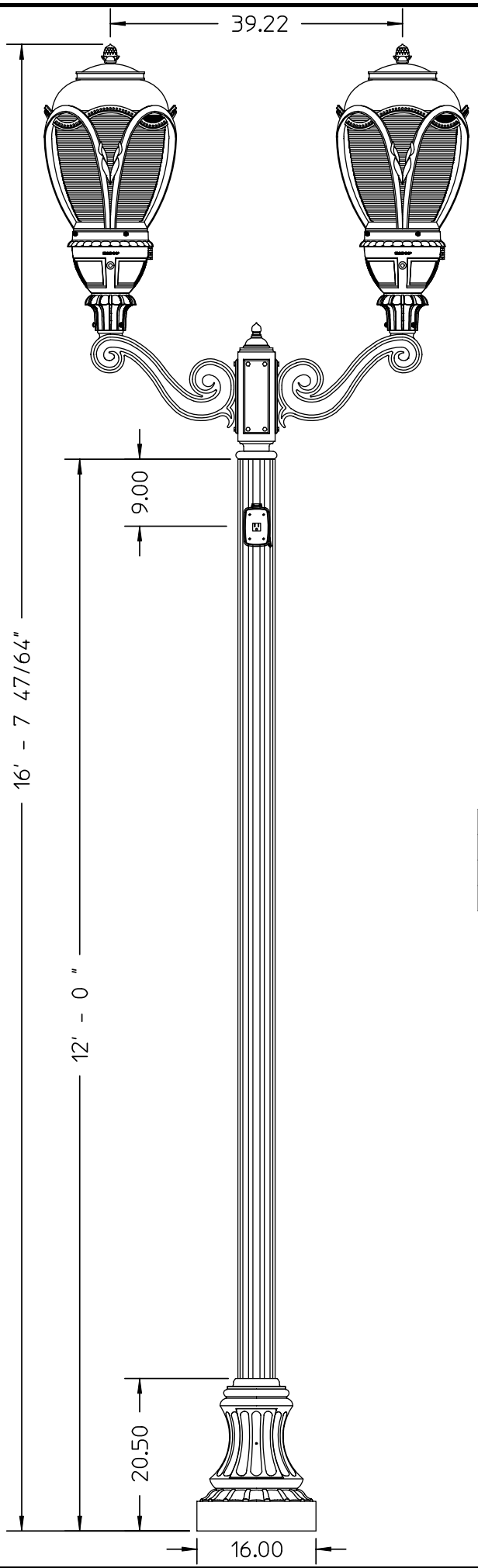
REP. TERRITORY:	DRAWN BY:
52	SMK

SCALE:	DATE:
1:20	08/20/09

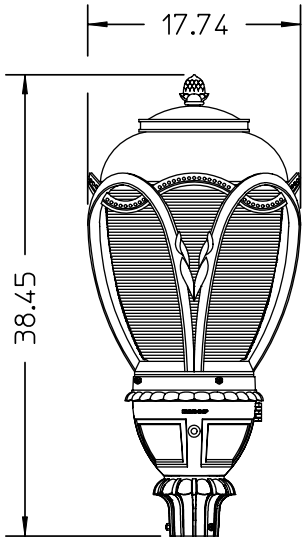
DRAWING NUMBER: *C6025-DWG01*

REP: *Dave Murphy & Assoc.*

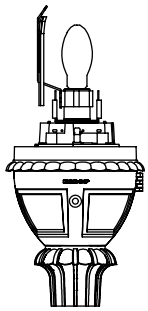
REV: A	PCN: 09-080
BY: .	DATE: .



Luminaire Detail
Scale 1:16



Lamping & Reflector Detail



C/C	PART #	DESCRIPTION
05-3200	S5824C-A	Capitol, 100W HPS, T5, Black
05-0195	SA5841-A	Imperial Arm, 2-Lite, Black
04-1280	SP5844-A	Classic I Pole, 12', Black

PRODUCT APPROVALS

HADCO	JAZ
CUST.	

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Full Specification Drawing

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Phone 717-359-7131
Fax 717-359-9515
www.hadco.com

JOB NAME: *Dunellen*

REP. TERRITORY:	DRAWN BY:
52	*SMK*

SCALE:	DATE:
1:20	*08/20/09*

DRAWING NUMBER: *C6025-DWG02*

REP: *Dave Murphy & Assoc.*

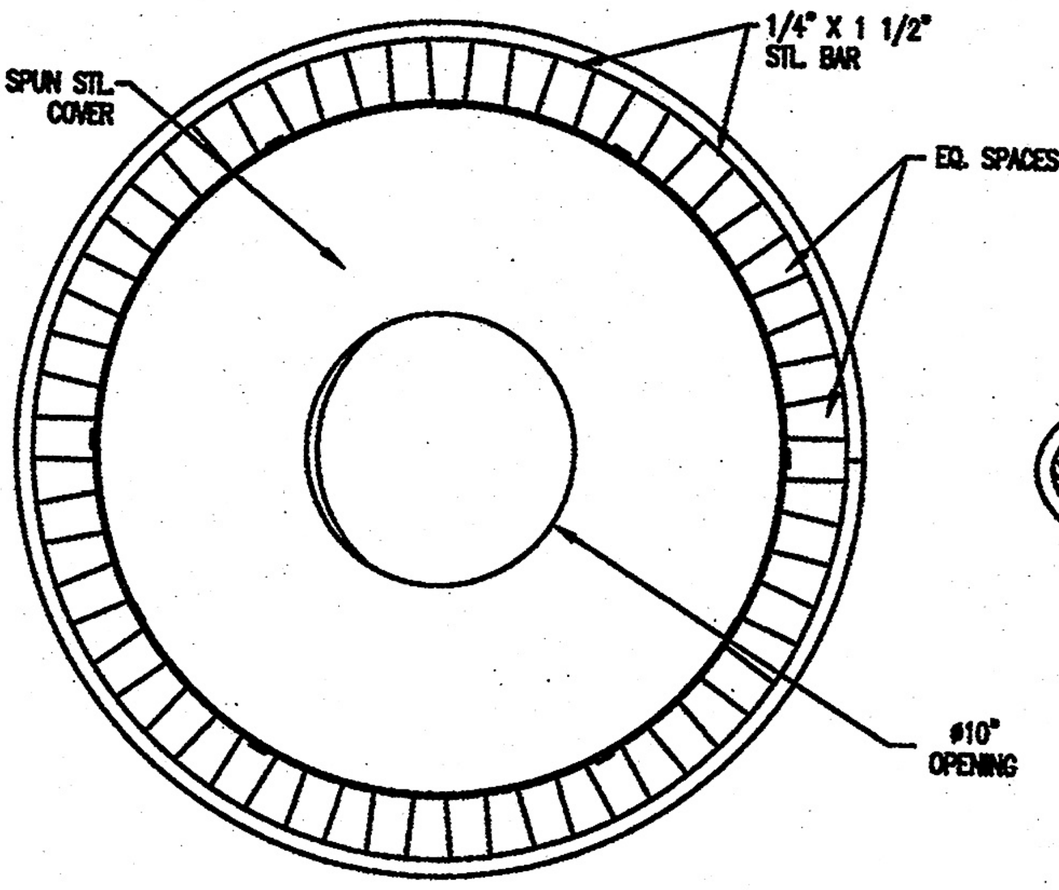
REV: *A*	PCN: *09-080*
BY: .	DATE: .

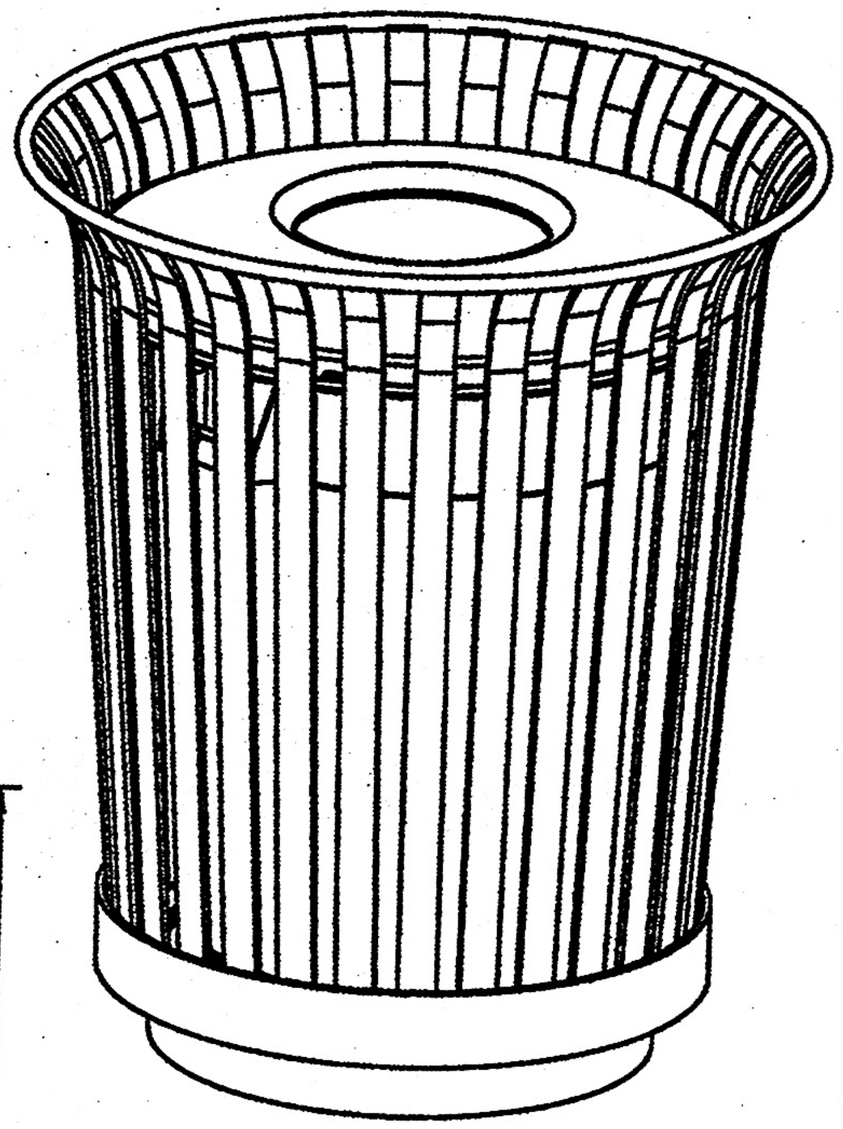
APPENDIX V

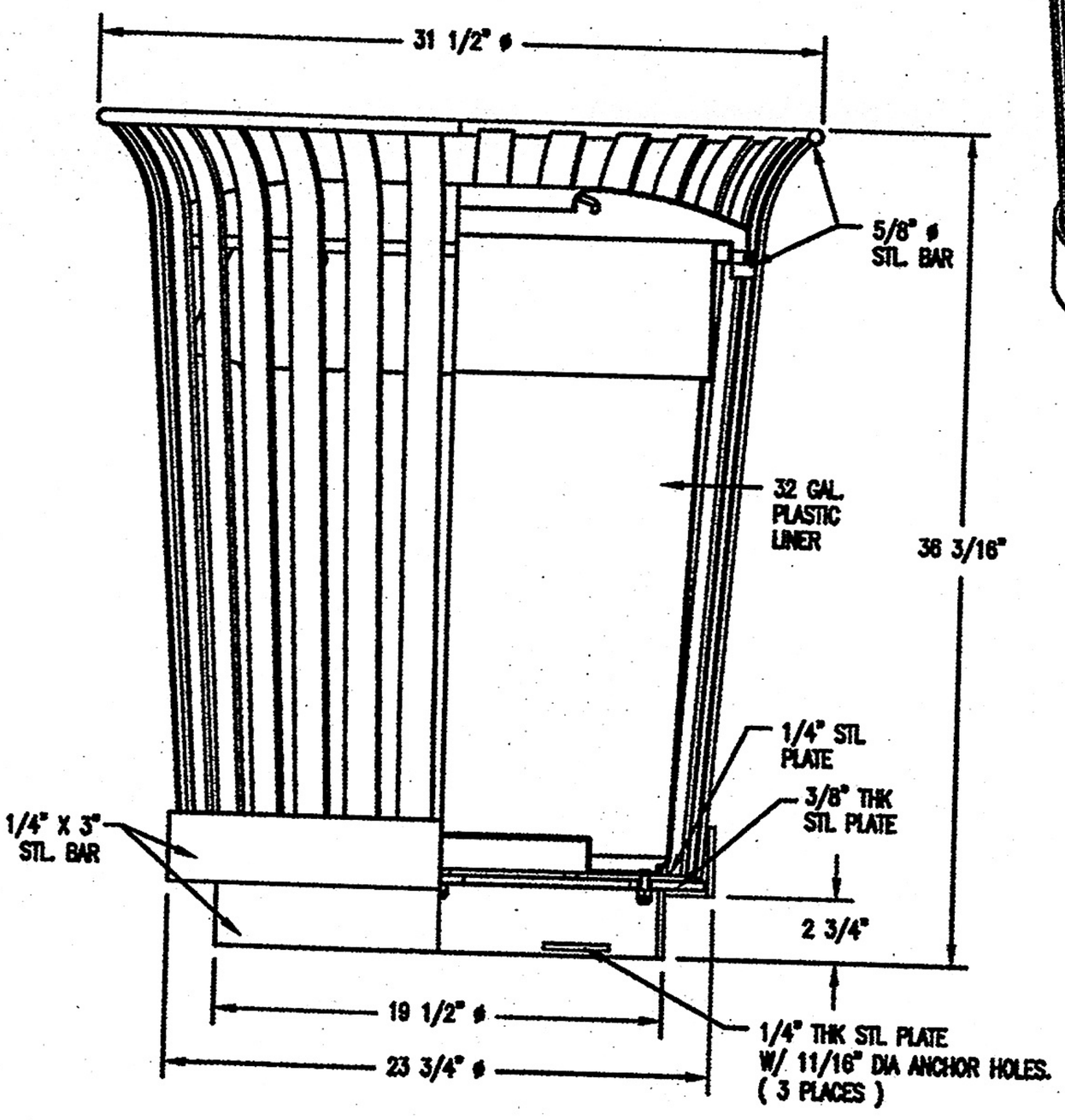
Trash Receptacle

[Attached]

N.T.S.







RECEPTACLE
COLOR: BLACK

NOTES:

1.) ALL STL. MEMBERS COATED W/ ZINC RICH EPOXY THEN FINISHED W/ POLYESTER POWDER COATING.
2.) 1/2" X 3 3/4" EXPANSION ANCHOR BOLTS PROVIDED.
3.) RECEPTACLE FULLY ASSEMBLED AT FACTORY.

DuMor, inc.
P.O. Box 142 Mifflintown, PA 17059-0142

SCALE : NONE	TITLE : RECEPTACLE			
DATE DRAWN : 12/12/96				
DRAWN BY : AH	REV.	DRAWING NUMBER		SHEET
DATE REV. : 12/3/12	1	84-32-FTO		1 OF 2
REV. BY : JSB				

RECEPTACLE DETAIL

N.T.S.